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Communicating the European Ombudsman's Mandate: An Overview of the Annual Reports

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Abstract

The purpose of this paper is to explore the communication strategy of the European Ombudsman (EO), focusing on the evolution of the Annual Reports (ARs) of the office from 1995 to 2010. The EO was created to bridge the gap between citizens and the EU Institutions; therefore the EO office may be seen, *inter alia*, as a vehicle of European communication per se. The ARs are the Ombudsman's main instrument of political pressure and an opportunity to communicate the outcomes of the preceding year to a broad audience. It is shown that the ARs have improved significantly in terms of layout and structure, while the EO now uses a dynamic logo and website. The various communicative activities presented in the ARs are proof of the EO's efforts to improve the office's public image, thereby strengthening the Ombudsman's so-called 'moral authority' in the context of a rather limited mandate. In terms of the legal and political messages of the ARs, the article focuses particularly on the evolution of the notion of maladministration, inter-institutional relations and the creation of a European Network of Ombudsmen. Another section addresses the similarities and differences of the two office-holders of the period under examination regarding their perception of the mandate. The article generally assesses the EO's efforts in the communication field positively. However, from a communication-policy perspective, it is doubtful that the EO could respond to the possible preference of some citizens to contact him/her on issues which concern a national entity implementing EU law when such matters are excluded from the EO's jurisdictional ambit.

Keywords

European Ombudsman; Annual Report; Communication; Transparency; Networks; Good Administration; Charter of Fundamental Rights

The purpose of this paper is to explore the communication strategy of the European Ombudsman (EO), focusing on the evolution of the Annual Reports (ARs) of the office from 1995 to 2010, both in terms of presentation and content, as well as in terms of communication and rhetoric strategies, using a combination of content analysis techniques from a historical and legal perspective.

The EO office was created by the Maastricht Treaty as part of the provisions on EU citizenship and became operational in 1995. The first EO, Jacob Söderman, was succeeded by Nikiforos Diamandouros on 1 April 2003.¹ Elected by the European Parliament, the EO investigates complaints of maladministration of EU institutions, bodies and agencies, but also benefits from the power to activate own-initiative inquiries when appropriate. Indeed, the Treaties (now Art. 228 TFEU) and the Court of Justice of the European Union in *Lamberts*² confirmed the extensive discretionary powers of the EO. When possible, the EO makes every effort to reach a friendly solution between the citizen/legal person and the institution concerned; otherwise, he/she possesses a series of non-binding instruments. These instruments may be listed as follows, according to their gravity: further

¹ Since the EO signs the 'Overview' (previously the 'Foreword' or 'Introduction') of the Annual Report and on numerous occasions declares authorship of the document, this paper attributes each AR to the respective Ombudsman in charge at the time of publication. After Diamandouros's decision to resign in 2013, Parliament has elected a new Ombudsman, Emily O'Reilly, who assumed office on 1 October 2013. This paper, however, examines the period between 1995 and 2010 only.

² Case 234/02 P, *European Ombudsman v Frank Lamberts*, [2004] ECR I-2803.

remark (where no maladministration is found but the institution can still improve), critical remark, draft recommendation and a special report to the European Parliament. From a pragmatic point of view, the EO is an institution with rather limited resources and personnel.³

The EU has invested time and resources in augmenting its communication strategy. Michailidou stresses how 'new media' are now increasingly perceived as a participatory or democratising factor, but maintains that the Commission has yet to develop the full potential of new media so as to implement in practice a more 'dialogue-oriented' participatory communication scheme.⁴ The emergence (or strengthening) of the European public sphere⁵ presupposes an intensive communication among the different levels of the EU's multilevel system of governance.

The EO is particularly relevant when discussing communication in the EU, since it was precisely the creation of the EO which served, among others, the purpose of bridging the distance between the citizens and the EU to begin with.⁶ In other words, the existence of the EO as such, beyond his/her function directed at improving the EU's administrative framework, may be seen as an instrument of communication. Among the communicative activities of the EO, the Annual Reports are of particular relevance. In fact, the EO has consistently stated that the ARs are 'the Ombudsman's most important publication',⁷ and that readers⁸ rely upon the reports so as to understand the institutional role of the EO and the limits of his/her mandate. The ARs can also be seen as the EU institutions' opportunity 'for self-regulation', since 'problematic areas within the administration' are highlighted therein.⁹ Consequently, the ARs are the EO's main instrument of political pressure and an opportunity to communicate the outcomes of the preceding year to a broad audience. Furthermore, while the reports of several EU entities do not differ substantially over the years, the EO has developed the presentation and content of their own reports, being one of the few examples of Union institutions or bodies actually investing time and resources to eventually turn the report, as the title of the following section suggests, from a Union *document* to an attractive *publication*. This evolution is reflected, for example, in the front covers and the length (in terms of pages) of the reports. During the first years of operation especially, the EO included in the reports almost every communication or media activity, providing details, pictures and feedback received. As the reports started to become more succinct, a selective exposition of communication activities replaced the initial form of presentation. Indeed, the EO has endorsed the principle that the reports submitted to Parliament ensure an ombudsman's accountability.¹⁰

It could be argued that the ARs serve a dual purpose: first, they are communication instruments as such and, second, they are the vehicle through which the EO has communicated information

³ For more on the mandate of the EO see, for example, K. Heede, *European Ombudsman. Redress and Control at Union Level* (The Hague: Kluwer Law International, 2000); P. Magnette, 'Between Parliamentary Control and the Rule of Law. The Political Role of the Ombudsman in the European Union', *Journal of European Public Policy*, 10 (2003), 677-694; A. Tsadiras, 'The Ombudsman', in P. Graig, ed., *EU Administrative Law* (Oxford: Oxford University Press, 2006), 739-762.

⁴ A. Michailidou, 'Democracy and New Media in the European Union. Communication or Participation Deficit?', *Journal of Contemporary European Research*, 4 (2008), 346-368.

⁵ See, for example, T. Risse, *A Community of Europeans? Transnational Identities and Public Spheres* (Ithaca: Cornell University Press, 2010); K. Eder and H.-J. Trenz, 'Prerequisites of Transnational Democracy and Mechanisms for Sustaining It. The Case of the European Union', in B. Kohler-Koch and B. Rittberger, eds, *Debating the Democratic Legitimacy of the European Union* (Lanham, MD: Rowman and Littlefield, 2007), 165-181.

⁶ See Annual Report 1995, p. 22. The Annual Reports are available at <http://www.ombudsman.europa.eu/activities/annualreports.faces> [last visited 10 November 2012].

⁷ See, for example, Annual Report 2004, op. cit. n6, p. 18; Annual Report 2008, op. cit. n6, p. 4.

⁸ Readers, according to the EO, are: 'fellow ombudsmen, politicians, public officials, professionals, academics, interest groups, non-governmental organizations, journalists and citizens alike at the European, national, regional and local levels' (Annual Report 2006, op. cit. n6, p. 123).

⁹ Annual Report 2004, op. cit. n6, p. 18.

¹⁰ Ibid.; Annual Report 2007, op. cit. n6, p. 97; T. Buck, R. Kirkham and B. Thompson, *The Ombudsman Enterprise and Administrative Justice* (Farnham: Ashgate, 2011), 178.

campaigns, visits to member states and beyond, activities during the Open Days, etc. By addressing both functions of the reports and with a view to evaluating the communication policy of the EO, this paper will attempt to take into consideration, on the one hand, how the two EOs in the time period under consideration presented themselves and, on the other, what they did communication-wise beyond the ARs (in this latter case it has to be acknowledged, of course, that it was up to the EO to decide which activities and initiatives would be included in the publication). For the above reasons, the 16 ARs, available on the website of the EO,¹¹ served as the principal sources of this study and have been assessed from a historical and comparative perspective.

