Final paper

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Access to Justice

Non-judicial Remedies in EU Law

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Abstract

Existence of remedies is absolutely essential in every legal state which is based on justice and integrity. It is not possible to ignore their importance, they are the main instrument for preserving and developing the fundamental rights and freedoms of individuals. These rights should always be at the top of the interests of any state or supranational institution. Still, there are many elements that weaken the position of an individual in seeking justice, or even prevent him / her from attaining it. The protection of individuals’ rights is offered not only by the judicial apparatus – nowadays, there are also many alternative methods available. And the European Union is making a substantial contribution.

More than half of Europe’s countries have joined together to create a political and economic legal entity, *inter alia*, to improve the living standards of their people. Their rights are at the forefront of the Union’s interest and as such are protected by Union law. In the event of their breach, the European Union allows citizens to turn directly to its institutions as part of its complaints mechanism. The aim of this thesis is to examine in detail the process of access to non-judicial institutions of the Union – to the European Commission in the context of the infringement procedure, the European Parliament in the petitions procedure and the European Ombudsman, which are competent to investigate cases of breaches of Union law protecting citizens’ rights and also to ensure proper redress.

Key words

I would like to thank Professor María Elvira Méndez Pinedo for her valuable advice and remarks, willingness and generally very helpful approach to the supervising of this final thesis.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>BGC</td>
<td>British Gas Corporation</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECI</td>
<td>European Citizens’ Initiative</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EFTA</td>
<td>European Free Trade Association</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EO</td>
<td>European Ombudsman</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EU</td>
<td>European Union</td>
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<td>MEP</td>
<td>Member of European Parliament</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>US</td>
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I. Part: Introduction

In this work, I deal with instruments enabling private persons to reach the European Union institutions in order to achieve justice. This thesis will concern only non-judicial instruments, thus the Court of Justice of the European Union will not play a big part in this work and the main focus will be on the institutions such as the European Commission, the European Parliament and the European Ombudsman. I will also discuss briefly the European Citizens’ Initiative, which is a relatively new European instrument. Each section will be explained mainly from the theoretical point of view and then accompanied by practical examples and relevant case law. However, the individual sub-chapters will vary according to the nature of each institution.

The first main section, the introductory part, is about the access to justice in general. Given that this work is intended to examine methods of operation of non-judicial authorities, access to the bodies of the judicial power is assessed with a critical eye in this section. In the first chapter, I try to comprehensively highlight the difficulties that an individual can struggle with on his / her way to remedy an illegal situation. The second chapter then deals with the law of supranational organizations that individuals can invoke. It therefore contains an analysis of the direct effect of legal norms of international treaties, EU law as well as EEA law.

The pivotal and the most extensive part of the thesis is devoted to the analysis of the complaints procedures of the particular non-judicial institutions of the Union. This part is divided into the three main chapters (complaints procedure with the Commission, petition to the Parliament and complaint to the Ombudsman), to which a shorter chapter describing a relatively young institute – the European Citizens’ Initiative – is added.

At the end of this work the outputs of the analysis of the individual complaints processes and their mutual comparison are included. With regard to the topic of this paper – de facto a description of procedural acts – I chose descriptive and comparative writing methods that I combined with insights into practice and practical examples.

I see the potential of this work in the possibility of its use as a guide for individuals and non-governmental organizations for the successful application of available mechanisms at European Union level and as a comprehensive overview of the Union’s non-judicial system of remedying the violation of EU law.
II. Part: Access to Justice

2. Development and obstacles from the perspective of international law

The question of access to justice has been one of the classic themes of comparative law for decades. The first major projects in this area can be seen in the 1970s, such as Mauro Cappelletti and his several-volume “Access to Justice” project from 1978. Other research projects followed him shortly after the release of his work. In the 1990s, creative activity was halted, and in 2002 Jonas Ebbesson followed up in the book “Access to Justice in Environmental Matters in the EU”. A comparison of access to justice has taken place between the legal systems of the whole world – in Southeast Asia, Africa, Islamic countries, etc.¹

With the institute access to justice has been dealt from the outset as with a tool through which can be provided healthcare, education, housing and other essential needs for a good quality of life of the society. However, guaranteeing of equal conditions for access to the courts seemed facing a problematic evolution. This, of course, affected the poorer part of the population the most. The response to the unfortunate situation was a birth of the ADR – an alternative resolution dispute. The ADR, in the forefront of which were professional mediators who have not always been enriched by legal education, was not guided by the idea of justice (as courts) but the idea of achieving harmony between the parties. The concept was quickly privatized and as such spread throughout the world.²

The problem of easy access to the courts is very lively even today. Less financially self-sufficient individuals are intimidated by economic entities that can afford to carry out a lengthy and financially demanding trial. This leads to the so-called closing of the door to justice for ordinary people and the growth of inviolability to strong market players.³ Italian professor of international and comparative law, Ugo Mattei, tackled this problem. He created a questionnaire focusing on five main themes:

² Mattei U (n 1) 2 – 3.
³ ibid 3.
sociological background, charges connected with access to justice, participating institutions, structure and course of procedure and Legal Aid Programs. Mattei created a number of questions for each topic and sent the questionnaire to the relevant country rapporteurs around the world. The result of the questionnaire – i.e. answers to the questions, brought valuable information (predominantly statistical) revealing factors that nowadays can affect the access of individuals to the judicial authorities and to justice in general. The questionnaire was completed by sixteen states. From the analysis of the answers of the sixteen countries, the following conclusions emerged.

Individual factors can be divided into social, organizational and economic. I will begin gradually. From a social point of view, a person desirous of achieving justice can be influenced by the fear of *stigmatization*. Fear of stigmatization can be considered topical in Japan, China and Poland. Fear, however, concerns mainly rural areas, where participation in legal proceedings (on both sides of the dispute) is seen as “humiliation and dishonesty” affecting the whole family. On the other hand, most of the countries that participated in the questionnaire (hereinafter referred to as “respondents”) are convinced that the question of social stigmatization does not apply in their territory, whether on the part of a plaintiff or a defendant. But this attitude only stands in terms of civil actions. In criminal proceedings, social stigma appears everywhere, even though the principle of *presumption of innocence* is enshrined in generally recognized human rights documents such as the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the EU and usually also in the constitutional documents of states. In particular, media attention does not benefit to this phenomenon. The problem of inappropriate application of the principle of the presumption of innocence is closely related to another problem (rather organizational in nature if we keep the original structuring), that is high demands on evidence. If the evidence requirements are too strict, actions may be condemned to failure. The rights of individuals guaranteed by law

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4 “...Belgium, Chile, China, France, Germany, Greece, The Netherlands, India, Iran, Italy, Japan, Mali, Poland, Spain, Sweden and the United States.” (Mattei U [n 1] 5.)
8 Mattei U (n 1) 8.
can then be unenforceable in practice. The European Union has adopted a Directive which aims to reinforce some aspects of the principle of the presumption of innocence. The Directive requests the Member States to ensure that the burden of proof for establishing guilt is on the prosecution and that suspects and accused ones can properly exercise their right of legal representation. The Directive is to be transposed by 1 April 2018.

Perhaps all of the respondents point to the problem of delays. The only exception is France, which mentions the problem rather in the deterioration of court quality than in speed. Article 47 of the EU Charter of Fundamental Rights guarantees everyone to have their case heard before a judicial authority within a reasonable time. However, EU law does not specify a timeframe for what constitutes “reasonable time”. Cases are usually judged individually and in the light of particular circumstances.

The economic aspect seems to be the most important factor. How expensive is the dispute? The question is not so much about the fees levied by the court but about the fees for legal representation. In this respect, there is a visible difference between the access to judicial bodies and the access to non-judicial institutions – such as the European Commission, the European Parliament or the Ombudsman, which are the main subject of this work. The EU institutions are trying to be for their citizens as accessible as possible without the need for legal representation or a large amount of money. In the justice sector, legal fees are dealt with in a variety of ways. Often it is a forward uncertain amount that depends on the outcome of the litigation. Professionally, this phenomenon is called *quota litis*. In Germany, this method of determining remuneration is forbidden, but, for example, in the United States, it is a traditional way of determining the attorney’s fees. It is a manifestation of contractual freedom, that is,

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11 ibid art 6.
12 ibid art 8.
13 Mattei U (n 1) 9.
15 *Pactum de quota litis or contingency fees arrangement* – in a narrow sense, it means: a contractual agreement between a lawyer and a client, in which the attorney undertakes to represent the client for remuneration as a percentage of the amount obtained in the dispute. In the broader sense, these terms are understood to mean any contractual arrangement on remuneration, the amount of which depends on the outcome of the dispute. (Dostál O, ‘Pactum de quota litis jako způsob určení odměny českého advokáta [Pactum de quota litis as a method of determining the reward of a Czech lawyer]’ (2005) 4 Bulletin Advokacie [Bulletin Advocacy] 24.)
there is no authority to regulate the bottom or the ceiling of the fees. However, in
general, the fees charged by a lawyer are usually high (the hourly rate may start at
around 50 Euros), and for an ordinary person with an average monthly income, this is a
major interference with his / her financial integrity.16

Anyway, legal representation is not always necessary. Some states allow access
to official state institutions in cases of small claims dispute without the need for a
lawyer (USA, Belgium, Poland or Japan). Litigation is conducted more informally. In
the overwhelming majority, however, it is a situation where lawyers are not needed for
conducting proceedings, but they are still used. The reason is simple – it increases the
chances of winning / proper defence for the population ignorant of law. This is not
really helped by the ADR (mediation, arbitrage) either, which still has not broken
through the ordinary people properly. While the ADR can help speed up the resolution
of a dispute, it can be financially as demanding as a lawsuit, because expensive lawyers
are used in these cases.17

The most likely solution for financially weaker individuals is the various
programs of free legal aid. Specific figures have been provided, for example, by Chile,
which stated that the service uses for around 25 % of the population. However, not
every country offers these services, or it offers it to a limited extent. Germany stated
that legal aid is available in the form of a low fee consultation (around 10 Euros). In the
Netherlands, legal aid is limited by the amount of annual income (i.e. it is available for a
single person with an income below € 1.450 or a family with an income of less than €
2.701 per year). In Iran, legal advice is completely free. Great contrast is Greece, where
legal aid, in whatever form, is not provided to anyone. The first global consensus was
seen in answers to the scope of free lawyers’ use in the state legal assistance mechanism
(where applicable). The participating states have almost consistently stated the beliefs
that, once a person has acquired the necessary qualifications, he should be entitled to
provide advice free of charge in both civil and criminal cases, irrespective of whether it
is for a plaintiff or a defendant. Some countries, such as Sweden and Japan, limit this
possibility only to criminal proceedings; on the other hand, the US and Iran do not
count on this service even in criminal cases. Although in the case of serious crimes for
which the death penalty (execution, stoning) or life imprisonment may be pronounced,
representation by a lawyer in Iran is mandatory. The US surprisingly does not follow

16 Mattei U (n 1) 10 – 14.
17 ibid 17 – 18.
this concept, “capital murder cases involving the death penalty, which would dictate the highest need for the assistance of counsel at every level, are sometimes without attorneys, or at least adequately trained attorneys”\textsuperscript{18}. Some states have introduced a two-phase system, according to which a lawyer must first register to help the poor, but once he is listed, he cannot refuse the service – that is the example of Spain and the Netherlands.\textsuperscript{19} Similarly, this is also the case in the Czech Republic, but only in the case of criminal proceedings. Unfortunately, the lack of interest in giving free legal aid is prevalent, not only because of low pay (where the payer is a state), but also because of overworking of lawyers.

The analysis has sparked many pressing problems for access to justice in the judicial world. Claiming your rights through court trials can often prove to be a time-consuming and costly process that is always associated with the risk of failure.

Other possible barriers for users in terms of access to justice include:\textsuperscript{20}

- abuse of power by the authorities,
- ineffective law enforcement, or of court decisions, etc.,
- gender or racial discrimination,
- gaps in law – e.g. insufficient protection of women, children, the poor or people with disabilities,
- limited knowledge of laws, which is related to the lack of awareness of the population,
- too many laws (related to the latter),
- citizens’ lack of interest in participating in reforming projects.

3. Direct effect of law

What law can individuals invoke? Naturally, the law that the national legal order offers them. But what is the status of international law, EU law and EEA law in this hierarchy?

\textsuperscript{18} Mattei U (n 1) 22.
\textsuperscript{19} ibid 21 – 24.
3.1 EU law

The Advocate General Ruiz-Jarabo Colomer in his Opinion on the Roda Golf & Beach Resort SL case (2009) stated that: “Access to justice is a fundamental pillar of western legal culture. (…) Therefore, the right to effective legal protection is one of the general principles of Community law, in accordance with which access to justice is organised. (…) The present reference is doubly crucial with regard to safeguarding the procedural rights of individuals at both Community and national level.”

The idea that Union law can lead to the creation of rights of individuals that would be enforceable by national authorities directly on the basis of the existence of the EU law was first carried through in 1963 in the Van Gend en Loos case. In this ground-breaking case, the European Court of Justice has stated that “[i]ndependently of the legislation of member states, community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community.” In connection with this, the court emphasized the role of national courts as guardians of individuals’ Community (Union) law rights when deciding that the provisions of the Treaties “produce direct effects and creates individual rights which national courts must protect”. This way, the principle of direct effect of primary Community (Union) law was enshrined, and thus, also the capacity of the Union to establish individuals’ rights enforceable before the courts of the Member States.

The principle of direct effect also applies to acts of secondary law. Its application, however, depends on the type of act. Under Article 288 of the Treaty on the Functioning of the European Union, regulations are directly applicable in the EU countries. The Court of Justice in the Politi case (1971) clarifies that this is a full direct effect. A directive is an act addressed to a particular Member State / group of States / or to all EU Member States. However, it needs to be transposed into national law. In some cases, however, the European Court of Justice grants directives a direct effect in order to protect fundamental individuals’ rights.