One issue merits particular attention. As will be demonstrated below, the communication strategy of the EO should be evaluated in the light of his/her rather limited mandate and, in particular, his/her lack of competence to supervise national entities even when they implement EU law. Efforts to find the appropriate balance in this issue are evident in almost every report, most notably during the first period of the EO's operation.

This article firstly presents the evolution of the ARs in terms of the presentation and content of their political and legal messages. A separate section deals with the highlights of other communication activities. Additionally, given that the EO is an institution endorsing a 'personal dimension to the office',¹² a feature which enhances inter alia his/her 'moral authority',¹³ the question of how each of the two office holders of the period under examination perceived his mandate will be examined. It will be argued that the ARs and the communication policy of the EO in general are close to reaching their full potential. As a final remark, it will be suggested that a future research agenda on the EO could arguably focus on the limits of the mandate.

THE PRESENTATION OF THE ANNUAL REPORTS: FROM AN EU 'DOCUMENT' TO AN ATTRACTIVE 'PUBLICATION'

Between 1995 and 2010, the ARs were significantly transformed in terms of layout; the last ARs especially are modern, succinct and user-friendly publications. Four indicators substantiate this claim.

Firstly, from the record-high 321 pages in 1997 the AR now numbers just 77 pages (see Figure 1). It can easily be deduced that further to the arrival of Diamandouros in 2003, a progressive effort to reduce the length of the reports took place. Perhaps the most ambitious of these efforts occurred in 2008, when Diamandouros emphasised that changes to the AR were made 'with the end-user in mind'.¹⁴ The new, shorter version of the report had to strike a balance between being sufficiently informative and user-friendly at the same time; it is argued that the AR succeeds in this respect.

Secondly, given that, as previously stated, the EO is a personal institution, it is understood why significant efforts were eventually made to produce a logo that would help citizens identify the institution and encourage them to comprehend its mission.

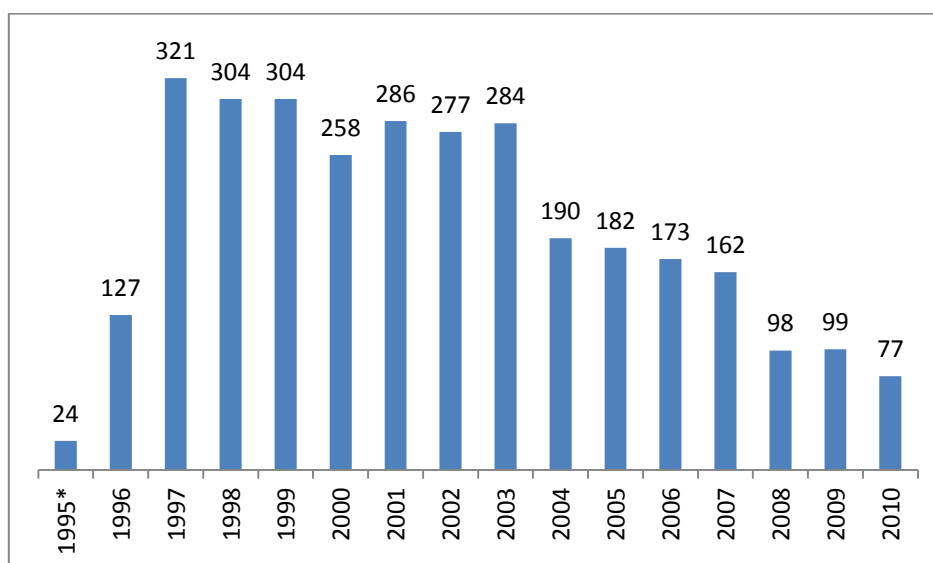
¹¹ See <http://www.ombudsman.europa.eu/activities/annualreports.faces> [last visited 10 November 2012].

¹² C. Harlow and R. Rawlings, *Law and Administration* (Cambridge: Cambridge University Press, 2009), 529.

¹³ *Ibid.*, 530; see also N. Diamandouros, 'Ethics and the Ombudsman', Speech by the European Ombudsman at the 27th Plenary meeting of the ERC Scientific Council, available at <http://www.ombudsman.europa.eu/activities/speech.faces/en/5468/html.bookmark> [last visited 10 November 2012].

¹⁴ Annual Report 2008, op. cit. n6, p. 4.

Figure 1: The gradual reduction of the length of the Annual Reports (number of pages).



*The 1995 Annual Report only covers the period from 27 September to 31 December 1995.

The EO has produced two logos, or ‘visual identities’. The first logo, used from 1996 to 2007, delivered a rather arcane message. By contrast, the new, dynamic logo featured on the front cover of the 2010 AR and figuring also on the EO’s website, does deliver more obviously messages of ‘equality’, ‘dialogue’ and a link to citizens (see Figure 2).¹⁵

Figure 2: The old and the new logo of the European Ombudsman.

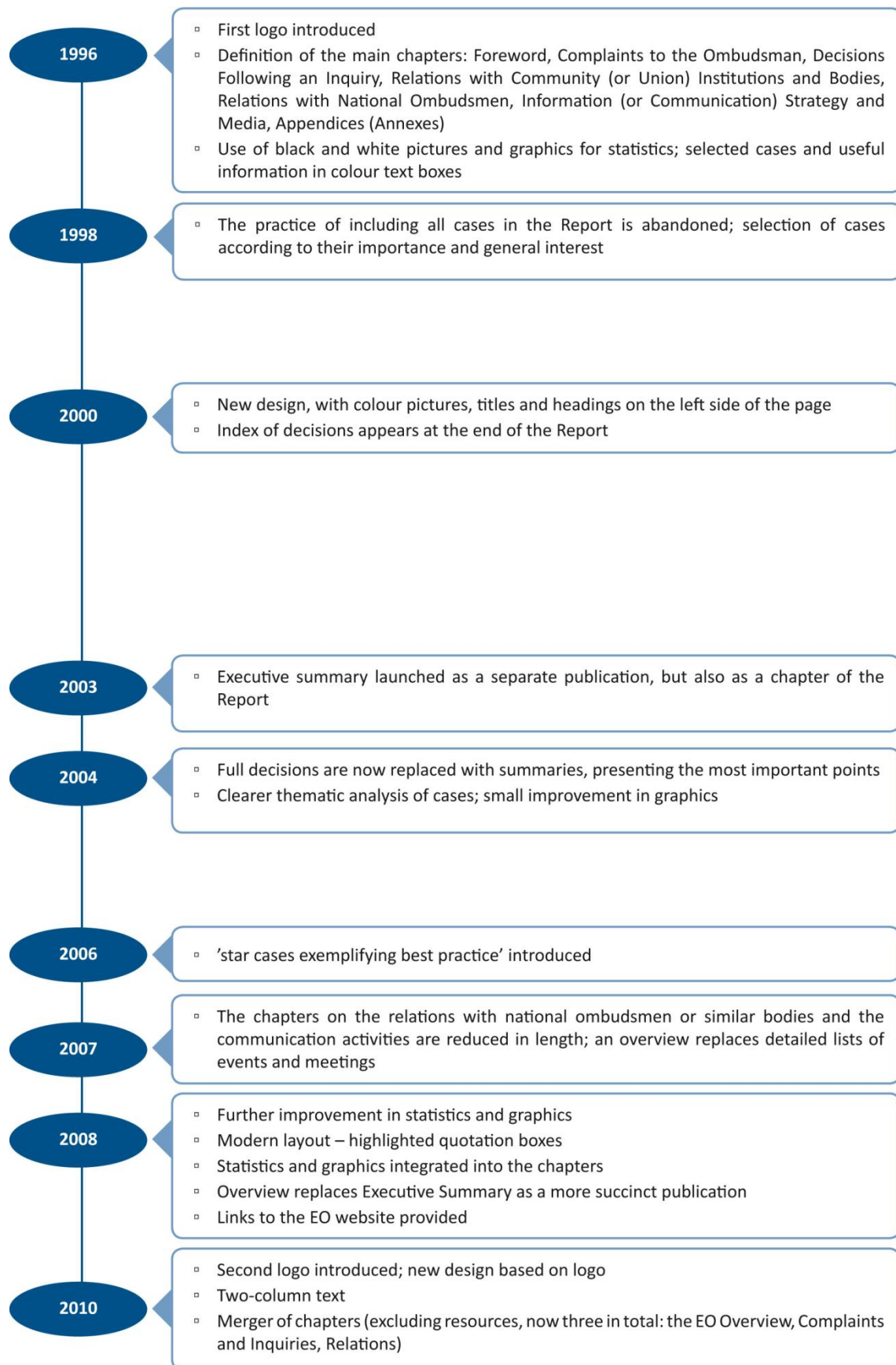


Thirdly, the evolution of the AR front covers is also of a certain interest. Again, Diamandouros’s ARs offer the most differentiated versions, before ending up with the new logo in 2010.¹⁶ Under Söderman, the front cover presented the EO as receiving awards twice (2001, 2002),¹⁷ perhaps in an effort to enhance the public image of the institution, whereas Diamandouros produced rather neutral or abstract messages for three years (2005-2007) before deciding to change drastically the layout of the AR in 2008, including the front cover.

¹⁵ Annual Report 2010, op. cit. n6, p. 9.

¹⁶ The front covers can be seen on the EO’s website. Compare op. cit. n6.

¹⁷ In 2001 he received the Alexis de Tocqueville Prize of the European Institute of Public Administration (Annual Report 2001, op. cit. n6, p. 239), whereas in 2002 the Ombudsman ‘was nominated to the rank of Chevalier in the Legion of Honour’ by the President of France (Annual Report 2002, op. cit. n6, p. 233).

Figure 3: Synoptic presentation of changes to the Annual Reports (1995-2010)

Lastly, the structure and layout of the AR has changed considerably as well (see Figure 3). For instance, one may observe the presentation of cases: the initial decision to include all cases in 1996 was first replaced by a selection of them, then by summaries of decisions. Finally, alongside the summaries, ‘star cases exemplifying best practice’ were included, usually fewer than ten in total. Moreover, in 2003 Diamandouros introduced an Executive Summary, initially numbering 20 pages, reduced to between 6 (2008 and 2009) and 8 pages (2010) in total. The title of the publication has been changed to ‘Overview’.

THE CONTENT OF THE ANNUAL REPORTS: LEGAL AND POLITICAL MESSAGES

As a preliminary remark, it should be noted that the ARs display a variety of elements demonstrating consistency with and continuation of the first EO’s work. Cross-references to previous reports, acknowledgments of the work of the first EO by Diamandouros, pictures of meetings between Diamandouros and Söderman, repetition of legal passages concerning the legal basis of the EO or the delimitation of his mandate – all serve the purpose of continuity and contribute to the stabilisation of the institutional position of the EO. The second EO often pays tribute to the first: he is the ‘founding’ EO.¹⁸ Elsewhere, Diamandouros comments: ‘For these accomplishments and, indeed, for many others, we, as citizens of the Union, are forever indebted to Jacob Söderman’.¹⁹ Besides, both office holders took advantage of the ‘Foreword’, later to be renamed ‘Introduction’ and ‘Overview’, in order to express more personal views and reflections on the previous year. This is a typical practice of ombudsmen around the world.²⁰ In what follows, the parts of the ARs composed solely of cases are not covered, given that they mostly concern the strictly legal work of the EO; instead, this article focuses on specific legal and political messages deduced from the remaining parts of the reports.

One central aspect of several of the ARs is the notion of ‘maladministration’. The Treaty establishing the European Community (now Treaty on the Functioning of the EU) empowered the EO to act upon ‘instances of maladministration in the activities of the Community institutions and bodies’,²¹ but did not further define this notion. Therefore, in 1995, the EO was preoccupied with adopting the broadest possible definition, given that ‘the open ended nature of the term is one of the things that distinguishes the role of the Ombudsman from that of a judge’.²² The 1997 AR is often cited for the classic and somewhat more precise definition of maladministration, which was adopted at the request of the European Parliament: ‘maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it’.²³ More specifically, these rules and principles, while depending on the legal and political context, certainly include the observance of the rule of law.²⁴ The Parliament confirmed the above definition with a Resolution and in 1999 the Commission finally subscribed to it as well.²⁵ More interestingly, in 2001 the EO attempted to

¹⁸ Annual Report 2003, op. cit. n6, p. 19.

¹⁹ Annual Report 2005, op. cit. n6, p. 17.

²⁰ See, for example, Ombudsman of Ireland, ‘Annual Report 2011’, available at <http://www.ombudsman.gov.ie/en/Publications/Annual-Reports/2011-Annual-Report> [last visited 13 February 2014]; Ontario Ombudsman, ‘Annual Report 2012’, available at <http://www.ombudsman.on.ca/Resources/Reports/2011-2012-Annual-Report.aspx> [last visited 13 February 2014].

²¹ Art. 138e TEC. Art. 228 TFEU extends the ambit of the EO’s mandate to ‘instances of maladministration in the activities of the Union institutions, bodies, offices or agencies’.

²² Annual Report 1995, pp. 8-9. The Ombudsman provided a list of possible instances of maladministration, but explained that ‘[t]his list is not intended to be exhaustive. The experience of national ombudsmen shows that it is better not to attempt a rigid definition of what may constitute maladministration’ (ibid).

²³ Annual Report 1997, op. cit. n6, p. 23.

²⁴ Ibid., p. 24.

²⁵ Annual Report 1998, op. cit. n6, p. 18; Annual Report 1999, op. cit. n6, p. 17.

expand the subject-matter scope of maladministration to the ‘rules and principles contained in the Code’ (i.e. the European Code of Good Administrative Behaviour).²⁶ The second EO continued working on the expansion of the notion, stating in 2004 – that is, a few years after the proclamation of the Charter of Fundamental Rights containing a right to good administration – that ‘maladministration and good administration are two sides of the same coin’.²⁷ Finally, in the subsequent AR, a clarification was provided, repeated ever since: maladministration is broader than illegality. ‘While illegality necessarily implies maladministration, maladministration does not automatically entail illegality’.²⁸ As the EO explains, this clarification could be read inversely, meaning that whenever an institution has committed maladministration, according to the EO’s findings, this does not automatically entail that the Court of Justice will find ‘illegality’; the findings of the EO might eventually be rejected by the Court of Justice.²⁹

The main types of maladministration have remained almost unchanged over the years, led by transparency or refusal of information issues. Other types include abuse of power/unfairness, negligence, delays, discrimination, or the role of the Commission as the ‘guardian of the Treaties’.

Besides the notion of maladministration, the developments in relation to two of the most important instruments of the EO, namely the own-initiative inquiries and the submission of special reports to the European Parliament, are of particular importance. According to the EO, neither should ‘be used too frequently’.³⁰ In fact, a special report is ‘of inestimable value’ but absent from the arsenal of many national ombudsmen; this probably explains why the first special report was only submitted in 1997.³¹ Besides, the submission of a special report presupposes that Parliament can actually pursue the case further,³² but this is up to its ‘political judgment’.³³ Accordingly, Diamandouros went as far as characterising a special report as ‘the Ombudsman’s *ultimate weapon* and [...] the last substantive step he takes in dealing with a case’.³⁴ Regarding own-initiative inquiries, shortly after he assumed office, he declared his intention to augment the use of this instrument.³⁵ More importantly, he institutionalised its use when a ‘non-authorized person’ (non-citizen or resident of the EU) submits a complaint: ‘No complaint has yet been rejected solely because the complainant is not an authorised person’.³⁶ Evidence of a practical application of this position can be found in 2006 when the EO stated his clear intention to supervise the actions of the European Investment Bank in its external lending activities, even by the use of an own-initiative inquiry when the *locus standi* requirements (that is, the submission of a complaint by an EU citizen or an EU resident) are not fulfilled.³⁷ It has nonetheless been argued that ‘complaints regarding projects carried out outside of the EU, rais[e]

²⁶ Annual Report 2001, op. cit. n6, p. 19.