The groundbreaker is the *Van Duyn* case (1974), in which the vertical direct effect of the directives (i.e. in the relationship between the individuals and the State) was introduced. An individual may claim from the State its rights and obligations contained in a directive, if these are defined clearly, specifically and unconditionally and, at the same time, if the State failed to transpose the directive in time, or properly.\(^{24}\) However, horizontal direct effect of directives (i.e. in the relationship between the individuals) has not been established yet.

### 3.2 International law

The direct effect is also a well-known institute behind the European Union’s gates. International law is used as a direct basis for the decisions of the national authorities in some thirty non-Union countries. The most prominent representative is the US, then most states of Latin America, Asia has representatives in Japan and Nepal and Africa in e.g. Benin, Ethiopia, Kenya and Senegal. A substantial number of cases can also be found in Russia and Israel.\(^{25}\) However, in any case, these examples cannot compete with a significant shift in the application of transnational law in the Member States, as brought by Van Gend en Loos case. The direct effect, in the form of its application within the European Union (hereinafter referred to as the “*EU*” or “*Union*”), does not have its similarity even in the relatively uniform legal order of the European Free Trade Association. According to the European Court of Justice, the European Economic Area, unlike the European Community, was based on the international treaty that which “merely creates rights and obligations as between the Contracting Parties and provides for no transfer of sovereign rights to the inter-governmental institutions which it sets up. In contrast, the EEC Treaty, albeit concluded in the form of an international agreement, none the less constitutes the constitutional charter of a Community based on the rule of law. The Community treaties established a new legal order for the benefit of which the States have limited their sovereign rights and the subjects of which comprise not only Member States but also their nationals. The essential characteristics of the Community legal order which has thus been established

\(^{24}\) Case 41-74 *Yvonne van Duyn v Home Office* [1974] ECR 01337, para 12.

are in particular its primacy over the law of the Member States and the direct effect of a whole series of provisions”.  

Article 26 of the Vienna Convention on the Law of Treaties, which reads as follows: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”, enshrined the fundamental principle of law of treaties pacta sunt servanda. Nevertheless, it remains the rule that the contracting states are free to decide how to meet their international obligations. There is no general obligation under international law or customary law that would require states to open their national courts for invocation of international treaties’ provisions by individuals. On the other hand, states cannot rely on national legal order as justification for non-performance of the treaties’ provisions. However, there are some exceptions to the rule of freedom of a contracting state in the implementation of treaties. For example, UN Convention against Torture (1984) contains provisions requiring adoption of effective measures to prevent torture in the territory of a contracting state. For international treaties on human rights, such provisions are commonplace. States usually regulate the way they accept the rights and obligations imposed on them by an international treaty in their Constitutions. If a Constitution is silent, the task will be transferred to national courts, which may, in their decisions, transpose the provisions into national law by reference to the provisions of an international agreement.

### 3.3 EEA law

Before moving on to the issue of law within the European Economic Area, I briefly summarize the development of the European Free Trade Association (hereinafter referred to as the “EFTA”). This regional organization was established in 1960 on the basis of the Stockholm Convention as an alternative trading block for European states that did not want to or could not become members of the current European Union. The

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26 Opinion of the Court 1/91 of 14 December 1991 pursuant to the second subparagraph of Article 228 (1) of the Treaty - Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area (1991) ECR 1-6079, para 1.
31 Mendez M (n 28) 3.
32 ibid 17 – 20.
organization operates in parallel with the European Union. At the beginning of the EFTA stood seven European countries – Austria, Denmark, Norway, Portugal, Sweden, Switzerland and Great Britain. Well, over time, some of the original members have moved to the rapidly evolving then European Community, and to date the EFTA has four members. From the founding members only persevered Norway and Switzerland. Iceland and Liechtenstein have joined them subsequently. The individual EFTA States may freely enter into contractual relations with third countries. EFTA does not create a customs union, but in order to facilitate trade with other European countries, its Member States have acceded to the conclusion of the Agreement on the European Economic Area, which came into force January 1, 1994. The European Economic Area (hereinafter referred to as the “EEA”) is formed of the EU Member States and EFTA States. However, all EFTA States did not become part of it. Switzerland has not acceded to the EEA Agreement and has decided to adjust its economic relationship with the EU through bilateral treaties. Other EFTA States, which means Iceland, Liechtenstein and Norway, together with all the current EU Member States, constitute an economic space, under which the free movement of goods, persons, services and capital is guaranteed.

As already mentioned in the previous chapter, within the EFTA States, the direct effect of the EEA law does not apply (cf. the ECJ Opinion 1/91). However, there are efforts to overcome this approach. The EEA Agreement contains provisions according to which it may seem at first sight that the EEA has a dualistic approach. An example is Article 7 of the EEA Agreement, according to which the acts corresponding to the EEC regulations shall be made part of the national law of the Contracting Parties and the acts corresponding to the EEC directives shall be implemented in the national legal order in the form and method chosen by the Contracting Parties. Furthermore, it is stipulated in the Protocol 35 to the EEA Agreement that for the achievement of the objective of the homogeneous EEA is not required for the Contracting Parties to transfer legislative powers to any of the EEA institutions and the Article itself of the Protocol 35 provides that, in the event of a conflict of the implemented EEA rules with other EFTA

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35 ibid 11 – 12, 34 – 35.
States’ statutory provisions, the EEA rules shall prevail. The principle of the direct effect of EU law is one of the key to protecting the rights of individuals. It cannot be said that this principle is universally recognized within the EEA / EFTA States. It is complicated mainly because of the fact that the Nordic EFTA States are dualistic states, which in short means that the rules of international law must be incorporated into national law to have direct effect in a Contracting State. The EEA Agreement contains several references to the need to protect the rights of individuals and puts this concept at the forefront. Nevertheless, the EEA Agreement does not explicitly lay down the direct effect of EEA law. Well, it is not surprising when one considers that the direct effect of EU law has been gradually developed due to the European Court of Justice case law.

The EFTA Court has made a move to something that can be called a “quasi-direct” effect. It first introduced this concept in the Restamark case in 1994 when, with reference to the Protocol 35, it ruled that “individuals and economic operators in cases of conflict between implemented EEA rules and national statutory provisions must be entitled to invoke and to claim at the national level any rights that could be derived from provisions of the EEA Agreement, as being or having been made part of the respective national legal order, if they are unconditional and sufficiently precise.”

Regarding the non-implemented EEA rules, the EFTA Court has ruled in the Karlsson case (2002) that these rules have no direct effect. But at the same time it stressed that the national courts shall “consider any relevant element of EEA law, whether implemented or not, when interpreting national law.” It is clear that even though the direct effect of the non-implemented rules in the EEA law is absent, the EFTA Court is continually moving towards a state of complete recognition of the principle of direct effect as recognized in the Union law.

Bårdsen, a judge at the Supreme Court in Norway, expanded at a seminar in 2015 in Luxembourg the idea that the protection of fundamental rights of individuals lies primarily with national courts whose task is to recognize these rights, clarify them and protect them at a domestic level. International law has only a subsidiary character in this respect. According to him, “access to justice is predominantly a question of access

38 Protocol 35 to the EEA Agreement.
39 e.g. 15th Recital, Article 102 of the EEA Agreement.
to effective protection of rights and freedoms in the domestic courts. The principle of homogeneity, formulated in Article 6 of the EEA Agreement, is a powerful means of protecting fundamental rights, but it also has its limits, especially with regard to the static nature of the EEA Agreement. If the principle of homogeneity were to be interpreted purely on its own, it could affect the sovereignty of the Contracting Parties. Bårdsen further explains that Norway, like Iceland, has a dualistic approach. Thus, EEA law, which has not been transformed into domestic national law, is not applicable. However, he adds that even the transformed EEA law is not applicable by Norwegian courts if it is inconsistent with higher-ranking domestic legislation (e.g. lex superior). This approach does not contradict the foundations of the EEA Agreement, since EEA law, unlike EU law, does not recognize the principle of direct effect (see Article 7 of the EEA Agreement and Protocol 35 to the Agreement).

III. Part: Access to the non-judicial European Union institutions

The very basis for access of individuals to non-judicial EU institutions – namely to the European Commission, the European Parliament and the European Ombudsman, are the following Articles of the Treaties:

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44 Article 6 of the EEA Agreement: Without prejudice to future developments of case-law, the provisions of this Agreement, in so far as they are identical in substance to corresponding rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two Treaties, shall, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of this Agreement.
45 Bårdsen A (n 43) paras 8 – 9.
47 Bårdsen A (n 43) paras 32 – 33.
Article 11 TEU:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

Article 24 TFEU:

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

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

Why should individuals use non-judicial remedies? The nature of problems, with which individuals can in some cases cope, may be very often linked to the political decisions that leave out democratic principles, and they can also be linked to the loopholes in the national legislation that are almost impossible to resolve without international intervention. Sometimes the effort to deal with the problem at the national level using only available mechanisms of the state seems less emphatic. However, if the attention of an international institution is brought to the case, it may not only be an effective solution to the problem, but also a good tool for political shakeup on the national level.
The European Union complaints mechanism can be used for:

- By submitting a complaint you make national governments more answerable. The attention will be drawn to the national bodies at the European level and that might increase the pressure on the national government to proceed on the case respecting EU law.

- Linking international and national levels stimulates interest of media, which will further support the activities of both state bodies and institutions of the Union.

- Both points above-mentioned lead to stimulation of national bodies. And it also makes the institutions of the EU more active at the national level. The increase of their role in state’s policy makes the institutions function more effectively, which contributes to the creation of stable practices that can also be used in future cases.

However, it is necessary take into account that the European Union complaint mechanisms do not have to be always the proper solution for every issue. In order to make the EU institutions handle your complaint or petition successfully all mandatory procedural requirements must be met. In some cases, the bodies of the EU, despite meeting all the conditions, do not have to act at all.

3. European Commission

The European Commission is based in Brussels, Belgium. The European Commission (hereinafter referred to as the “Commission”) is primarily a political institution of the EU. Its members and decision-making mechanisms are completely separated from the Member States. Together with the Court of Auditors of the EU, the Commission is the purest expression of the transnational nature of the authorities in the EU system. The Commission implements the main tasks of the executive power. Its function, however, goes well beyond the executive body and extends mainly to co-
creation of the EU legislation. Due to its independence from national influence and its functions, the Commission is often referred to as the “guardian of the Treaties” and “motor” of the integration process.

The Commission is formed, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, of nationals of the EU countries, namely of one from each Member State (Article 17 par. 4 of the Treaty on European Union [hereinafter referred to as the “TEU”]). Currently, the EU comprises a total of 28 European countries. Owing to the continuous growth of members and maintaining the principle of “one state, one commissioner” this results in a certain weakening of ability to act from the College of Commissioners. For this reason, the Lisbon Treaty aims to reduce the number of Commissioners. According to Article 17 par. 5 TEU, the Commission shall reduce the number of its members corresponding to two thirds of the Member States, although the European Council has the power to change the embodied numerical limit.

Article 17 par. 4 TEU:

*The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.*

Article 17 par. 5 TEU:

*As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.*

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48 Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Spain, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. (‘EU member countries’ (<https://europa.eu/european-union/about-eu/countries/member-countries_en> accessed 8 January 2017.). However the United Kingdom is supposed to leave the European Union on Friday, 29 March 2019 (Hunt A and Wheeler B, ‘Brexit: All you need to know about the UK leaving the EU’ (<BBC News / bbc.com, 13 July 2017) >http://www.bbc.com/news/uk-politics-32810887> accessed 16 July 2017.).
However, in May 2013, the European Council decided that the Commission would continue to consist of a number of members equal to the number of Member States, thus 28.\textsuperscript{49}

The Commission when deciding shall proceed in accordance with the principle of collegiality. Decisions are made by a majority of members in accordance with Article 250 par. 1 of the Treaty on the Functioning of the European Union (hereinafter referred to as the \textit{TFEU}). Detailed provisions contain the Rules of Procedure of the Commission.\textsuperscript{50}

At this stage, I would like to briefly describe the main activities of the Commission in order to understand its position among the institutions of the EU.

The Commission has four main tasks:\textsuperscript{51}

- to propose legislation to the Parliament and the Council,
- to manage and implement EU policies and the budget,
- to represent the EU at international level (e.g. when negotiating agreements between the EU and other countries), and
- to enforce European law (jointly with the Court of Justice).

For the purpose of this thesis, the fourth point is of the most importance, and therefore I will not pay closer attention to all different tasks above-mentioned, but I will further concentrate only on the fourth point, namely enforcement of European law.

In this regard, the Commission acts as a so-called “guardian of the Treaties” and is the guarantor of the common interests of the EU Member States. One of its tasks is to ensure compliance with EU law, as well as monitoring the transposition of directives approved by the EU Council, or the Commission, to the national law of the Member States. For this purpose, the Commission is equipped with a number of special supervisory powers, which are regulated in particular articles of the TFEU – Articles 258, 263 and 260 of the TFEU:\textsuperscript{52}

\begin{itemize}
  \item Janků M and Janků L, \textit{Právo EU po Lisabonské smlouvě [EU Law after the Lisbon Treaty]} (2\textsuperscript{nd} edn, Key Publishing 2015) 69 – 76.
\end{itemize}
according to Article 258 TFEU the Commission has the right to sue the Member State (I will describe this tool further in the next chapter 3.1 Complaint to the Commission),

Article 263 TFEU governs the possibility for the Commission to sue the other EU institutions, and

and finally, under Article 260 TFEU, the Commission may require the state to pay monetary penalties (fines) if the State fails to fulfil obligations arising from decisions of the Court of Justice of the European Union (I will follow up with this in the chapter 3.1.4 How do you complain – the infringement proceedings).