²⁷ Annual Report 2004, op. cit. n6, p. 37.

²⁸ Annual Report 2005, op. cit. n6, p. 39.

²⁹ This was confirmed by the Court in the *Komninou* case, where it was stated that the Court is not bound or confined by the EO’s findings on maladministration. See Case C-167/06, *Komninou v Commission*, [2007] ECR I-141, paras 43-46. Put differently, if the EO finds maladministration (which is broader than illegality), the Court will not necessarily agree that the EU institution has acted unlawfully – and the Court is confined to the examination of legality. If the EU institution has acted legally (although in breach of principles of good administration), the Court would generally be satisfied.

³⁰ See, respectively, Annual Report 1995, op. cit. n6, p. 11; Annual Report 1997, op. cit. n6, p. 32.

³¹ Annual Report 1997, op. cit. n6, p. 32.

³² *Ibid.*

³³ Annual Report 2005, op. cit. n6, p. 28.

³⁴ Annual Report 2004, op. cit. n6, p. 27 (emphasis added by the author).

³⁵ *Ibid.*, p. 19. The own-initiative inquiry is generally related to the Ombudsman’s proactive role. One Advocate General went as far as suggesting that ‘the optimisation of the Community administration and not individual legal protection is the focus for the Ombudsman’s efforts’. See Opinion of Advocate General Trstenjak in Case C-331/05, *Internationaler Hilfsfonds eV v Commission* [2007] ECR I-5475, paras 58 and 61-63.

³⁶ *Ibid.*, pp. 28, 36.

³⁷ Annual Report 2006, op. cit. n6, p. 36.

the most concern' and sometimes access to the EO might be counterweighted by 'cost or distance' considerations.³⁸

From the very early years of the office's inception, the EO particularly stressed the value of transparency in the EU. Söderman opined that the Union was 'commit[ted] to open, democratic and accountable forms of administration';³⁹ he conducted an own-initiative inquiry on this subject;⁴⁰ he considered obstacles to his broad powers of inquiry as contradicting the principles of the Union being based on democracy and transparency;⁴¹ and eventually he increased his criticism after the resignation of the Santer Commission, arguing that 'confidentiality' might often be used as a cover-up for wrongly conducted administration:

I find it disturbing that those who oppose the increasing demands for more openness overlook this important point. Whatever their arguments and reasons may be, the fact remains that their stubborn opposition to the necessary opening up of the Union administration in a modern way obscures the details of European Union funding.⁴²

In the 2001 AR, the Regulation on access to documents⁴³ was warmly welcomed and optimism was expressed.⁴⁴ In his final AR, Söderman used a metaphor: the Union is 'a castle that should reform and open up'; 'more light' could be let in if 'old traditions and ways of working' are abandoned.⁴⁵ Leading scholars have commented that the first EO's 'contribution to the cause of transparency' was made 'typically in advance of the European Court of Justice'.⁴⁶ Similarly, Diamandouros declared the commitment of the office to transparency and accessibility vis-à-vis the media, for the purposes of a broad public awareness.⁴⁷ Transparency also encompasses the fight against corruption, and the EO had a crucial role to undertake in this respect.⁴⁸ In 2008, the EO appeared as the 'guardian of transparency' and drew inspiration from a comparative study in various member states so as to propose amendments to the Regulation on access to documents.⁴⁹ The adoption of such rhetoric should be analysed alongside the statement that the EO is 'the guardian of good administration' and in light of the Commission's role as the 'guardian of the Treaties'.⁵⁰ In other words, while the Commission safeguards the implementation of EU law, the EO described himself as safeguarding transparency and good administration, including the activities of the Commission. Last but not least, transparency features in the 'mission statement' of the EO (see also below).⁵¹

³⁸ N. Hachez and J. Wouters, 'A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability' *Common Market Law Review*, 49 (2012) 47-96, 87.

³⁹ Annual Report 1996, op. cit. n6, p. 96.

⁴⁰ Annual Report 1997, op. cit. n6, p. 12.

⁴¹ Annual Report 1998, op. cit. n6, p. 32.

⁴² Annual Report 1999, op. cit. n6, p. 13.

⁴³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJEC L 145/43.

⁴⁴ Annual Report 2001, op. cit. n6, p. 11.

⁴⁵ Annual Report 2002, op. cit. n6, p. 13.

⁴⁶ C. Harlow and R. Rawlings, 'Promoting Accountability in Multilevel Governance. A Network Approach', *European Law Journal*, 13 (2007), 542-562, 557.

⁴⁷ Annual Report 2007, op. cit. n6, p. 127.

⁴⁸ Compare the speech 'The European Ombudsman as promoter of transparency and contributor to the fight against corruption' (2005), available at: <http://www.ombudsman.europa.eu/en/activities/speech.faces/en/333/html.bookmark> [last visited 30 December 2013], where he also delineated the EO's mission vis-à-vis the European Court of Auditors and the European Anti-fraud Office (OLAF).

⁴⁹ Annual Report 2008, op. cit. n6, pp. 10-11, 74.

⁵⁰ Annual Report 2004, op. cit. n6, p. 20.

⁵¹ Annual Report 2010, op. cit. n6, p. 2. For the EO's contribution to the reform of Regulation 1049 on access to documents see I. Harden, 'The Revision of Regulation 1049/2001 on Public Access to Documents', *European Public Law*, 15 (2009), 239-256.

Taking into consideration Tsadiras's account⁵² on the relations between the EO and the Parliament, it is interesting to note that the ARs consistently refer to a 'constructive', 'fruitful' and 'special' relationship with the Parliament,⁵³ not only in the sense that Parliament provides accountability for the EO (see above), but also in the sense that this 'privileged relationship'⁵⁴ is beneficial to the EO in that it helps him/her to convince the institutions to comply. In return, the Committee on Petitions, often referred to as a 'complementary institution',⁵⁵ decided to join the European Network of Ombudsmen,⁵⁶ a step which may be viewed as an achievement of the EO. Oftentimes, Parliament commended the work of the EO, notably when presenting the AR. In 2009, for instance, the EO was praised for 'his public profile' as well as 'his new website and interactive guide'.⁵⁷

By contrast, the EO's approach vis-à-vis the Commission was less harmonious. The two office holders employed rather different modes of rhetoric here. In the beginning, Söderman used a reserved tone, noting that the EO 'maintains a regular dialogue and cooperation'.⁵⁸ However, relations with the Commission reached a record-low level in 1999; a 'time-consuming dispute' was one of the terms used by the EO as regards his right to inspect documents.⁵⁹ He issued the following warning:

There was an attempt by the services of the Commission to raise once again the idea that questions concerning the Commission's interpretation of Community law can be dealt with only by the Court of Justice and not the European Ombudsman. [...] Let me only say, hoping this is the last time I have to underline it, that it is never good administration not to follow the law; that is rules or principles, that are binding upon a Community institution or body.⁶⁰

In the same AR, the EO blamed the Commission for presenting 'bizarre arguments' before agreeing to the inspection of documents and declared himself 'surprised' with the Commission's stance on the mandate of the EO in 'cases in which the complainant has a possible remedy before a court or a tribunal'.⁶¹ Two years later, strong criticism was targeted against both the Commission and the Parliament, this time regarding the Charter of Fundamental Rights:

In last year's Annual Report, I described the Charter as a step forward for European citizens. Much to my regret, I have now to state that, apart from the progress mentioned above, the three institutions that proclaimed the Charter have not yet shown themselves to be serious about applying it in practice. On the level of words, both the President of the European Commission, Mr Romano PRODI and the Commissioner responsible for human rights, Mr António VITORINO, as well as the political authorities of the Parliament have declared that the Charter should be followed. In real life, this has not yet been followed by deeds. The European Parliament and the Commission have both continued, for example, to use the old

⁵² A. Tsadiras, 'Of Celestial Motions and Gravitational Attractions. The Institutional Symbiosis between the European Ombudsman and the European Parliament', *Yearbook of European Law*, 28 (2009), 435-457.

⁵³ Tsadiras's main argument is that the EO over the years has managed to achieve institutional detachment from the Parliament, building a distinctive role of his own. Regarding the use of terms such as 'fruitful collaboration', his view is that they 'had admittedly a rather descriptive and generic character and were virtually void of any formative content, capable of affecting the existing institutional equilibrium'. See *ibid.*, 442-443.

⁵⁴ Annual Report 2007, op. cit. n6, p. 97.

⁵⁵ Annual Report 1996, op. cit. n6, p. 88.

⁵⁶ Annual Report 2004, op. cit. n6, pp. 107-108.

⁵⁷ Annual Report 2009, op. cit. n6, p. 74; see more in detail below for the website and the interactive guide.

⁵⁸ Annual Report 1997, op. cit. n6, p. 277.

⁵⁹ Annual Report 1999, op. cit. n6, p. 12.

⁶⁰ *Ibid.*, p. 12.

⁶¹ *Ibid.*, pp. 12, 19.

rules about discrimination in their recruitment notices, neglecting the fact that the Charter also identified age as a prohibited form of discrimination.⁶²

These remarks were in accordance with his continuous efforts to promote the Charter and also the EU's accession to the European Convention on Human Rights.⁶³

On the other hand, Diamandouros, supportive of a more inclusive approach (see below), used more diplomatic techniques to deliver his messages. In 2004, the EO invited the Parliament to 'encourage' the Commission to extend its 'very positive co-operation' 'to all cases'.⁶⁴ The Commission was praised for 'introducing a new internal procedure for responding to the Ombudsman's inquiries'.⁶⁵ The EO organised 'bilateral meetings' with Commissioners, during which he affirmed that he identified a 'commitment to promoting a culture of service',⁶⁶ whilst the next year brought the involvement of 'civil servants from all levels within the European Commission'.⁶⁷ Regarding the fact that most complaints were directed against the Commission, the EO noted: 'Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens' complaints'.⁶⁸ Interestingly, in this 2004 pronouncement the slightly more neutral word *logical* replaces the word *natural*, previously, since 1996, consistently used in identical contexts. The same year, the EO officially intensified the supervision of the Commission's 'behaviour' (therefore not its *decisions*) in infringement procedures to include 'both procedural and substantive aspects'. Concerning the substantive aspects, the EO examines whether 'the conclusions reached by the Commission are reasonable and [...] well argued and thoroughly explained to complainants'.⁶⁹ This was a rather bold step to take.⁷⁰

Beyond relations with the EU institutions, the ARs record the story of the creation of a European Network of Ombudsmen. The idea was put forth by the first EO, and was implemented in a more robust and recognisable institution under the lead of the second EO. As early as 1996, Söderman put into practice a network of 'liaison officers from each of the national ombudsmen' so as to 'promote a free flow of information about Community law and its implementation and to make possible the transfer of complaints'.⁷¹ These two pivotal goals of the network have remained unchanged and are repeated throughout all the ARs. One year later, the network qualified as a 'flexible system of cooperation' which can produce newsletters and organise seminars while offering the possibility to its members of directing queries on EU law to the EO.⁷² These projects materialised immediately. Thus, the network gradually became 'an effective collaboration tool'.⁷³ It produced a very successful and participatory 'Ombudsman Daily News' section, its members 'share[d] experiences and best practice' and 'in particular, matters relating to the implementation of Community law at the

⁶² Annual Report 2001, op. cit. n6, p. 11.

⁶³ See the speech by the European Ombudsman, Mr Jacob Söderman, Round Table on the Future of Europe, (2002), available at <http://www.ombudsman.europa.eu/speeches/en/2002-11-18.htm> [last visited 30 December 2013].

⁶⁴ Annual Report 2004, op. cit. n6, p. 20.

⁶⁵ Annual Report 2005, op. cit. n6, p. 18. This procedure entailed 'individual Commissioners taking strong political ownership of each case, while maintaining the valuable role of the Secretariat-General' and aimed to 'enhance the consistency and quality of the Commission's replies' (ibid).

⁶⁶ Annual Report 2006, op. cit. n6, p. 105.

⁶⁷ Annual Report 2007, op. cit. n6, p. 97.

⁶⁸ Annual Report 2008, op. cit. n6, p. 16.

⁶⁹ Ibid., pp. 56-57.

⁷⁰ See also M. Smith, 'Enforcement, Monitoring, Verification, Outsourcing. The Decline and Decline of the Infringement Process', *European Law Review*, 33 (2008), 777-802.

⁷¹ Annual Report 1996, op. cit. n6, p. 92.

⁷² Annual Report 1997, op. cit. n6, pp. 281-282.

⁷³ Annual Report 2001, op. cit. n6, p. 233. Diamandouros used the phrase 'powerful collaboration tool'; see, for instance, Annual Report 2004, op. cit. n6, p. 113.

Member State level'.⁷⁴ Diamandouros foresaw the potential of the network and clearly decided to raise its visibility. The network was viewed as an excellent opportunity for 'mutual learning' which was eventually translated into a better service to citizens.⁷⁵ Besides, the EO 'argued that the Network needs to make the added value that citizens derive from co-operation more visible, both to citizens themselves and to policy-makers at all levels in the Union'.⁷⁶

Of particular relevance is the joint statement adopted by the network in 2007. The EO had already highlighted the importance of a 'clearer public identity' and the need to present 'to citizens what they can expect if they turn to an ombudsman in the Network'.⁷⁷ What was not explained further was the position of the EO, who was 'fully aware of just how carefully such a statement would need to be drafted'.⁷⁸ In any case, in 2007, a consensually adopted statement declared inter alia that: accession to the network is voluntary and candidate countries are included; national ombudsmen can deal with complaints involving EU law at the national level; the principles of impartiality, fairness and effectiveness apply to them all and they all respect the values of the EU.⁷⁹ Diamandouros went even further by creating a proper 'visual identity' in the form of a logo for the network, which should symbolise the 'diversity' and the spirit of 'communication, partnership and unity' of its members.⁸⁰ This was arguably further evidence of his belief in the capacity of carefully designed images (in the form of logos) to bring citizens somewhat closer to the EU entity concerned. Another project currently running sets out 'to map the competences' of each member of the network, so that citizens clearly comprehend what a national ombudsman is able to deal with.⁸¹

In general, Diamandouros's presence marked an intensification of collaboration with other EU institutions, bodies and agencies, as well as with redress mechanisms, notably SOLVIT, an entity composed of centres dealing with problems in cross-border situations.⁸² In this respect, a Memorandum of Understanding (MoU) was signed with the European Data Protection Supervisor in 2006, so as to facilitate the transfer of complaints and to 'avoid unnecessary duplication'.⁸³ Accordingly, in 2008 a MoU was agreed with the European Investment Bank, which benefits from an internal complaints mechanism.⁸⁴

OTHER COMMUNICATION AND MEDIA ACTIVITIES: RAISING AWARENESS IN THE CONTEXT OF A RATHER LIMITED MANDATE

It is critical to underline that from the very beginning the EO realised that he would receive an 'unusually high proportion' of 'inadmissible complaints' in comparison to national ombudsmen and

⁷⁴ Annual Report 2001, op. cit. n6, p. 233.