3.1 Complaint to the Commission

As I already mentioned in a previous chapter, the special inspection powers of the Commission include also the possibility of bringing an action against a Member State for breach of its obligations under EU law. This competence is governed by Article 258 TFEU.

Article 258 TFEU:

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a Reasoned Opinion on the matter after giving the State concerned the opportunity to submit its observations.
If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

This tool is a manifestation of the Commission’s role as “guardian of the treaties”. A possible action is submitted to the Court of Justice of the European Union, but it is preceded by a preliminary court proceedings. In practice, the action for

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53 Article 263 para 2 TFEU: [The Court of Justice of the European Union] shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.
infringement represents an important instrument to ensure compliance with EU law by Member States.\textsuperscript{54}

One of the main roles of the Commission is to monitor the Treaties and in that capacity this institution has powers to, \textit{inter alia}, bring infringement cases against Member States under Article 258 TFEU.

You might be thinking about why I have included this passage in this work which originally deals with the access of \textit{individuals} to the EU institutions. The reason is that the mentioned infringement actions may be triggered by complaints of individuals, who may alert the Commission to a problem in a particular Member State.

“A considerable number of infringement actions have their origins in a complaint from individuals or associations, some estimate as much as 50 %.”\textsuperscript{55}

3.1.1 Who can file a complaint

Anyone can file a complaint with the Commission against a Member State for any measure (law, administrative action or even a non-action) or practice which is attributable to the State, which they believe to be inconsistent with EU law and with the principles on which the EU law is built. Complainants do not have to show any particular interest to initiate infringement proceedings. Not even have to prove that they are directly affected by a breach of EU law, which - according to the complainant – the Member State has committed. It is essential that the complaint is related to alleged violations of European law by a particular Member State. The complaint therefore cannot relate to a particular private case of a complainant. According to the \textit{Commission communication to the European Parliament and the European ombudsman on relations with the complainant in respect of infringements of community law} (point 7 of the Annex “Relations with the complainant regarding infringements of community law”):

\textsuperscript{54} For example, Czech Republic joined the EU in 2004 and became the first country in the group of States acceding to the EU in the same year against which the European Court of Justice pronounced a condemnatory sentence for breach of the obligations laid down by EU law. The issue was non-transposition of the Directive 78/686/EEC concerning the mutual recognition of diplomas, certificates etc. (Janků M and Janků L [n.52] 114 – 115.)

\textsuperscript{55} Pinedo MEM, ‘LÖG244F: EU – EEA Law II’ (Reykjavík, Faculty of Law, University of Iceland, Lögberg 201, spring 2015) class 5.
“The Commission departments will contact complainants and inform them in writing, after each Commission decision (formal notice, Reasoned Opinion, referral to the Court or closure of the case), of the steps taken in response to their complaint.

Where a number of complaints are lodged in relation to the same grievance, individual acknowledgements may be replaced by a publication in the Official Journal of the European Communities and on the European Communities’ Europa server.

At any point during the procedure complainants may ask to explain or clarify to the Commission officials, on the spot and at their own expense, the grounds for their complaint.”

3.1.2 What can you complain about

For the infringement is considered any action against EU law, whether in the form of an *act* or *omission*, regardless of what institution or authority acts in a particular case (see next sub-chapter 3.1.3 Whose actions can you complain about). The infringement of a Member State may also include a violation of any State’s obligations arising from secondary legislation, agreements concluded with third countries and legal principles developed by the Court of Justice of the European Union. A special category of a violation of the Treaty is when a Member State fails to incorporate a directive into its national law or it does not incorporate the directive properly. This is perhaps the most common case of an infringement of the EU Treaties by a Member State. An infringement of a Member State can be found even in situations where provisions of the Treaty admit to some extent independent discretion of a Member State, but the State in its actions exceeds the boundaries of that discretion.

3.1.3 Whose actions can you complain about

From a formal point of view, infringement proceedings can only be brought against a Member State, which corresponds to the wording of Article 258 par. 1 TFEU: “If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties ...”, however, in practice commonly happens that the process is

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57 Janků M and Janků L (n 52) 115.
instigated against a Member State’s authority or similar institution. The essence is that the unlawful act (or non-act) is *imputable* to the State. What does it mean?

In practice, this means that responsible for the illegality in this case is not only a Member State but also state agencies, as the Member State is liable for these agencies, even if they are not constitutionally part of a Member State. Any institution falling under the state government is considered to be a state body. It does not matter at which level of the hierarchy it is located, it can be a national, regional or even local authority. A state authority is considered to comprise also some entities, which are not formally part of a Member State, but which are subjected to a certain degree of State supervision or control. Furthermore, the state authorities are also considered to be the authorities responsible for providing services to the public and for that reason they have been given special powers.\(^5\) Thus, the infringement may be committed by national parliaments as well as government bodies and individual executive bodies. Under the State’s conduct are regarded also actions of independent bodies such as courts.\(^6\) As far as national courts are concerned, this is a rather controversial issue, mainly because of the risk of breach of legal certainty, which is one of the general legal principles. However, it is clear from the settled case law of the Court of Justice that even though the national court has issued a final judgment (*res judicata*), the Commission may, on the basis of an infringement procedure, claim that it should be amended if it is contrary to the EU legal system.\(^6\)

A very important case has caught the attention of the public. It has clearly embedded the interpretation of the notion of "state" in its wider meaning.

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**C-188/89 Foster v British Gas [1990]:**\(^6\)

Case *Foster v British Gas plc* from 1990 is one of the leading cases of the Court of Justice of the European Union. Its main contribution is the definition of the term

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\(^6\) Case C-188/89 Foster v British Gas [1990] ECR I-03313.
“State” for the purposes of determining which institutions in the private or public sector can be considered as an authority of a Member State.

Mrs. Foster was a worker in the company of British Gas. At the age of 60 years, she was required to retire, even though men in the same company can work there up to 65 years. The British Gas at that time was a nationalized company (it was not privatized until the Gas Act in 1986). Mrs. Foster and four other women considered these practices to be unlawful discrimination on grounds of sex, which was contrary to the Equal Treatment Directive (then 76/207/EEC, now reconstructed in the Directive 2006/54/EC).

By an order of the House of Lords, delivered to the Court of Justice on 29 May 1989, this Court submitted a reference for a preliminary ruling under Article 177 of the European Economic Community Treaty (hereinafter referred to as the “EEC Treaty”) on the interpretation of the abovementioned Directive 76/207/EEC of 9 February 1976 concerning the principle of equal treatment for men and women in access to employment, professional training for employment, promotion at work and basic workplace conditions. The question arose in legal proceedings between Mrs. Foster and other women – former female workers of British Gas Corporation – and this company, during which it has been discussed compulsory retirement of the complainants. British Gas Corporation (hereinafter referred to as the "BGC") was at that time nationalized company responsible for gas distribution in Great Britain and had a monopoly on the supply of gas in this area. Its members were appointed by the Secretary of State and the BGC was obliged to submit regular reports on its activities to the Secretary. These reports were then submitted to the Parliament of Great Britain. The BGC also had power to present to the Parliament draft laws – all in accordance with the Gas Act 1972. In 1986 the BGC was privatized, creating a British Gas plc. Still during the period of the BGC was Mrs. Foster, along with other complainants, forced to retire because she reached the age of 60 years. The age limits for retirement were set by general policy of the BGC. While women had to retire at age 60, men could work up to 65 years.

The appellants brought proceedings before a national court claiming damages for not being able to continue in employment, based on the belief that mandatory retirement is contrary to Article 5 par. 1 of the Directive 76/207 EEC, according to which: “Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women
shall be guaranteed the same conditions without discrimination on grounds of sex.”

On this basis, the House of Lords stalled the proceedings and referred a following question to the Court of Justice for a preliminary ruling:

 Was the BGC [...] a body of such a type that the appellants are entitled in English courts and tribunals to rely directly upon Council Directive 76/207/EEC [...] so as to be entitled to a claim for damages on the ground that the retirement policy of the BGC was contrary to the directive?

The Court of Justice took into account previous cases (e.g. Case 8/81 Becker v Hauptzollamt Muenster-Innenstadt [1982] ECR 53, paragraphs 23 to 25, or Case 152/84 Marshall, paragraph 49), which also dealt with the effects of directives in Member States. The Court in its decisions expressed, inter alia, consideration that failure of a state to implement a directive whose provisions are unconditional and sufficiently precise cannot be used to the detriment of individuals when claiming their rights against the state and its institutions.

In line with previous decisions, the Court of Justice held that unconditional and sufficiently clear provisions of a directive can be relied upon against organizations or bodies which:

- are subjects to the authority or control of the Member State, or
- have special powers beyond those which result from the normal rules governing relations between individuals.

Such institutions are e.g. tax authorities, local or regional authorities, independent bodies responsible for maintaining security and public order within the Member State as well as the bodies that provide public health services.

It follows from the foregoing “that a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between

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individuals is included in any event among the bodies against which the provisions of a directive capable of having direct effect may be relied upon."\(^{63}\)

The answer to the question that was the subject of a preliminary ruling was that: *Article 5(1) of Council Directive 76/207/EEC may be relied upon in a claim for damages against such body.*

After answering the question of what can be considered for this purposes as a “state’s action”, another important question has come to light. The subject of this question is to find out what the state is responsible for in its territory.

If I go back to the previous chapter 3.1.2 What can you complain about, I will repeat that a Member State may be held responsible for any measure which is not formally in conformity with the European law. Whether it be a law, a court decision or any other legal instrument of the State. A Member State is also responsible for administrative practices if they are incompatible with the EU legal system. These practices also mean omission or undesirable inactivity. The State has the duty to monitor compliance with EU law in its territory and to ensure its exercise. The State can be held responsible for a failure to provide sufficient legal certainty with regard to EU law or a failure to notify the Commission of any difficulties with the application or enforcement of EU law.\(^{64}\) These obligations arise directly from the fundamental Treaties of the EU. The duty of cooperation imposed on a Member State is enshrined in Article 4 par. 3 TEU, which reads as follows:

**Article 4 par. 3 TEU:**

*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*

*The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.*

\(^{63}\) Foster v British Gas [1990], para 20.

\(^{64}\) Chalmers D, Davies G and Monti G (n 58) 352 – 357.
The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.

3.1.4 How do you complain – the infringement proceedings

The official website of the European Commission offers an official form which can be used for the purpose of online filing of a complaint. The form can be found on: https://ec.europa.eu/info/about-european-union/problems-and-complaints/how-make-complaint-eu-level/submit-complaint_en#submitting-a-complaint-by-post. However, you do not have to follow the prescribed form and you can prepare a complaint simply in the form of a regular letter and send it to:

European Commission
Secretary-General
B-1049 Brussels
BELGIUM

Or to the EU Commission office in your country (addresses can be found on the website above).

A content of the complaint is very important. All the information contained must be well-argued and supported by evidence. From the submission must be clear that it is meant seriously. It is therefore recommended to ground the complaint on relevant sources (such as letters of official authorities, credible press releases, scientific reports and so on).65

Before the Commission shall bring an action before the Court of Justice of the European Union (which is only a facultative phase), obligatory preliminary proceedings take place. In this procedure are supposed to be proven the conditions for the proceedings before the Court of Justice. However, its main purpose is the possibility to resolve the dispute out of court. It means that the Member State removes occurred unlawful situation voluntarily.

Preliminary proceedings have two main phases (these two can be followed by an optional third phase – referral to the Court). In the first phase it is only an informal process. A Member State in question is notified of an infringement of the Treaty and is suggested an amicable settlement of the dispute. The basis of this phase consists of a Commission’s letter of formal notice. This letter includes a summary of the relevant facts and legal grounds of a breach of the Treaty. The Member State is allowed to express his opinion to the letter of formal notice. From the constant practice of the Commission can be seen that to the State are given two months to submit its comments to the letter of formal notice, but setting a deadline is fully at the discretion of the Commission. The formal notice is not legally binding act and cannot be challenged by the State with an action for annulment. More about the letter of formal notice is discussed in chapter 3.1.4.2 Letter of formal notice.

Once the deadline, which was provided to the state by the Commission to remedy the unlawful situation, has passed without result, the whole procedure is moving into the second phase, so-called formal stage. The second, formal, phase is initiated by the Commission by issuing a Reasoned Opinion. The Reasoned Opinion expresses the view of the Commission that a violation exists. The Reasoned Opinion is not to its structure much different from a binding legal act – it must include a verdict and reasoning, from which it is clear, which legislation of EU law has been infringed by a Member State, what action of a Member State is considered as a breach and what are the legal grounds that authorize the Commission to assess such conduct as a breach of the Treaties. In the description of the infringement (the infringing act) must the opinion of the Commission coincide with the letter of formal notice. It is obvious that the Commission may issue an Opinion only if a breach of the Treaties, which is alleged in a letter of formal notice, continues. In the Opinion, the Commission shall determine the period within which a Member State is obliged to eliminate the consequences of breach of the Union law. The length of this period is not expressly set in the Treaties, but it should not be less than two month (but again, the Commission is in this regard endowed with full discretion). If even after this period the Member State fails to rectify the unlawful situation and the unlawful situation continues, the Commission may bring an

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66 The EU Pilot is also involved in the infringement proceedings. However, it is not an official part of this process, but can precede it. Its aim, essentially, is to “approve” the start of the infringement process (see chapter 3.1.4.1 EU Pilot).
68 ibid.
action before the Court of Justice of the EU, the subject of the action must be identical to the subject of the Commission’s Reasoned Opinion.