⁷⁵ Annual Report 2004, op. cit. n6, p. 115.

⁷⁶ Annual Report 2005, op. cit. n6, p. 19.

⁷⁷ Ibid., p. 19.

⁷⁸ Ibid.

⁷⁹ Annual Report 2007, op. cit. n. 6, p. 110.

⁸⁰ Annual Report 2010, op. cit. n. 6, p. 9.

⁸¹ Ibid., p. 64. For a comprehensive account of the inter-institutional relations between the EO and the national ombudsmen see further A. Tsadiras, 'Rules of institutional 'flat-sharing'. The European Ombudsman and his national peers', *European Law Review*, 33 (2008), 101-115.

⁸² See http://ec.europa.eu/solvit/site/index_en.htm [last visited 13 December 2012]. As Lottini underlines, nonetheless, this collaboration comes with the following limitation: the EO has reached the conclusion that SOLVIT centres form part of the national administration and are therefore excluded from the EO's supervisory ambit. See M. Lottini, 'Correct Application of EU Law by National Public Administrations and Effective Individual Protection: the SOLVIT Network', *Review of European Administrative Law*, 3 (2010), 3-24, 20.

⁸³ Annual Report 2006, op. cit. n6, p. 106.

⁸⁴ Annual Report 2008, op. cit. n6, p. 75.

that most of these complaints would concern ‘maladministration by *national* authorities’.⁸⁵ Later on, this type of complaints was reclassified as complaints falling ‘outside the mandate’. So, even back in 1996, the EO understood that a balance had to be struck between an active information (or communication) strategy and the need ‘to take steps to prevent false expectations that might simply result in an increase in complaints that are outside the mandate’.⁸⁶ This phrase was repeated several times. Before leaving office, Söderman emphatically noted that ‘there is no point in campaigning so loudly that the first thing citizens think about when they wake up in the morning is the European Ombudsman’.⁸⁷ Diamandouros argued along similar lines whilst ‘promoting subsidiarity in remedies’.⁸⁸ It is in the light of this balancing dilemma that what follows should be viewed.

As has been observed, all ombudsmen ‘put considerable energy into promoting their respective offices through lectures, articles and regular communication with public officials’.⁸⁹ The EO fulfilled these expectations, and in addition endeavoured to secure coverage by, and interviews with, national and Europe-wide media. The EO declared in 2008 that ‘a proactive media policy constitutes a central component of his activities’.⁹⁰

In principle, Söderman and Diamandouros followed a ‘twin approach’: they considered it essential, firstly, to inform the ‘wider European public’ about the activities of the EO,⁹¹ and, secondly, to dedicate more effort to targeting audiences, i.e. entities or citizens who regularly contact the EU institutions and may therefore be seen as ‘potential complainants’.⁹² It is not possible to cover in this account the entirety of communication activities throughout a period of 15 years. What can be offered instead is a brief overview and a few highlights.

During the first years of the office’s existence, the foundations for an active strategy were laid: the EO engaged in a series of information visits to member states, participated in conferences and meetings with the press. These activities were usually covered in detail in the first ARs. The first guide was published in 1995 and additional informative publications (leaflets or brochures) were soon to follow. The prominent increase in press releases⁹³ enhanced the opportunities for political pressure exercised by the EO upon the EU institutions.

From 1996 to 1997 the internet was seen as ‘an addition to and not a substitute for conventional forms of publication’, because citizens could not easily access the internet. This approach was abandoned from 1998 onwards and ‘the year 2000’ was described as ‘the year in which Internet communication with citizens has truly come of age’.⁹⁴ A significant amount of complaints was now received by e-mail, but the quality of complaints could be better, according to the EO. Hence the idea to launch a complaint form on the website,⁹⁵ which became a reality in 2001. Simultaneously, the EO felt the need to respond in a personal way (‘I must repeat to these critics’) to criticism of the

⁸⁵ Annual Report 1995, op. cit. n6, p. 9 (emphasis in the original). In 2010, the overall registered number of complaints was 2667, out of which 744 fell inside the mandate (see Annual Report 2010, op. cit. n6, p. 19). For an explanation of this development, compare the analysis in the subsequent paragraphs.

⁸⁶ Annual Report 1996, op. cit. n6, p. 101.

⁸⁷ Annual Report 2002, op. cit. n6, p. 11.

⁸⁸ Annual Report 2006, op. cit. n6, pp. 16-17. The principle of subsidiarity entails that ‘in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level’. See Art. 5.3 TEU.

⁸⁹ Buck, Kirkham and Thompson, *The Ombudsman*, op. cit. n10, 50.

⁹⁰ Annual Report 2008, op. cit. n6, p. 83.

⁹¹ Annual Report 2007, op. cit. n6, p. 127.

⁹² Ibid.

⁹³ In many ARs, one can find a calculation of press releases per working days; see, for example, Annual Report 2002, op. cit. n6, p. 11.

⁹⁴ Annual Report 2000, op. cit. n6, p. 12.

⁹⁵ Ibid.

information campaigns, stressing that the EO cannot deal with national entities.⁹⁶ The following statement expresses a similar message:

In fact, I do not know of any ombudsman office in the world that does more to inform the citizens about the right to complain and there is no other office that has to do it in 15 Member States and in 12 Treaty languages. [...] Any advice on how it should be done better would be truly appreciated. Any practical help and cooperation in doing it would be even more welcome. Demands to act in a more populist and noisy way will not be met, as they might *damage the profile* of the Ombudsman as a *professional and serious actor* within the European Union.⁹⁷

Diamandouros built on the activity of his predecessor, adding an extra-European dimension to the office (discussed in more detail below). One of the first challenges the second EO faced was the enlargement of the Union and, in particular, the handling of the increase in complaints and, naturally, the addition of new official languages. This led him to pay particular attention to enlargement-related issues and subsequently to organise visits to all ten accession countries before their accession⁹⁸ while publishing the AR in 20 languages, an initiative viewed by the EO as an opportunity to 'greatly enhance [...] the accessibility' of the AR.⁹⁹

The EO continued campaigning actively during the Open Days in Strasbourg. Celebrations of the ten-year anniversary of the institution provided a suitable headline for the 2005 AR and 'raise[d] awareness'.¹⁰⁰ Among other initiatives, a 'Commemorative Volume' for the tenth anniversary¹⁰¹ and a new version of the European Code of Good Administrative Behaviour were produced.¹⁰² Furthermore, one of Diamandouros's innovations regarding the strengthening of communication among the members of the office was the 'staff retreat', i.e. 'an exercise in self-reflection' where every member expressed views on a series of matters, including communication strategies.¹⁰³ Still, probably the most visible contribution of Diamandouros is the new, dynamic and easily accessible EO website launched in January 2009. One of its most important parts was and is its 'interactive guide', aiming to direct virtually complainants to the most appropriate mechanism for redress, often to a national or regional ombudsman.¹⁰⁴ And it has turned out to be a success story: the guide led to a 'significant reduction in information requests'¹⁰⁵ and also to a reduction in complaints outside the mandate.¹⁰⁶ In addition, in 2010 the EO adopted a 'Strategy for the Mandate', accompanied by a 'mission statement' quoted inside the front cover.¹⁰⁷ Furthermore, he sought 'to raise awareness about the right to complain' in 'myriad ways'.¹⁰⁸ Of additional help are the media, which, in publicising important cases of the EO, serve to increase public pressure.¹⁰⁹

⁹⁶ Annual Report 2001, op. cit. n6, p. 12.