The aim of the first and second phases of the infringement procedure is to resolve the case quickly without needing to take it to the Court. With regard to the response from the Member State in question, the Commission may decide to waive the infringement proceedings, for example in cases where the State provides credible assurance that it will remedy violations and change the legal norms or its administrative practice. Most of the cases are solved in this way. It really depends on the answer from the Member State.

If the Commission brings an action, the Court of Justice will discuss it and examine the evidence submitted by both parties. On their basis the Court issues a judgment. According to the wording of Article 260 TFEU (see below) this action is by its nature declaratory relief action. To assess the legal action, the state at the time of its submission is relevant. In other words, to find the action by the Court to be reasonable, the unlawful state must continue at the time of its submission. The Court either dismisses the action or declares for the breach of the Treaties. If the Court concludes that the Member State is "guilty", it determines in the judgment the obligation to take necessary measures that ensure conformity with EU law. It is interesting that the defendant State have, in this respect, freedom for choice of means and methods of removal of breach of the Treaties. But if the court judgment namely specified the State’s obligation (to rectify the unlawful situation), discretion is not possible. For example, if the Court declared national legislation incompatible with EU law, the authority of the State is obliged not to apply its legislation to the extent that it is contrary to Union law. Judgment of the Court can serve as a basis for damages, or more precisely for an action for damages against a Member State. Article 260 par. 2 TFEU foresees enforcement of the judgment, in cases where a Member State has not made appropriate corrective measures.

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69 Declaratory relief action is an action in which the plaintiff seeks in court to determine whether there is a legal relationship or right or not. (Smith MH, The Legal, Professional, and Ethical Dimensions of Education in Nursing [2nd edn, Springer Publishing Company 2012] 105.)

70 Janků M and Janků L (n 52) 115 – 117.
Article 260 TFEU:

Par. 1: If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

Par. 2: If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

If the Court finds a Member State “guilty”, it rules in its decision a breach of obligations, what specific breach has occurred and the time to rectify the breach. If the State fails to meet the deadline set in the decision and does not carry out the obligation to eliminate the consequences of the violation, the Commission may seek before the Court of Justice in accordance with Article 260 par. 2 TFEU that the Court order to the State to pay a lump sum and/or penalty payment. The Commission therefore may submit a new action before the Court of Justice, within which the Commission proposes to impose a financial penalty on the State. For the first time the Court of Justice imposed an obligation to pay a penalty to Greece in 2000 (due to failure of execution of the judgment on the obligation of waste management and adoption of plans for waste management – the ruling in Commission v Hellenic Republic C-387/97 SbSD 2000, I-5047). The Court also takes into account gross domestic product as an indicator of financial capacity.\textsuperscript{71}

Judgments of the European Court of Justice are somewhat different from the judgments of national courts. At the end of the proceedings the Court of Justice delivers a judgment which determines whether there was a breach of EU law. The Court of Justice cannot annul a national provision that is contrary to EU law, neither induce a Member State to replace the resulting damage to individuals who were adversely affected by the act incompatible with EU law, not even get the State to comment on the

\textsuperscript{71} Janků M and Janků L (n 52) 115 – 117.
request of an individual. It is fully up to the Member State to choose the appropriate measures to be taken to comply with the judgment.

If the Member State on the basis of the judgment of the European Court of Justice does not comply, the Commission may refer the matter back to the European Court under Article 260 TFEU with a proposal that the Member State is obliged to pay periodic penalty payments until the Member State remedies the situation. The Commission may propose a penalty payment or a lump sum (these two can be combined). But only the Court decides whether to apply sanctions and in that case what type of sanctions and in what amount would be more apposite.72

In a nutshell, the individual possible stages of Articles 258 and 260 TFEU are:73

- an initial control by the Commission →
- the commencement of EU Pilot (not in urgent cases) →
- a letter of formal notice by the Commission to the Member State which causes a violation of EU law →
- the submission of a statement from the Member State on a letter of formal notice →
- a Reasoned Opinion stating the breach of EU law issued by the Commission →
- a time-limit for the Member State to take action to comply with the Reasoned Opinion →
- referring the case to the Court of Justice of EU by the Commission →
- the Court’s ruling.

According to available sources entire process takes approximately one to two years. However, this calculation does not include a possible resolution of the matter before the Court of Justice of the EU. If the matter is further taken to the Court to decide, the procedure can be prolonged up to five years or more.74 You can see that the whole process is greatly complicated and protracted. Nevertheless, the fundamental pillars of the whole infringement proceedings are mainly three of the above mentioned

72 Janků M and Janků L (n 52) 115 – 117.
73 Chalmers D, Davies G and Monti G (n 58) 357.
74 Gallop P and Stefanova A (n 65) 20 – 21.
phases. These are: the commencement of EU Pilot, a letter of formal notice stating an infringement and the issue of a Reasoned Opinion with possible referral to the Court of Justice in case that a Member State does not comply with the Reasoned Opinion.75

3.1.4.1 EU Pilot

There are known two triggers to the infringement proceedings. The Commission may launch an investigation on its own initiative or it starts acting on the initiative of a third party – for instance an individual. All third-party infringement complaints are recorded and registered, except for a few exceptions, these are:76

- no grievance was alleged in a complaint,
- it sets a grievance which evidently falls outside the scope of EU,
- it refers to the reasons on which the Commission already publicly adopted a clear and consistent stance – which will be communicated straight to the complainant (in case of occurrence of such situation),
- a complaint is against private parties (see case Foster) – unless it is proved the involvement of public authorities or their inaction when it comes to responding to the acts (omissions) incompatible with EU law; the Commission should, in any case, investigate whether the filings indicate the behaviour contrary to the rules of competition law laid down in Articles 101 and 102 TFEU77,
- it is anonymously made (does not contain contingent data from the sender, or contact details are incomplete), or
- it fails to specify (explicitly or implicitly) a concrete Member State to which the measures or acting in violation of EU law may be attributable.

Upon receipt of the complaint, the Commission will carry out an initial review. Most complaints from the third parties and about half of the cases that were the subject of the Commission’s own investigation will not go through this phase. In 2015, the

75 Chalmers D, Davies G and Monti G (n 58) 357.
77 The prohibition of anti-competitive agreements between undertakings and the abuse of a dominant position on the market (Arts 101, 102 TFEU).
Commission opened 881 new EU Pilot files of which 578 were triggered by the Commission’s own initiative and 295 were based on the third parties complaints.\textsuperscript{78} If the Commission considers the case as likely to be misconduct on the part of a Member State, the Commission then will open so-called EU Pilot dialogue with the Member State to determine precisely whether the EU rules have indeed been violated. In urgent cases, the Commission directly sends a letter of a formal notice (instead of opening an EU Pilot), but this is only rarely done, the EU Pilot is used more commonly. “\textit{EU Pilot is a scheme designed to resolve compliance problems without having to resort to infringement proceedings.}”\textsuperscript{79} It is initiated by the Commission using an online database and communication tool in order to share information and important details regarding a case with a particular Member State. Governments will thus be able to solve the problem voluntarily on an informal level.

The online database is managed in English, but some Member States retain their right to respond in their official language. The Member State has ten weeks to answer questions in the most exhaustive way through the online application and to propose a solution to a problem that is in line with EU law. A Member State may request the Commission to extend the deadline for reply for a further ten weeks. The request must be factually substantiated. In exceptional cases, however, the response time may be shorter than the usual ten weeks. This must be justified to the Member State by the Commission. The answers received are reviewed and their evaluation is uploaded to the EU Pilot online database. The Commission also has ten weeks to consider the answers. Predominantly the compatibility with EU law is assessed. If the Member State does not propose any appropriate solution, the Commission may launch infringement proceedings under Article 258 TFEU. In the event that an EU Pilot was deployed on the basis of a third party complaint, the complainant will be informed of the outcome of the investigation of his complaint.

At present, approximately 75 \% of submissions that pass the EU Pilot dialogue are resolved already at this stage. It sounds like a pretty high number, but it is not. For instance, between 1 June 2012 and 26 March 2013, 1.251 EU Pilots were opened, but


the Commission was able to resolve only 237 of them without launching the infringement proceedings. This represents success at 18.9 percent.\textsuperscript{80}

There is no public access to the EU Pilot online database. Nobody – nor the European Parliament, other governments of the Member States or their national parliaments – can therefore report on the state of this informal dialogue. The EU Pilot is a closed and completely non-transparent system of negotiation only between the Commission and the representatives of the Member State concerned.\textsuperscript{81}

3.1.4.2 Letter of formal notice

The official process of the infringement procedure begins with the issuance of a letter of formal notice. A letter of formal notice represents a guarantee of the maintenance of the right of defence of the Member State. The Commission cannot issue a Reasoned Opinion until the Member State concerned has been given an opportunity to comment on the present case – see Article 258 par. 1 TFEU: "If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a Reasoned Opinion on the matter after giving the State concerned the opportunity to submit its observations." For this reason, the Commission first sends a letter of formal notice under which a Member State may submit its observations. The letter of formal notice frames the dispute, since the Commission may only bring a Member State before a court for infringement that is explicitly delineated in the letter of formal notice.\textsuperscript{82}

3.1.4.3 Reasoned Opinion

If, after the Member State concerned has expressed its opinion, the Commission does not reach an agreement with that State, it shall issue a Reasoned Opinion. The subject-matter of the dispute must follow the previous letter of formal notice setting out the content boundaries of the case. In a Reasoned Opinion, the Commission cannot modify the subject-matter of the case by submitting new allegations. In exceptional cases, however, it can be possible, for example, if new evidence is brought to the case.

\textsuperscript{80} Chalmers D, Davies G and Monti G (n 58) 359.
\textsuperscript{81} ibid.
\textsuperscript{82} ibid 359 – 360.
While a letter of formal notice does not need to contain more than a summary of complaints, a Reasoned Opinion must be more specific. In a Reasoned Opinion, the Commission must particularize what reasons led it to believe that a Member State has infringed EU law. The statement of the reasons must be sufficiently detailed to enable the Court of Justice to make a clearer conclusion as to whether there has been a presumed breach. Chalmers quotes the jurisprudence of the European Court of Justice, which, in pursuance of its years of practice, has established formal requirements of the Reasoned Opinion: “[i]t should include a detailed statement of the legal and factual context to the dispute and take account of any resolutions submitted by the Member State. Finally, and importantly, the Reasoned Opinion must also set out a reasonable period for compliance by the Member State.”

The Reasoned Opinion principle is dealt with in more depth in the Case C-350/02 Commission v Netherlands. In this relevant case, the Court of Justice defined in 2004 formal and content boundaries of the Reasoned Opinion:

“...the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under Community law and, on the other, to avail itself of its right to defend itself against the charges formulated by the Commission...”

“The proper conduct of that procedure constitutes an essential guarantee required by the Treaty not only in order to protect the rights of the Member State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter...”

“It follows that the subject-matter of proceedings under Article 226 EC is delimited by the pre-litigation procedure governed by that provision. The Commission’s reasoned opinion and the application must be based on the same grounds and pleas, with the result that the Court cannot examine a ground of complaint which was not formulated in the reasoned opinion (...) which for its part must contain a cogent and detailed exposition of the reasons which led the Commission to the conclusion that the Member State concerned had failed to fulfil one of its obligations under the Treaty...”

83 Chalmers D, Davies G and Monti G (n 58) 360 – 361. Summary of the following cited case law: Case C-365/10 Commission v Slovenia [2011]; Case C-34/11 Commission v Portugal [2012]; Case C-266/94 Commission v Spain [1995]; Case C-350/02 Commission v Netherlands [2004].
“It should also be emphasised that, whilst the formal letter of notice which comprises an initial succinct résumé of the alleged infringement, may be useful in construing the reasoned opinion, the Commission is none the less obliged to specify precisely in that opinion the grounds of complaint which it already raised more generally in the letter of formal notice and alleges against the Member State concerned, after taking cognizance of any observations submitted by it under the first paragraph of Article 226 EC. That requirement is essential in order to delimit the subject-matter of the dispute prior to any initiation of the contentious procedure provided for in the second paragraph of Article 226 and in order to ensure that the Member State in question is accurately apprised of the grounds of complaint maintained against it by the Commission and can thus bring an end to the alleged infringements or put forward its arguments in defence prior to any application to the Court by the Commission.”

Once the Reasoned Opinion has been sent to the respective State, it must have sufficient time to examine it and to approach to take the necessary action. The time-limit depends on a number of factors – especially how urgent the matter is, how much time has elapsed since the first contact of a Member State with the Commission (this may not be the same as the delivery of a letter of formal notice) and other circumstances of the particular case. Once the time-limit has expired without the Member State having complied with the Reasoned Opinion from the Commission, there is no other way than to bring a Member State to the Court of Justice.

Here I would like to point out that the Court will assess the case by the end of the period set out in the Reasoned Opinion. The court cannot take into account any changes made after this deadline. If a Member State ceased to act in breach of EU law, but would have done so before the final decision was taken, it could not prevent the Court from issuing a “condemnatory” judgment. The reason for this practice is that otherwise the Member States would very easily avoid judicial sanctions, since they could end the infringement in the course of legal proceedings, and thus their unlawful conduct would remain unpunished.85

There is another relevant decision of the Court of Justice related to the infringement proceedings, namely the judgment on the case Star Fruit Company SA v

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85 Chalmers D, Davies G and Monti G (n 58) 360 – 363.
Commission dated February 14, 1989 (C-247/87). I will discuss this case briefly in the following table.