⁹⁷ Ibid., pp. 12-13 (emphasis added by the author).

⁹⁸ Annual Report 2003, op. cit. n6, p. 16.

⁹⁹ Annual Report 2004, op. cit. n6, p. 129.

¹⁰⁰ Annual Report 2005, op. cit. n6, p. 152.

¹⁰¹ 'The European Ombudsman: Origins, Establishment, Evolution – Commemorative Volume Published on the Occasion of the 10th Anniversary of the Institution', (2005), available at:

<http://www.ombudsman.europa.eu/en/resources/historicaldocument.faces/en/10122/html.bookmark> [last visited 30 December 2013].

¹⁰² Ibid.

¹⁰³ Annual Report 2006, op. cit. n6, pp. 165-166.

¹⁰⁴ Annual Report 2009, op. cit. n6, p. 19.

¹⁰⁵ Ibid., p. 85.

¹⁰⁶ Annual Report 2010, op. cit. n6, p. 9.

¹⁰⁷ The full document may be found at: <http://www.ombudsman.europa.eu/en/resources/strategy/strategy.faces> [last visited 30 December 2013].

¹⁰⁸ Annual Report 2008, op. cit. n6, p. 21.

¹⁰⁹ Annual Report 2004, op. cit. n6, p. 151.

The ARs explain that both office-holders participated in conferences on fundamental rights, Union citizenship,¹¹⁰ democracy, good administration and openness, to name only a few. In particular, certain recurrent keywords and themes of conferences, events and meetings pointed to the core message regarding citizens being the focal point not only of the EO but of the EU as well: 'Citizens' rights under Community law' should become 'a living reality';¹¹¹ 'reaching out' to citizens should be a priority; 'the way an institution reacts to complaints is a key indicator of how citizen-centred it is'.¹¹² The reduction of the length of the AR is also part of the effort to serve the citizen in the best way possible: 'A constant concern for the Ombudsman!'¹¹³ Finally, a message of almost all the ARs was that the EO promotes 'a culture of service'¹¹⁴ in the EU.

It was clearly acknowledged in the ARs that the European Parliament, or specific MEPs interested in the work of the EO, should be credited with providing motivation and ideas to the EO so as to further improve his communication strategy. From internet developments to the presentation of statistics, but also in the context of the signing of the abovementioned Memorandum of Understanding with the European Investment Bank and, more importantly, with relation to the proposal for a European Code of Good Administrative Behaviour, the Parliament or specific MEPs were referred to in the ARs as being of crucial assistance to the EO in connecting with citizens.

THE TWO OFFICE HOLDERS AND THEIR PERCEPTION OF THE MANDATE

It has been observed that the second EO advanced 'a more pluralistic conception of the ombudsman role'.¹¹⁵ Having examined the ARs and taking into consideration the previous sections of this paper, it is worth understanding how both office holders perceived their mandate and, consequently, how they viewed their roles.

Söderman's period in office coincided with a generally challenging period: on the one hand, the Maastricht enthusiasm combined with the open discussion about the democratic deficit could provide a supportive basis to build on; on the other hand, it was unknown at the time what the reactions of other EU actors would be. Yet it appears that Söderman never ceased to be concerned about the limits of his mandate. In 1995, while discussing the high number of inadmissible complaints, he posed the question: 'Does this mean that the mandate of the Ombudsman as set out in the Treaty is too narrow?'¹¹⁶ In 1997, he found that his mandate was 'rather limited',¹¹⁷ whereas in 1998 he opened up the discussion on the boundaries of the mandate of the EO, the latter being seen as 'one of the most important achievements of the Maastricht Treaty in relation to the citizenship of the Union'.¹¹⁸ In the same AR he clearly stated that he was in favour of the principle of subsidiarity, but that it was also plausible to interpret the text as advocating the possibility of a different approach (that is, an approach departing from subsidiarity considerations) if 'cooperation with national or regional bodies' would at some point become problematic.¹¹⁹ Thus, one of the reasons

¹¹⁰ For an analysis on the EO's link to Union citizenship and EU rights see, for example, R. Gregory and P. Giddings, 'Citizenship, Rights and the EU Ombudsman' in Bellamy, R. and Warleigh, A., eds, *Citizenship and Governance in the European Union* (London: Continuum 2001).

¹¹¹ See, for instance, Annual Report 2001, op. cit. n6, p. 230 or Annual Report 2005, op. cit. n6, p. 18 – in the second case, EU residents are also mentioned.

¹¹² Annual Report 2008, op. cit. n6, p. 10 – previous versions used the term 'citizen-focused' instead.

¹¹³ Annual Report 2004, op. cit. n6, p. 18.

¹¹⁴ See, for instance, Annual Report 2006, op. cit. n6, p. 15; Annual Report 2010, op. cit. n6, p. 57.

¹¹⁵ Harlow and Rawlings, 'Promoting Accountability', op. cit. n46, 557.

¹¹⁶ Annual Report 1995, op. cit. n6, p. 18.

¹¹⁷ Annual Report 1997, op. cit. n6, p. 12.

¹¹⁸ Annual Report 1998, op. cit. n6, p. 9.

¹¹⁹ Ibid., p. 11.

behind the creation of the Network of Ombudsmen could be that Söderman knew that the Treaties clearly excluded the possibility of supervising national authorities implementing EU law from the EO's mandate; given the objections based on the principle of subsidiarity that would have arisen if the EO had opted for discussing a possible extension of the mandate, the network constituted an easily defensible alternative. There have been accounts defending this claim, albeit in a more cautious fashion.¹²⁰ Söderman's position in this respect can be compared with his views on problems concerning the free movement of persons, where national authorities were experiencing difficulties in assessing the complexities of EU law: 'Community and national bodies could combine their efforts towards a rapid solution of individual problems' and 'new mechanisms' could be 'design[ed]'.¹²¹ Consider another example of how the EO presented his position with the use of the abovementioned arguments:

There have been many proposals debated about the future development of the European Ombudsman institution. Dealing only with complaints concerning possible maladministration by the institutions and bodies of the EU is indeed a limited mandate. [...] In order to deal with this situation, my Office has established a close co-operation with the national ombudsmen and similar bodies in the Member States. [...] All these measures have been taken to achieve an efficient handling of complaints concerning Community law in the Member States. The institutions in the Member States have shown a good spirit of co-operation. It is my view that more can be achieved by this kind of co-operation than by extending the mandate of the European Ombudsman to all administrative levels of the Union where Community law is applied. [...] We have to put the important principle of subsidiarity into practice whenever possible and must respect it, not just talk about it.¹²²

Accordingly, Söderman contributed to the European Convention by suggesting an expansion of the EO's mandate¹²³ and by pressing for 'the inclusion in the Treaty of a chapter on remedies',¹²⁴ this would constitutionalise the role of national ombudsmen at the EU level.

Diamandouros appears to follow a more *inclusive* approach in the ARs. The message to the EU institutions could be briefly codified as follows: it is to the benefit of everyone, i.e. citizens, institutions and the EU in general if the EU institutions follow his recommendations. Otherwise, there is a risk of damaging the EU's legitimacy. This approach probably led him to accept the mandate as such and to try to identify other ways of improving the EO's results. There is one exception: in 2004, he referred to the possibility of 'joint inquiries' with national ombudsmen and, echoing his predecessor, he also mentioned the possibility of contacting the Court concerning violations of fundamental rights.¹²⁵ These proposals were not repeated in the ARs.

The above claim can be explained through a close reading of the ARs. Diamandouros's rhetoric consistently refers to the capacity of the administration to propose a solution; this approach 'credits the institution with solving the problem, increases its legitimacy in the eyes of the complainant and

¹²⁰ Thus Peters opines that the first EO's 'reliance on and improvement of the network of national ombudsmen [was] important [...] because of his limited mandate' (A. Peters, 'The European Ombudsman and the European Constitution', *Common Market Law Review*, 42 (2005), 697-743, 724). Accordingly, Harlow and Rawlings suggest that 'the jurisdictional limitation has special resonance, since the EO has been pressed from the outset to promote an accountability network [i.e. the European Network of Ombudsmen]' (Harlow and Rawlings, 'Promoting Accountability', op. cit. n46, 556-557).

¹²¹ Annual Report 1998, op. cit. n6, p. 23.

¹²² Annual Report 2000, op. cit. n6, p. 13.

¹²³ Söderman had proposed the possibility 'for the European Ombudsman to refer a case involving fundamental rights to the Court of Justice, if it could not be solved through a normal ombudsman inquiry'. See Annual Report 2002, op. cit. n6, p. 223.

¹²⁴ Annual Report 2002, op. cit. n6, pp. 222-223; see also Peters, 'The European Ombudsman', op. cit. n120.

¹²⁵ Annual Report 2004, op. cit. n6, p. 19.

ensures a win-win outcome for all concerned'.¹²⁶ Elsewhere, he refers to a 'positive-sum' outcome which 'enhance[s] relations between the institutions and citizens and can avoid the need for expensive and time consuming litigation'; therefore, '[w]henver possible, the Ombudsman tries to achieve a positive-sum outcome that satisfies both the complainant and the institution complained against'.¹²⁷ Besides, the ombudsman's role, unlike that of the courts, 'includes mediation'.¹²⁸ In this context, another technique used in friendly solutions which might indeed satisfy the complainant is the agreement for compensation *ex gratia*, i.e. 'without admission of legal liability and without creating a legal precedent'.¹²⁹ Of particular attention are also the follow-up studies introduced by the second EO, that is, analyses of responses of the institutions concerned to further or critical remarks. The publication of these studies in the ARs is another way of exercising pressure over the institutions to comply. Inversely, when an institution complies, it is awarded with a 'star case exemplifying best practice' in the Annual Report and automatically becomes 'a model for all EU institutions'.¹³⁰

Regarding the network, Diamandouros adopted another interesting approach. The cases successfully transferred via the network now count as successful outcomes for the complainants, increasing the percentage of overall success of the EO: 'In over 70% of cases processed, we were able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn'.¹³¹ The slightly more restrained rhetoric when criticising the institutions (see above) might serve as further evidence of the aforementioned inclusive approach. A characteristic phrase used in order to depict the hesitation of some institutions to take advantage of the EO's recommendations is 'missed opportunities'.¹³² Elsewhere, these missed opportunities are a 'defensive approach' which 'risks damaging the image of the Union'.¹³³ This means that the EO implies that he safeguards or even promotes the image of the EU and its legitimacy vis-à-vis the citizens. According to Diamandouros, the use of more 'informal procedures' is producing more and more tangible results: 'We have now reached a stage where our relations with the institutions are such that we can solve a growing number of cases rapidly, avoiding the need for a lengthy inquiry'.¹³⁴

However, a somewhat ambiguous phrase appears in the last three ARs, where the EO suggests that he might close the case on the basis of no grounds when there is no 'reasonable prospect that an inquiry will lead to a useful result', because the EO does not wish to raise 'unjustifiable expectations among complainants' while trying to use resources properly.¹³⁵ It would be in the interest of a potential complainant to see a further clarification of the aforementioned position, in particular of the terms 'useful result' or 'unjustifiable expectations', because the complaints rejected on the basis of no grounds still fall *inside* the mandate of the EO.

Moreover, it is worth noting that Diamandouros appears very often as a global actor, promoting 'ombudsmanship' and expanding the profile of the office beyond the EU. 'Active' membership in 'an array of ombudsman organisations' is an indicator of this policy.¹³⁶ To this end, in 2007, the EO met and exchanged views with the ombudsmen of East Timor, Morocco and Ontario, Canada.¹³⁷ In 2009,

¹²⁶ Annual Report 2005, op. cit. n6, p. 15.

¹²⁷ Annual Report 2007, op. cit. n6, p. 19.

¹²⁸ Annual Report 2003, op. cit. n6, p. 14.

¹²⁹ Annual Report 2008, op. cit. n6, p. 47.

¹³⁰ See, for instance, Annual Report 2010, op. cit. n6, p. 35.

¹³¹ Ibid., p. 10.

¹³² See for instance Annual Report 2006, op. cit. n6, pp. 15-16.

¹³³ Annual Report 2010, op. cit. n6, p. 6.

¹³⁴ Annual Report 2007, op. cit. n6, p. 11.

¹³⁵ Annual Report 2008, op. cit. n6, p. 32; also Annual Reports 2009 and 2010.

¹³⁶ Annual Report 2006, op. cit. n6, p. 118.

¹³⁷ Annual Report 2007, op. cit. n6, p. 115.

he attended the Independent and Accountability Mechanisms Annual Meeting in Tokyo.¹³⁸ These are just two non-exhaustive examples.

CONCLUSIONS

‘And we got results!’ Diamandouros proclaimed with enthusiasm in 2004.¹³⁹ Indeed, as the overview of the ARs has demonstrated, the communication strategy of the office, both in terms of ARs and other communication activities, is close to reaching its full potential and could be an example of how an EU entity with limited resources and personnel can continuously reflect upon its strategy and eventually achieve measurable results. In short, it has been shown how the second EO boosted the user-friendliness of the AR and why he is perceived to have increased the overall ‘communication product’ of the institution, not least since he invested in the public image of the EO, thereby creating an EO of considerable ‘moral authority’ in Europe. However, the first EO should be equally credited for preparing the ground, notably by organising visits to member states and by conceiving and launching the European Network of Ombudsmen, as it is called now. ‘An 85% increase in media coverage’ recorded in 2009¹⁴⁰ might serve as tangible proof of the above conclusion and indeed proves that the mandate of the EO now matters more. Accordingly, it is understandable why Söderman felt the need to respond openly to critics. On the basis of this groundwork, Diamandouros was able to combine new ideas with pre-existing practices, offering a communicative outcome which probably surpasses the boundaries of the actual mandate.

Additionally, notwithstanding the fact that the two office holders often differed in practices, vocabulary and perhaps perception of the mandate, at least according to the ARs and based on the interpretation provided here, they still managed to expand the inter-institutional relations beyond the most prominent EU actors and, what is more, in so far as the EU institutions were concerned, they did avoid serious conflicts, despite occasionally being considerably critical of the latter.

As a final observation one could refer to a recent Special Eurobarometer survey which has shown that half of European citizens are interested in knowing more about the responsibilities of the EO.¹⁴¹ It is therefore possible to see the glass as half full, rather than half empty. In accordance with the findings of this article, the successful communication policy has increased the ‘moral authority’ of the office, but what remains to be answered is to what extent the EO can respond – from a communication-policy perspective – to the phenomenon that many citizens might still prefer to contact the EO for cases involving a national entity implementing EU law. In these cases, the EO simply cannot examine the complaint. In this context, the EO could consider *cautious* proposals vis-à-vis his/her institutional position and the existing limitations of the mandate at the national level, in order to remedy this irreconcilable contradiction.

¹³⁸ Annual Report 2010, op. cit. n6, p. 67.

¹³⁹ Annual Report 2004, op. cit. n6, p. 17.

¹⁴⁰ Annual Report 2009, op. cit. n6, p. 9.

¹⁴¹ Special Eurobarometer conducted by TNS Opinion & Social at the request of the European Parliament and the European Ombudsman (2011), available at http://www.ombudsman.europa.eu/en/press/statistics/eb751_eb_report.faces [last visited 10 November 2012], 10.

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