<table>
<thead>
<tr>
<th>Case C-247/87 Star Fruit Company SA v Commission of the European Communities [1989].¹⁸⁶</th>
</tr>
</thead>
</table>
| The applicant, Star Fruit Company SA (hereinafter referred to as the “Star Fruit”), which was engaged in import and export of bananas, brought an action on 14 August 1987 under Article 173 para. 2¹⁸⁷ and Article 175 para. 3¹⁸⁸ of the EEC Treaty in order to seek a declaration that the Commission had failed when it did not initiate an infringement proceedings under Article 169 of the EEC Treaty¹⁸⁹, within which it would establish that the French Republic has committed a breach of its obligations under the Treaties. The Star Fruit had considered that the legal system for supplying bananas on the market in France is in contradiction to EU law (specifically Article 30 et seq. EEC Treaty [now Article 34 TFEU] concerning the prohibition of quantitative restrictions on importation and all the measures with equivalent effect between Member States).

Guided by this conviction, Star Fruit sent a letter to the Commission on April 17 1987 (thus before bringing this action before the Court), by which it demanded the initiation of proceedings under Article 169 of the EEC Treaty against the French Republic and establishing that import quotas on bananas not originating in member countries, but freely imported into other Member States of EU, are in conflict with the aforementioned provisions.

The Commission responded to the letter by filing an objection of inadmissibility to the Court and requested the Court to rule on the objection without considering the

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¹⁸⁷ Article 173 para 2: Any natural or legal person may, under the same conditions, appeal against a decision addressed to him or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and specific concern to him.
¹⁸⁸ Article 175 para 3: Any natural or legal person may submit to the Court of Justice, under the conditions laid down in the preceding paragraphs, a complaint to the effect that one of the institutions of the Community has failed to address to him an act other than a recommendation or an opinion.
¹⁸⁹ The original wording of Article 169 of the EEC Treaty is almost indistinguishable with its contents from today wording of Article 258 TFEU. To illustrate it, I’m quoting Article 169 of the EEC Treaty: (Para 1:) If the Commission considers that a Member State has failed to fulfil any of its obligations under this Treaty, it shall give a Reasoned Opinion on the matter after requiring such State to submit its comments.(Para 2:) If such State does not comply with the terms of such opinion within the period laid down by the Commission, the latter may refer the matter to the Court of Justice.
content of the case (of the application). One of the main reasons why the Commission finds signs of inadmissibility in the request, was its interpretation of the third paragraph of Article 175 of the EEC Treaty. According to its beliefs, wording of this provision excludes the possibility of an action for failure to act lodged by a private person for non-application of the procedure provided for in Article 169 against a Member State.

The Court took into consideration all the submissions and arguments of the parties and decided as follows:

"(11)...it is clear from the scheme of Article 169 of the Treaty that the Commission is not bound to commence the proceedings provided for in that provision but in this regard has a discretion which excludes the right for individuals to require that institution to adopt a specific position."

Therefore, the Court dismissed the action as inadmissible.

3.1.5 Statistics

In his publication, Chalmers quotes the 29th annual report of the European Commission, according to which “in 2011, the Commission launched 1,227 investigations of its own and received 3,115 complaints.” According to the 33rd Annual Report, in 2015, the Commission received a total of 3,450 new complaints (most often against Italy, Spain and Germany), and, on the other hand, the Commission itself started investigations (by sending the EU Pilot) from its own oversight activities in 578 cases (most often in the case of Italy, Portugal and Germany). From this, there is a clear downward trend in the Commission’s opening process and a slightly increasing tendency in the case of private-sector complaints (the 2015 report, however, explicitly states that the number of complaints decreased slightly in 2015 compared to 2011; in 2014, a total of 3,715 complaints under Article 258 of TFEU were recorded).

90 The figures provided in this chapter – Statistics, do not include the infringement proceedings initiated by the Commission on the basis of the late transposition of a directive into the legal order of a Member State.
91 Chalmers D, Davies G and Monti G (n 58) 357.
93 ibid 20.
Complaints are primarily made by the members of public, NGOs, private individuals and other organizations.

The overview of complaints submitted in 2015 is illustrated in the following graph:\textsuperscript{94}

![Number of Complaints: 2011 - 2015](image)

Out of the 3,450 complaints registered in 2015, the most were filed against three Member States: Italy (637), Spain (342) and Germany (274).

A significant number of complaints were addressed to the policy area of Employment, social affairs and inclusion, then Internal market, industry, enterprises and small and medium-sized enterprises (hereinafter only as “SMEs”). The lowest number of complaints was addressed to the area of Environment.

\textsuperscript{94} Commission, Annual Report 2015, 17.
The following chart divides the new complaints received in 2015 into five areas according to their number – the chart captures a total of 72 % of all new complaints from 2015.\textsuperscript{95}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{New complaints registered in 2015: policy areas}
\end{figure}

In 2015, the Commission managed to deal with 3,315 complaints. These consist of complaints that remained “open” at the end of 2014 (2,963) and complaints that were newly registered in 2015 (3,450). At the end of 2015, 3,098 complaints were left unresolved.\textsuperscript{96} These figures reflect the increasing activity of private individuals in the infringement process, and thus a greater burden for the Commission and a slowdown in the decision-making process.

I consider the figures relating to the judicial phase of the infringement procedure to be particularly noteworthy. In 2015, the Court of Justice issued only 25 judgments under Article 258 TFEU. Out of these 25 decisions, the overwhelming majority was in the favour of the Commission – a total of 18 of the judgements, which represents the Commission’s 82 % success rate. Namely, it was most often:

\textsuperscript{95} Commission, Annual Report 2015, 18.
\textsuperscript{96} ibid 17 – 18.
• Poland (4 judgements in the Commission’s favour),
• Belgium (2 judgements in the Commission’s favour),
• Bulgaria (2 judgements in the Commission’s favour),
• France (2 judgements in the Commission’s favour),
• Germany (2 judgements in the Commission’s favour),
• Greece (2 judgements in the Commission’s favour),
• Luxembourg (2 judgements in the Commission’s favour),
• Slovakia (2 judgements – both in Slovakia’s favour) and
• the United Kingdom (2 judgements – on of them in the United Kingdom’s favour).

Once the Court of Justice has decided, Member States usually seek to take the necessary measures immediately. Still, at the end of 2015, 85 infringement proceedings, which were in the phase following the Court’s decision, were still open, as the Commission considered the Member State's measures to be insufficient. Of the 85 cases mentioned, two cases have already been referred to the Court for the second time. Where the Court has imposed a financial penalty in accordance with Article 260 par. 2 TFEU, the Member State violating the Treaty must immediately pay the lump sum and then continue to pay regular penalty payments until full compliance with the first and second judgments of the Court of Justice. In 2015, the Court delivered a total of three judgments under Article 260 par. 2 TFEU. The Court has imposed penalties on Greece\(^9^7\) and on Italy\(^9^8\). At the end of 2015, seven infringement proceedings were still open, which were in the phase following the judgment of the Court of Justice under Article 260 par. 2 TFEU\(^9^9\).

\(^{97}\) The Court imposed on Greece a lump sum payment of EUR 10 million and a penalty of EUR 3.64 million for every half year of non-compliance with the Court judgement under Article 258 TFEU (Commission v Greece, C-167/14).

\(^{98}\) The Court imposed on Italy a lump sum payment of EUR 20 million and a penalty of EUR 120.000 for every day of non-compliance with the Court judgement under Article 258 TFEU (Commission v Italy, C-653/13). And a lump sum payment of EUR 30 million and a penalty of EUR 12 million for every half year of non-compliance with the Court judgement under Article 258 TFEU (Commission v Italy, C-367/14).

3.1.6 Suitability of the infringement procedure

A complaint to the Commission for infringement of Union law can only be used in such situations where the State fails to comply with the legal obligations imposed on it by EU law. The focus of the Commission on the case might spur activity of the national authorities. The aim of infringement procedure, however, is not to resolve a particular case of the complainant, but to force a Member State to bring its legislation into compliance with EU law. It is primarily the duty of the courts and administrative authorities of the Member States to ensure that their activities and the activities of all national institutions are in line with EU law. It is also possible, of course, to claim your rights as guaranteed by EU law at the national level. Although this method is less emphatic and does not always lead to a successful conclusion, if it leads to persuade the national authorities to remedy, it is a more direct, more personal, and faster way to assert your rights. Nevertheless, Chalmers emphasizes the need to speed up the process. “The average time in the period 1999 – 2006 between the Commission opening a file on the matter and it being referred to the Court of Justice was twenty-three months. There is now target in relation to complaints by third parties for this not to be more than twelve months.” However, he also warns of the negative consequences of the acceleration of the infringement procedure, “…if this has quickened national responses, it has led to the Commission being overloaded.”

To sum up, see the pros and cons table of the infringement proceedings:

<table>
<thead>
<tr>
<th>Advantages:</th>
<th>Disadvantages:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The complaint mechanism covers a wide range of cases in which it can be used (particularly as for the environment), its scope extends to the</td>
<td>• Approximately 80 % of complaints are terminated at an early stage, the Commission does not have an obligation to investigate the case,</td>
</tr>
</tbody>
</table>

101 Chalmers D, Davies G and Monti G (n 58) 359.
102 Gallop P and Stefanova A (n 65) 19 – 20.
European decisions, regulations and directives that form legal obligations of implementation for Member States.

- It is a powerful way to get the state to act in accordance with EU law; the state must obey the result of the infringement proceedings, otherwise it runs the risk of financial sanctions.

- A conciliation process that goes between the Commission and a Member State is not transparent, therefore the complainant cannot access it. Revealing details of the process were rejected by the Commission on the grounds that it could jeopardize negotiations with the Member State, which often end with extrajudicial settlement.

starting the process is purely in its discretion; it is therefore necessary to prepare the complaint well and support it by a number of relevant evidence

3.1.7 Example of the infringement case

Infringement Case: Netherlands and protection of animals used for scientific purposes (Brussels, 16 October 2014)

Netherlands failed to enact a new Union legislation in time regarding the protection of animals used for scientific purposes. Directive 2010/63/EU (revising Directive 86/609/EEC) on the protection of animals used for scientific purposes was adopted on 22 September 2010. The directive is based on the principle of “the Three Rs” – replace, reduce and refine the use of animals in science. Thus, it aims primarily to decrease the number of animals used in laboratories and to disseminate alternative practices in this field. The scope of the protection of animals is now wider compared to the previous regulation. It includes protection of foetuses of mammals and cephalopods, as well as animals that are used for basic research, higher education and training. Directive sets basic standards for housing and care of animals. It specifies how to treat animals that are the subject of projects for assessing pain, distress and lasting harm. All
this requires an increased need for transparency and inspection procedures. Introduction of alternative methods is supported by EU measures (such as the establishment of a Union reference laboratory, which dealt with the validation of alternative methods used in laboratories within Member States) trying to promote alternative methods more at national level.\textsuperscript{103}

Member States were supposed to adopt these regulatory changes till November 2012, however, the Netherlands did not meet this deadline. Although Dutch legislation had some degree of protection of animals used in experiments, it showed some gaps, which were supposed to be filled by the Directive. Nearly two years after the given time limit, Dutch legislation concerning animal testing was still not in full compliance with EU standards.

The European Commission firstly pointed out this discrepancy in a letter of formal notice addressed to the Dutch government in January 2013. Since there was no remedy of the situation, the Commission reiterated its concerns in a Reasoned Opinion sent to the Dutch government five months later. The Netherlands replied that the deficiencies in the process of transposing the Directive will be resolved by adopting a new law regulating the use of animals in scientific (and similar) experiments. The adoption of this law was expected on 1 January 2014. However, no Act was adopted even after the announced date.

Based on the abovementioned, the Commission has decided to act in accordance with Article 260 TFEU and brought the Netherlands to the European Court of Justice. The proposal of the Commission contains the possible penalty payments of EUR 51.156 per day until the provisions of the Directive are duly enacted into the national law. The amount of the financial sanctions was determined in the light of the importance and duration of the infringement and was to be paid daily from the date of decision of the Court of Justice until the adoption of the harmonization measures.\textsuperscript{104} Netherlands has enacted the Directive (2010/63/EU) on 18 December 2014.\textsuperscript{105}

\textsuperscript{104} ‘Environment: Commission takes the Netherlands to court over failure to protect animals used for scientific purposes, asks for fines’ (Europa.eu) <http://europa.eu/rapid/press-release_IP-14-1141_en.htm> accessed 12 March 2017.
\textsuperscript{105} ‘Opinion provided by NCad as to how the Netherlands can become a pioneer in non-animal research (Netherlands National Committee for the protection of animals used for scientific purposes, 15 December 2016) <https://english.ncadierproevenbeleid.nl/> accessed 26 March 2017.
3.2 Summary of the infringement proceedings

In conclusion, I would like to emphasize that the role of complainants ends with the filing of the complaint. They have no right to require the Commission to act under a complaint and take proposed action or to be in any way participated in a dispute. The Commission has full discretion to bring or not to bring an infringement action. The access for individuals to bring a problem to the attention of the Commission has merely an informative character. An individual is not entitled to require the Commission to act and he / she does not have any formal status in a potential dispute.\footnote{Chalmers D, Davies G and Monti G (n 58) 368.} Bringing the case before the Court of Justice has also no impact on the rights of the complainant, as described in an article on the official website of the European Commission: “Finally, it should be underlined that any finding by the Court of Justice has no impact on the rights of the complainant, since it does not serve to resolve individual cases. It merely obliges the Member state to comply with Community law. It is, therefore, in the complainant’s interest to make use of any redress available at national level, which as a rule enables him/her to assert his/her rights more directly and more personally. When damage has been suffered, only national courts can award reparation from the Member States concerned. This means that individual claims for damages would have to be brought before the national courts.”\footnote{‘Complaints. European Commission: Mobility and transport’ (Ec.Europa.eu) <https://ec.europa.eu/transport/media/infringements/complaints_en> accessed 6 March 2017.}

Below, you can see a table that summarizes the basic facts concerning the complaints submitted to the European Commission.\footnote{Pinedo MEM, ‘LÖG244F: EU – EEA Law II’ (Reykjavík, Faculty of Law, University of Iceland, Lögberg 201, spring 2015) class 5.}

| WHO can complain? | Anyone may lodge a complaint. There is no requirement of being directly affected. |

\footnote{Chalmers D, Davies G and Monti G (n 58) 368.}
\footnote{Pinedo MEM, ‘LÖG244F: EU – EEA Law II’ (Reykjavík, Faculty of Law, University of Iceland, Lögberg 201, spring 2015) class 5.}
<table>
<thead>
<tr>
<th>WHAT can you complain about?</th>
<th>You can complain about any measure of the EU (e.g. law, regulation or administrative action) or even just a practice considered incompatible with a provision or a principle of EU law. You can also complain about omissions (inactions).</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHOSE actions can you complain about?</td>
<td>You can complain about actions of a Member State → only actions attributable to a Member State, not an individual, the Commission cannot follow up matters that only involve private individuals or bodies, and that do not involve public authorities (see case C-188/89 <em>Foster v British Gas</em>).</td>
</tr>
<tr>
<td>HOW do you complain?</td>
<td>Website of the Commission offers a complaint form which can be used (see above on the website address).</td>
</tr>
</tbody>
</table>

### 4. European Parliament

The European Parliament (hereinafter also referred to as the “Parliament”) is the European Union’s representative body. It consists of “representatives of the citizens of the Union”. The Lisbon Treaty replaced the definition of members of Parliament as “representatives of the peoples of the States brought together in the Community” (Article 189 of the EEC Treaty) by “representatives of the Union’s citizens” (Article 14 par. 2 TEU).\(^{109}\) This terminological development, in my opinion, expresses, besides establishing the fact that every citizen of a Member State of the European Union is also a citizen of the Union (which was first seriously urged during the negotiations relating to the Maastricht Treaty in 1980s and also then legally grounded in its final form in 1993)\(^{110}\), a certain effort of the Union to gain ground as a coherent democratic entity whose interest is above all the promotion of citizens’ rights and freedoms.

\(^{109}\) Janků M and Janků L (n 52) 58.

In the introduction to this chapter, I will devote a few general lines to the structure, functioning and powers of the European Parliament.

Since 1979, when the first direct elections took place, members of Parliament are elected in regular direct general elections. The elections are held every five years and the next the Europeans are awaiting in 2019. Members meet in plenary sessions in Strasbourg and in Brussels. Parliament has around twenty committees preparing its plenary sessions and a number of political groups that meet mostly in Brussels. The sessions are chaired by an elected President and fourteen Vice-Presidents (each elected for a period of 2,5 years) representing the so-called Bureau, Parliament’s executive body, which manages internal financial, administrative and organizational matters. In addition, the President of the Parliament manages a meeting of the Conference of Presidents, made up of heads of all political factions. This body decides, among other things, on the agenda of the individual plenary sessions, on bringing an action against other EU institutions, except for the courts, and on conflicts of jurisdiction between the various parliamentary committees.¹¹¹

¹¹¹ Janků M and Janků L (n 52) 76 – 77.
Most of the work is carried out by specialized standing committees, such as the Committee on Human Rights, Women’s Rights and Gender Equality, Environment, Public Health and Food Safety, the Committee on Petitions, Fisheries etc. There are currently about twenty different standing committees in the European Parliament. The number of members per committee ranges from 25 to 73 full members. Members of Parliament as rapporteurs in these committees express their views on the Commission’s proposals and draw up legislative proposals to the Parliament. The parliamentary committees meet once or twice a month in public sessions to discuss the legislative proposals put forward by the Commission.

The functioning of Parliament itself is complicated not only by a large number of its members but also by the number of official EU languages. The Union recognizes 24 official languages that MPs can use in the negotiations. It is not difficult to imagine how considerable the demands for translation services are in the negotiations.

The main difference between the European Parliament and most of national parliaments is that the European Parliament does not have an initiating role in the legislative area. The European Commission has a monopoly on the legislative initiative.

Since the 2014 elections, the European Parliament has 751 members from 28 Member States. MEPs form political factions. There is a certain limitation of European integration at the political level – there are no pan-European political parties in the EU, as is the case in individual Member States. In factions, MEPs are not grouped according to national division, but according to their political ideas, interests and goals. The election results in 2014 demonstrated the most numerous European political groups at that time. These include:

115 Article 289 para 1 TFEU: The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. Para 4: In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.
• the Group of the European People’s Party (Christian Democrats) (EPP; in the 2014 elections, they gained 221 seats),
• the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S & D; 191 seats),
• the European Conservatives and Reformists (ECR; 70 seats),
• the Alliance of Liberals and Democrats for Europe (ALDE; 67 seats),
• the European United Left/Nordic Green Left (GUE/NGL; 52 seats),
• the Greens/European Free Alliance (Greens/EFA; 50 seats) and
• the Europe of freedom and direct democracy Group (EFDD; 48 seats).

The last group is the so-called Non-attached Members – members of the Parliament who are not part of any political faction. In the 2014 elections, 52 of them became Members of Parliament.¹¹⁷

The factions of MPs are not perceived as public institutions in this sense, and although they are not public in nature and are separated from the state, they perform tasks of public interest. Separation of seats for single Member States is not proportional

and it is relatively advantageous for small countries. Elections to the Parliament have not yet been fully unified by a single electoral procedure, they partially respect electoral systems at national level. Yet we can call the Parliament one of the key institutions of the EU. It is the main negotiating chamber of the EU. It is the place where the political and national views of all Member States can meet and blend.

The following table shows the current distribution of seats by countries in the European Parliament for the election period 2014 – 2019 (reflecting the elections in 2014):

<table>
<thead>
<tr>
<th>Country</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>99</td>
</tr>
<tr>
<td>Austria</td>
<td>18</td>
</tr>
<tr>
<td>France</td>
<td>74</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>17</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>73</td>
</tr>
<tr>
<td>Denmark</td>
<td>13</td>
</tr>
<tr>
<td>Italy</td>
<td>73</td>
</tr>
<tr>
<td>Slovakia</td>
<td>13</td>
</tr>
<tr>
<td>Spain</td>
<td>54</td>
</tr>
<tr>
<td>Finland</td>
<td>13</td>
</tr>
<tr>
<td>Poland</td>
<td>51</td>
</tr>
<tr>
<td>Ireland</td>
<td>11</td>
</tr>
<tr>
<td>Romania</td>
<td>32</td>
</tr>
<tr>
<td>Croatia</td>
<td>11</td>
</tr>
<tr>
<td>Netherlands</td>
<td>26</td>
</tr>
<tr>
<td>Lithuania</td>
<td>11</td>
</tr>
<tr>
<td>Greece</td>
<td>21</td>
</tr>
<tr>
<td>Slovenia</td>
<td>8</td>
</tr>
<tr>
<td>Belgium</td>
<td>21</td>
</tr>
<tr>
<td>Latvia</td>
<td>8</td>
</tr>
<tr>
<td>Portugal</td>
<td>21</td>
</tr>
<tr>
<td>Estonia</td>
<td>6</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>21</td>
</tr>
<tr>
<td>Cyprus</td>
<td>6</td>
</tr>
<tr>
<td>Hungary</td>
<td>21</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>6</td>
</tr>
<tr>
<td>Sweden</td>
<td>20</td>
</tr>
<tr>
<td>Malta</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>751</strong></td>
</tr>
</tbody>
</table>

Moving from the structure of this institution to its powers, it is worth pointing out that the European Parliament has developed its powers in a very dynamic way. From an authority with relatively small powers, during the development of the EC and the EU it has become a representative body of legislators with many other powers.

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118 Janků M and Janků L (n 52) 77 – 78.
“Parliament has acquired ever more democratic, supervisory and legislative powers with each new Treaty. With the Treaty of Brussels (signed in 1975), the Parliament acquired the right to scrutinise the EU accounts at the end of each year, and assess whether the Commission has wisely and correctly spent the EU budget. New additions with the Single European Act (Treaty signed in 1986) ensured that Parliament's assent is mandatory before a new country can join the EU. The Amsterdam Treaty (signed in 1997) gave a much stronger position to the Parliament in co-legislating with the Council on a whole range of areas that are subject to EU law (consumer protection, ability to work legally in another country and environmental issues, to name a few). The latest Treaty, the Lisbon Treaty, entered into force on 1 December 2009. It strengthens the European Parliament, gives national parliaments more responsibility in determining the course of European policy, as well as allowing EU citizens the power of initiative. The Lisbon Treaty enhances European Parliament's powers as a fully recognised co-legislator with increased budgetary powers. It also gives Parliament a key role in the election of the European Commission President.”¹²⁰

Parliament shall act by an absolute majority of the votes cast, unless a specific rule applies to the case. Parliament’s most important tasks include:¹²¹

- Co-decision power in the legislative process. This power was entrusted to Parliament by the Maastricht Treaty in 1992. Parliament is participating in the adoption of acts of secondary law together with the Council of the EU. With the entry into force of the Treaty of Lisbon, this process was enshrined in Article 289 TFEU¹²² and called the ordinary legislative procedure. Hodson and Peterson, in their publication, point to the main problem in the European Parliament’s decision-making process, which is to bring together the interests of all members as a whole. “The Parliament is more diverse and more heterogeneous than any other EU institution.”¹²³ The authors also recall the development of the membership of the Parliament. Before the first


¹²¹ Janků M and Janků L (n 52) 79 – 81.

¹²² Article 289 para 1 TFEU: The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.

direct elections to the Parliament, there were only 198 members from nine states. In 2014 (when the last elections to the Parliament took place), the number of members tripled to 751 out of twenty-eight states. In Europe, we have no other elected parliamentary chamber with so many members, which also differ greatly from the number of citizens they represent.

- **Participation in the legislative process outside of the co-decision.** The European Parliament is also a consultative body of the Council. It participates in decision-making within the approval procedures or giving opinions. Under this consultation procedure, its position is not legally binding, but if the Council does not request it, it is considered to be a gross procedural defect which may result in the invalidity of the act adopted this way. The obligation to consult is a special legislative procedure\(^{124}\).

- **Control power.** Parliament’s legislative powers are complemented by a wide range of powers of control, similar to those we find in the national parliaments of the Member States. The Parliament has in particular the right to:
  - express its no-confidence to the Commission with a majority of two thirds of the votes cast and a majority of Parliament’s votes (Article 234 TFEU\(^{125}\)). The Parliament can express its mistrust if it considers that the Commission as a whole is not competent to carry out its tasks. In such a case, the Commission withdraws collectively;
  - interpellate with members of the Commission – and to a certain extent the members of the Council and the European Council (Article 230 TFEU\(^{126}\)) – that means it can ask them to answer relevant questions and they have to fulfil this call; or

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\(^{124}\) See, for instance, Articles 21, 23, 64, 78, 150 TFEU.

\(^{125}\) Article 234 TFEU: *If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from duties that he or she carries out in the Commission. They shall remain in office and continue to deal with current business until they are replaced in accordance with Article 17 of the Treaty on European Union. In this case, the term of office of the members of the Commission appointed to replace them shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.*

\(^{126}\) Article 230 TFEU: *The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members. The European Council and the Council shall be heard by the*
- bring an action for annulment or an action for failure to act before the Court of Justice (Articles 263 and 265 TFEU).  

- Participation in budget discussions. Parliament, together with the Council, approves the annual budget, building on the Commission’s proposal. During the debate, Parliament has the power to make amendments to the original proposal. The budget consists of the Union’s own resources (these include customs duties on imports from outside the EU collected on the basis of the EU Common Customs Tariff, customs duties on imports of agricultural products in accordance with the common agricultural policy, value added tax based on the uniform rate applied to the unified basis and contributions from the Member States as a percentage of Gross National Income).

- Appointment of the European Ombudsman (see chapter 5. European Ombudsman).

4.1 Petition to the European Parliament

The concept of a petition is not uniformly defined at the European level. However, the European Parliament has held by that it is important to have a clear definition, as it can only be for the benefit of those who would like to submit a petition. In keeping with this idea, the Parliament has suggested for its needs that the term “petition” covers “all complaints, requests for an opinion, demands for action, reactions to Parliament resolutions or decisions by other [Union] institutions or bodies forwarded to it by individuals and associations”.

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\[127\] Article 263 TFEU: [The Court of Justice of the European Union]shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

\[128\] Article 228 TFEU: A European Ombudsman, elected by the European Parliament, (...).

4.1.1 Legal basis for petition the Parliament

The right to petition is a non-judicial instrument and is part of the founding documents of many EU Member States. The right to petition is an integral part of the concept of Union citizenship. As I mentioned in the introduction of the European Parliament chapter, the Union had the intention to put citizens of the Member States at the centre of the EU’s actions and to consolidate awareness of the Union citizenship. The right of petition in this sense is expressed as a broader concept of the EU citizenship.

The possibility of petitioning the European Parliament has its roots in one of the fundamental human rights, right to petition. Previously, this right was considered a custom.

First steps of the right to petition in the European Union (then the European Community) appeared in the European Parliament resolution of 1977 on the granting of special rights to citizens of the European Community (OJ C/299/26 of 12 December 1977). Article 3 of the resolution explicitly called for Member States to regard the right to petition as one of the priority rights of Community citizens. The Petitions Committee was established in 1987. In the context of the founding Treaties, the right to petition was formally recognized in 1992 with the adoption of the Maastricht Treaty. Since the entry into force of the Charter of Fundamental Rights of the European Union in 2009, originally ratified in 2000 (hereinafter also referred to as the "Charter"), the right to petition became part of the primary law of the European Union as one its fundamental rights. This right is enshrined in Article 44 of the Charter.

Article 44 of the Charter: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

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132 Charter of Fundamental Rights of the European Union.
Commentary on Article 44 of the Charter further explains that: “The right guaranteed in this Article is the right guaranteed by Articles 20 and 227 of the Treaty on the Functioning of the European Union. In accordance with Article 52 (2) of the Charter, it applies under conditions defined in these two Articles.”133

Article 20 TFEU:
Par. 1: Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Par. 2: Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have (...) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

Article 227 TFEU
Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

As can be seen from the above-mentioned legal provisions, the petitions presented to the Parliament (the competent committee) by individuals, groups of individuals or companies must be relevant to the EU’s activities. However, the delimitation of the content is not so strict. Petitions may be submitted on matters of public interest or private interest. The petition may be in the form of a complaint, or even in the form of a request for the Parliament to take action in the matter or only to comment on the matter. Among all the defensive mechanisms discussed in this work, the petition mechanism is probably of the most extensive application.

### 4.1.2 Who can submit a petition

The petition may be submitted by the following persons:  

- citizens of the European Union,
- natural persons residing in the EU, or
- legal persons (companies, associations, or organizations) having their headquarters in one of the EU Member States,
- in exceptional cases, persons who are neither EU citizens nor residents in the EU (see below).

What is the difference between a citizen and a resident of the EU? While EU citizenship is tied to national citizenship, which means that every citizen of an EU Member State is also a citizen of the EU (Article 20 TFEU), a residence is tied to different rules. For persons who are not citizens of one of the Member States, the Union recognizes two types of residents – a resident worker and a long-term resident. The latter one must meet three conditions – to reside legally and continuously on the territory of a Member State of the EU for five years, to prove stable income without the need to use the State social assistance and to have health insurance. A Member State may require meeting of other integration conditions such as language skills and knowledge of history. Resident worker status is based on the issue of a “single permit” to work in a Member State. However, access to this status is mainly corrected by the national law of the State.

The right to petition is closely linked to the concept of EU citizenship, but it is clear from the abovementioned quotations of Article 44 of the Charter and Articles 20 and 227 TFEU that this right is not confined to the formal requirement to be an EU citizen. The possibility of submitting a petition to the Parliament also includes ‘non-citizens of the EU’, namely natural or legal persons residing or having their registered office in a Member State. In 1993, Parliament supplemented the Rules of Procedure in the European Parliament with a new paragraph, allowing the petition to be handed over by non-EU citizens or residents. Paragraph 15 of the Rules of Procedure in the Parliament expressly states that: “Petitions addressed to Parliament by natural or legal

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134 Gallop P and Stefanova A (n 65) 14.
135 Chalmers D, Davies G and Monti G (n 58) 547 – 548.
persons who are neither citizens of the European Union nor reside in a Member State nor have their registered office in a Member State shall be registered and filed separately. The President shall send a monthly record of such petitions received during the previous month, indicating their subject-matter, to the committee. The committee may ask to see those which it wishes to consider.”

It follows from the above that if the petition is filed by a person who is a non-citizen or a non-resident of the EU, the petition will be recorded separately in the register. Each month, the extract from the register is sent to the committee, which examines the petition and decides whether it will discuss it (it examines, above all, whether the subject of the petition pursues an interest relating to the EU law). In other words, non-resident citizens do not have an automatic right to petition Parliament.

4.1.3 What can I claim for a petition

The petition may cover any area related to the Union. An example would be:

- free movement of persons, goods, services and capital,
- the prohibition of discrimination and equal treatment of both sexes,
- protection of the environment,
- taxes or
- proper transposition of EU law into national law.

The range of usability of the petition is really wide. This is very different from the possibility of claiming rights with the European Ombudsman, where his powers are limited to the cases of maladministration of Union officials. It also differs not only in the fact that the Ombudsman has fewer powers than Parliament but acts as a next “level”. The Parliament cannot act as an appeal body against decisions taken by the Members of the Union.

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137 Peers S and others (n 133) 1155 – 1156.
138 Gallop P and Stefanova A (n 65) 12 – 13.
4.1.4 How does it work

For the purpose of carrying out its duties swiftly and with the participation of experts, Parliament is divided into committees that specialize in specific areas. One of these committees is the Committee on Petitions. As can be seen from the title, naturally its main task is handling petitions concerning EU affairs lodged by private natural or legal persons to the European Parliament. The Committee may carry out case investigations in order to identify possible violations of citizens’ rights guaranteed by EU law and may cooperate with Member States’ authorities in this context.\(^{139}\)

4.1.4.1 Formal and material requirements of a petition

The petition can be sent by regular post or electronically via an online form in any of the official EU languages. There are no essential requirements for the paper form of a petition. If the petitioner uses the online form, he will fill in the pre-set boxes. Petitions must always include:

- name of the petitioner,
- his nationality,
- the place of residence, and
- a signature.

A paper petition is supposed to be sent by post to the following address:\(^{140}\)

European Parliament  
Chair of the Committee on Petitions  
c/o PETI Secretariat  
Rue Wiertz 60  
1047 Brussels  
BELGIUM

\(^{139}\) Peers S and others (n 133) 1154.  
If you want to use the online form, you can find it on this website (Petitions Portal):
(before filling in the form, you must register / log in on the Petitions Portal).

If a petition is filed in another language, it will only be taken into account if it is
accompanied by a translation into one of the official languages of the EU (although the
Bureau may decide that a petition and other contacts with a petitioner may be held in a
language other than one of the official languages of the EU if that language has the
official status of a national language under the constitutional order of the Member State
in question in all or part of its territory\(^{141}\)). Parliament’s Rules of Procedure (hereinafter
referred to as the “\textit{Rules}”\(^{141}\)) in its Rule 215 par. 2 specify further formalities for the
submission. The petitioner must be clearly identified. The petition must indicate the full
name and address of the petitioner’s permanent residence. Rule 215 also states that if
the petition has been signed by several natural or legal persons, the signatories will have
to designate their representative and substitute representative, these persons will be
considered as submitters for the purposes of the petition process. If such persons were
not designated, the first signatory (or another suitable person) would be considered the
petitioner. A petitioner may withdraw his signature at any time. If there is a situation
that the signature under petitions will be cancelled by all its signatories, the petition will
become null and void.

It is clear from the wording of Article 227 TFEU that the petitioner must also
comply with the material requirements, that means that he has to be directly affected by
measures adopted by a Member State or the Union authority under EU law or by
activities (or inactivity) of those institutions falling within the scope of the Union law.
\textit{Locus standi} (i.e. the right to petition) is broadly conceived here. Legal provisions do
not require the petitioner to show his exclusive legal interest in filing a petition, but
\textit{actio popularis} (an action that anyone may bring to the court in the public interest) is
excluded. The right to petition must depend on the specific interest expressed by the
petition. Issues falling within the scope of the European Union are increasingly
affecting individuals, therefore, it is not required to demonstrate their exclusive
interest.\(^{142}\) We can explain this on an example from the field of environmental
protection. If a natural disaster such as large-scale air pollution occurs, this would have
a direct impact on a large proportion of the population, i.e. these persons would be

\(^{142}\) Peers S and others (n 133) 1156.
directly affected. The petition could then be submitted by individuals or groups of people.

In accordance with Article 227 TFEU, the subject of the petition must fall within the sphere of competence of the European Union. In par. 10 of Rule 215 of the Rules, it is stipulated that: "Petitions shall be forwarded by the President to the committee responsible for petitions, which shall first establish the admissibility of the petition in accordance with Article 227 of the Treaty on the Functioning of the European Union.”

Rationae materiae (subject-matter jurisdiction) is limited to petitions submitted in the light of the content of the fundamental EU Treaties and secondary law relating to the activities of the Union institutions and the authorities of the Member States implementing Union law.  

In 2009, approximately 40 percent of petitions were found to be inadmissible. These mostly concern internal matters of the Member States falling outside the scope of Union law.” According to the report taking into account the analysis of the petitions process for 2015, only about 30 % of all petitions filed in a given year were declared inadmissible. Petitions that are found to be admissible may be referred to the European Commission for the purpose of carrying out an activity or providing information, they also may be forwarded to the Parliament’s Legal Service or to other Parliament’s committees for further information or opinions.

**4.1.4.2 Assessment of a petition**

Petitions can be divided into three groups:

- petitions which seek to require Parliament to take some legislative action (adopted a new law or amended the existing law),
- petitions to notify violations of rights guaranteed by the Charter,

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143 Peers S and others (n 133) 1156 – 1157.
145 Peers S and others (n 133) 1156.
147 Peers S and others (n 133) 1157.
148 ibid.
• petitions aimed at pointing to an inappropriate or incorrect implementation of EU law in the national law of a Member State, which has a negative impact on the rights of EU citizens (residents).

The Committee on Petitions (PETI) plays a leading role in the petition procedure. The committee is made up of 34 members, the chairman and four vice-chairmen.\footnote{European Parliament. At your service: Petitions (Europarl.europa.eu) <http://www.europarl.europa.eu/atyourservice/en/20150201PVL00037/Petitions> accessed 30 July 2017.}

The Rules\footnote{Rules of Procedure of the EP, rule 215 paras 9 – 15, rule 216 paras 1 – 10.} describe in detail step by step how the petition is to be judged. Petitions are registered in the register of petitions in the order in which they are received. However, only petitions that meet the above-mentioned requirements are enrolled. If the petitioner’s submission fails to meet the requirements, these submissions are filed and the petitioner is informed of the reasons. The petitions that are registered will be forwarded by the President of the Parliament to the responsible committee – the petitions committee. It is the committee which assesses the admissibility of a petition under Article 227 TFEU. If the committee fails to reach a consensus on the admissibility of a petition in accordance with Article 227 TFEU, one-third of its members may propose the admissibility to be declared. Petitions declared inadmissible are filed. If possible, the petitioner is informed not only of the grounds for inadmissibility of the petition, but also of alternative ways of resolving his situation.

Registered petitions become public documents. If necessary for reasons of transparency, the name of the petitioner, possibly the co-petitioners, as well as his supporters, and the contents of the petition, may be made public. The petitioner must be informed of this (also co-petitioners and possible supporters of the petition). Nevertheless, the petitioner (co-petitioners / supporters) may ask for his name to be hidden in order to protect his privacy. Parliament must comply with the request. The petition process also emphasizes the protection of the rights of third parties. Parliament itself or at the request of the third party concerned may anonymise the contents of the petition if it considers it appropriate.

Petitions that are considered admissible are then examined by the petitions committee as part of its regular activity. Petitions are either discussed orally in a regular session, or in writing. Petitioners may be invited to attend meetings or they may demand
to be heard. However, the right to speak at a meeting may only be granted to them by the chairman of the committee, the decision is entirely within his competence. The committee may, regarding admissible petitions, prepare a draft decision to the Parliament. This procedure is possible only if the Conference of Committee Chairs is informed about it in advance and the Conference of Presidents does not raise any objections. The draft motion for a resolution to the Parliament shall be included at the hearing of the Parliament at the latest eight weeks after the petitions committee has accepted the motion for a resolution.

If the petitions committee decides to draw up a non-legislative report on an admissible petition (according to the Rule 52 para. 152) to deal with the application and interpretation of Union law or proposed amendments to supplement existing EU law, the committee responsible for the area covered by the proposed legislative amendments or concerning the interpretation of the law – the competent committee – shall be associated with the committee on petitions (the procedure is described in the Rules 53 and 54153). If the committee responsible for the subject-matter recommends amendments to the petitions committee for inclusion in a draft resolution for the Parliament, and if these amendments concern the application and interpretation of the Union law or legislative changes, the petitions committee adopts these proposals without a vote and incorporates them in the motion for a resolution. If the petitions committee does not accept it, the committee responsible for the subject-matter may submit it to the Parliament directly at its plenary session.


152 Rule 51 para 1 of the Rules of Procedure of the EP: A committee intending to draw up a non-legislative report or a report under Rule 45 or 46 on a subject within its competence on which no referral has taken place, may do so only with the authorisation of the Conference of Presidents.

153 Rule 54 para 2 of the Rules of Procedure of the EP: ...the Chairs and rapporteurs concerned are bound by the principle of good and sincere cooperation; they shall jointly identify areas of the text falling within their exclusive or shared competence and agree on the precise arrangements for their cooperation; in the event of disagreement about the delimitation of competences the matter shall be submitted, at the request of one of the committees involved, to the Conference of Presidents;...
The European Parliament administers the official website for petitions – the Petitions Portal: https://petiport.secure.europarl.europa.eu/petitions/en/home. All petitions submitted can be tracked on the Petitions Portal. Search can be specified by entering the keyword, the year of submission of the petition, the country concerned, determining the status of the petition or the area covered. It is possible to find out on the Portal whether the petitions were assessed admissible or inadmissible and also it is possible to express your support for individual admissible petitions. You must register for this activity on the online Petitions Portal. Support can be withdrawn. However, once you have withdrawn your support of a petition, you can no longer support it. The Petitions Portal does not allow this.

The committee may ask the European Commission for cooperation. This is particularly the case when the committee needs an assistant for correct interpretation and application of EU law, or if it needs to provide documents related to the petition. Commission’s representatives shall be invited to attend committee’s meetings and have a chance to make an oral statement. The committee may request the President of Parliament to mediate communication between the committee, the Commission, the Council, the Ombudsman or representative of a Member State in question. In this way, the committee may communicate its views with the listed authorities, convey recommendations to adopt certain measures or ask them to comment on the matter. In cases where the Commission finds that Union law has been infringed, it may commence communication with the Member State concerned and, if necessary, initiate infringement proceedings.154

The Committee informs Parliament of the outcome of its deliberations regularly every year, as well as of any measures taken by the Council or the Commission regarding the petitions that has been forwarded to them by the Parliament.

Once the consideration of an admissible petition is closed, the committee declares the petition closed by its decision. The petitioners are informed of all the essential decisions taken in connection with their petition and the reasons which led to the decision. If new facts appear to be relevant after the conclusion of the petition, the committee may, by its decision, reopen the hearing of the petition. It shall do so only at the request of the petitioner.

By majority vote of all members, the petitions committee adopts guidelines for consideration of petitions under the Rules. The guidelines detail the exact procedure for discussing the petition in the committee.

If necessary to investigate an admissible petition, to clarify the facts regarding the petition and to find a suitable solution, the committee may carry out an investigation mission – so-called fact-finding visits – to a Member State or an area concerned by the petition. However, the mission can only be carried out after the petition has been discussed in the committee. The general rule is that a visit to a Member State takes place only when more petitions concerning the same issue are involved. A member of the mission cannot be an elected member of the State which is the destination of the fact-finding visits delegation. These persons may be part of the delegation only by virtue of their position – ex officio. After the mission is carried out, a report on the progress and contribution of the mission shall be made. This is the responsibility of the head of the delegation. His role is, among others, to reconcile the proposals of the official members of the delegation and to find a common understanding on the content of the report. If consensus cannot be found, divergent opinions of the members need to be included in the report. Those participating in the delegation ex officio cannot participate in the final report. The mission report, together with any recommendations, shall be submitted to the committee on petitions. Members of the committee may propose recommendations to the report or, if appropriate, make suggestions to add recommendations from delegation members. Suggestions for change cannot relate to those parts of the report that the delegation declared as facts. The committee first votes on the proposals to complement the mission report (if any) and then on the report as a whole. If the report is approved, it is sent to the President of the Parliament in order to notify him of the report. For instance, in 2015, a fact-finding mission was held in London, it dealt with a question related to the protection of children in connection with an adoption without consent. Some of the petitioners have claimed that responsible authorities in the United Kingdom are discriminating against parents who do not have British citizenship.

The likely results of the petition process may be the following:

- If the petition is a specific case requiring an individual approach, the petitions committee may contact the competent authorities or the permanent representative of the Member State concerned to find a solution quickly and settle the dispute.
- If the petition refers to a matter of public interest, for example, if the European Union law has been infringed or the European directive have not been duly and timely implemented in the national law of a Member State, the matter may be taken over by the Commission and the infringement procedure commenced. In a given situation, the case may end with a decision of the Court of Justice of the EU, to which the petitioner may then refer.
- The petition may be the driving force for the action of the EU institutions or the bodies of a Member State and result in a political activity of these authorities.
- The petition may be filed as inadmissible.

Whatever the end of the process may be, the petitioner will be properly informed about the outcome and the reasons which led to it.

All the petitions entered in the register and the main decisions in the case of these petitions shall be notified to the Parliament. The title, summary of the petition, including the opinions and the most important decisions in connection with the petitions, are publicly accessible on the Petitions Portal.

The largest share of the work of the committee on petitions relates to the petitions regarding breaches of the rights guaranteed by the Treaties and EU secondary legislation. Considerable attention is paid to the petitions calling for changes in EU legislation or filling its gaps, although Parliament has no power to initiate new laws –

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the so-called monopoly on drafting new laws / adding the existing ones has the European Commission, Parliament has only limited powers in this respect.\(^{158}\)

Petitions are often seen as inadmissible primarily because it is confusing for petitioners to distinguish issues that fall within the competence of the EU and which are supposed to be dealt with at national level. It is no wonder that the number of petitions that were found to be unacceptable is still high.

### 4.1.5 Statistics

The Annual Report of the Committee on Petitions for 2015 was adopted on 15 December 2016. The Committee on Petitions had to be very active in 2015, particularly in the areas of the protection of the environment and the basic welfare of animals, access to justice, the internal marker, the protection of fundamental rights (children's rights, non-discrimination, protection of minorities, etc.), public health, workplace relationship, education and culture or risky financial instruments.\(^{159}\) Comparing to this, for example, according to the report regarding the petitions process during the year 2009, the petitions received by the Parliament most often related to the areas of the protection of the environment, fundamental rights, access to justice or the internal market. The largest share in 2009 concerned the environment.\(^{160}\) It follows that the protection of the environment has long been the focus of the greatest interest. During 2015, the Committee on Petitions dealt with issues such as the consequences of night flights at European airports for residents living nearby or the protection of the wolf, which is an endangered animal species in Europe.\(^{161}\)

In 2015, the European Parliament received a total of 1,431 petitions. If I compare this number with the number of petitions received in 2014, when Parliament received 2,715 petitions\(^{162}\), it represents a clear decrease, up to almost 50 %. The reason

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\(^{160}\) ibid 14 – 15.

\(^{161}\) ibid 26.

\(^{162}\) European Parliament. At your service: Fact Sheets on the European Union – The right of petition’ (Europarl.europa.eu)
may be that in 2013 and 2014 the number of petitions, which had been considerable in this period, peaked. However, such a significant decline is likely to indicate the arrival of a new trend with the number of petitions gradually falling after the almost steady yearly increase in the number of petitions during the Parliament’s previous legislative term from 2009 to 2014. However, we can only be convinced of this in the years to come. Now we can only compare the evolution of the number of petitions in recent years.

The following graph compares the development of petitions over the last five years including taking into consideration which petitions were considered admissible and which inadmissible:\textsuperscript{163,164}


\textsuperscript{163} European Parliament. At your service: Fact Sheets on the European Union – The right of petition (Europarl.europa.eu)


\textsuperscript{164} The sum of admissible and inadmissible petitions may differ from the total number of petitions filed in the year concerned, as in some cases it has not yet been clear how the petition was assessed.
The next chart summarizes the areas that have been the main focus of petitions in 2015:165

As already mentioned, the issue of environmental protection has a dominant position among petitions. This is evidenced also by the reports of the petitions committee for 2013 and 2014, when the number of environmental petitions was always in the first or second position.166 It is not a surprise that the overwhelming majority of petitions are submitted in electronic form (approximately 70 % in 2015 and 80 % in 2014). In terms of geographical coverage, the southern EU states are the most active in petitions, namely Spain and Italy.167

4.1.6 Case study – how it works in real life

As an example for the petitions process, I chose a petition by Lobo Marley, a Spanish NGO, lodged in 2013. Lobo Marley concentrates its interest in protecting wolves in order to enforce their protection throughout the whole Spain’s national territory. The petition was submitted to the Parliament on October 16, 2013. The petitioner stated that he has filed the petition in order to obtain support from the members of the Parliament for the Iberian wolves to be “protected” also in the region north of the Duero River. The petitioner further stated that the wolves seem to be protected in the south of this area and therefore should be protected in the northern part as well. In his claims he referred to the Annex II. and IV. of the Habitats Directive 92/43/EEC.

The Petition was considered admissible on June 23, 2014. The petitions committee first requested information from the European Commission under Rule 216 of the Rules. The Commission responded to the request on March 30, 2015. In its reply, the Commission stated, inter alia, that the population of wolves in the south of the Duero River is included in the Habitats Directive and therefore considered to be a strictly protected species. It confirmed that the Spanish population of wolves north of Duero is not classified among strictly protected species under the Habitats Directive. However, according to the Commission, the petition does not provide any evidence that there is a breach of the Habitats Directive. In conclusion, the Commission states that the petitioner is requesting activities which are not mandatory under the Directive. The Commission currently has no evidence to find the present animal protection regulation in Spain contrary to the Directive.

The committee discussed the Commission’s comments at the meeting on November 12, 2015. Further petitions were discussed at the meeting on the issue of the protection of wolves in the EU. Specifically to petition 1771/2013 by Lobo Marley, the committee expressed the view that, having regard to the Commission’s report, the

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petition would be sent to the Spanish authorities responsible for providing more detailed information on the subject-matter in question. Then the petition will be closed.\textsuperscript{170}

Further talks on petition no. 1771/2013 took place on March 22, 2017. Since 2013, the number of petitions that have also been targeted to protect wolves in Spain (e.g. their hunting) has increased. At this March’s meeting, the committee held that the petition would remain open (as opposed to the original 2015 thinking), waiting for a study on the management of large carnivores in the EU and the Member States. The Spanish government will then be requested up-to-date data on the wolf population in its territory.\textsuperscript{171} The petition is still open to signatures from potential supporters to date (4 August 2017). So far, there are five supporters.

\section*{4.2 Summary of the petition system in the EU}

The extent of the use of the petitions process is wide and the requirements laid down by the law are not complicated, two basic requirements must be met: the petition must fall within the sphere of activities of the European Union and the petitioner must be directly concerned with the subject of the petition. The petition may contain a complaint from an individual, but it may also be consisted of a collective complaint or a request that Parliament take certain steps (at the legislative level or towards other EU institutions).\textsuperscript{172}

In some cases, the petitions mechanism serves as a means of moving Parliament to take a step – such as adopting legislative amendments or adopting recommendations. In other cases, it may be a request for Parliament to get another union authority to act. Even though this defence mechanism seems to be very wide-ranging, but it should be noted that the Parliament is not a judicial institution, it cannot issue decisions or cancel decisions of other institutions (whether EU or national).

The right of petition highlights the role of democracy within the EU. It opens the way for direct contact of citizens (residents) with EU institutions. The right to petition is not just a benefit for citizens (residents), it is also essential for the EU institutions themselves. Through citizens (residents), institutions and EU bodies are directly linked

\textsuperscript{171} European Parliament. Committee on Petitions, ‘MINUTES Meeting of 22 and 23 March 2017’ (Brussels, 9.00-12.30-15.00 and 15.00-18.30) PETI_PV(2017)263_1.
\textsuperscript{172} Peers S and others (n 133) 1157.
to the information that is indispensable to solving the problems that citizens (residents) face. Thus, the petitions also have a significant role to play in the development and integration of the Union as a whole.

Despite the importance of petitions in EU law, there are certain difficulties in the petitions law. The biggest problem is the time lag that arises during the processing of petitions. The time needed to settle the petition depends on the complexity of the case. The period is often extended by the petitioner submitting the documents forwarded in one of the official EU languages\(^{173}\) (unless the exception in Rule 215 par. 6 of the Rules applies – see above). Of course, the process is also prolonged if the fact-finding visits have been launched or the committee requests consultation with other EU bodies.

The committee is trying to solve this problem. However, it is difficult to find specific numbers regarding the approximate length of the processing of a petition in the European Parliament’s available documents. According to the *Report on the institution of the petition at the dawn of the 21st century* from 2001\(^{174}\), there can be a one-year time lapse between the registration of a petition and its first consideration. The *Report on the activities of the Committee on Petitions 2015*, taking into account the development of the petition mechanism in the EU, states that “in 2015 the time taken to process petitions fell, but maintains nonetheless that the secretariat of the Committee on Petitions is in immediate need of greater technical resources and more staff in order to guarantee diligent examination and a further reduction in the time taken to process petitions, while ensuring the quality of their treatment”\(^{175}\). At the end of the report, the committee assessing the state of the petitions process for 2015 continues stating that “the vast majority (80 %) [of petitions] are closed within a year of being declared admissible and processed. Only a small number of petitions remain open for more than four years. Most open petitions have to do with infringement procedures before the Court of Justice or issues that Members [of Parliament] want to follow more closely.”\(^{176}\)

\(^{173}\) Gallop P and Stefanova A (n 65) 16.


\(^{176}\) ibid 22.
### Advantages:

- may be applied to a wide range of issues
- no special knowledge is required
- it is a free and transparent mechanism
- it is possible for petitioners to be invited to present their proposal or request in person before the Petitions Committee
- petitions do not have to be served through a member of the national parliament, but may be submitted directly to the European Parliament by electronic means or by postal service

### Disadvantages:

- an “European” petition may be submitted only by EU citizens or by persons legally residing in the EU (unless an exception applies to “non-citizens non-residents”)
- the outcome of the Parliament is not enforceable, but it may be a driving force for the Commission or Member States’ authorities to take the required steps
- the process is lengthy, mainly because of the large number of Members of the Parliament and therefore of various language requirements

## 5. European Ombudsman

The beginning of the role of the Ombudsman is strongly associated with the Nordic countries. As far back as in 1809 an office called “the ombudsman of Justice” was created in Sweden. Subsequently, in 1919, Finland joined the concept of ombudsman as an authority dealing with complaints of private persons. These two countries have become pioneers of the ombudsman’s institution and have inspired other European states.¹⁷⁸

The European Union formally introduced the institution of the European Ombudsman in the Maastricht Treaty (effective from 1993). Its main role was to fight

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¹⁷⁷ Gallop P and Stefanova A (n 65) 13.
¹⁷⁸ Peers S and others (n 133) 1151.
the maladministration of the EU institutions. The first ideas to establish the Ombudsman’s function within the European Community appeared in the 1970s. The first to come up with this concept was the Spanish government, which saw in the “pro-European” ombudsman a helping hand to overcome certain alienation and the distance of the citizens of the Union from its activities. This distance stemmed from the complexity of governance in the EU (some confusion exists even today, the EU is overwhelmed by a diverse secondary legislation with which is very difficult to keep up, but the EU tries to be more focused on communicating with its citizens and ensuring better awareness of its activities). As in the case of petitions, the creation of the European Ombudsman is closely linked to the establishment of the Union citizenship (also enshrined in the Maastricht Treaty). Articles 20 par. 2 (d) and 24 par. 3 TFEU expressly states that “[e]very citizen of the Union” has the right to apply to the European Ombudsman.

The European Ombudsman is an independent institution. Its legal basis can be found in Articles 20, 24 and 228 TFEU and in Article 43 of the Charter. The principal is Article 228 TFEU.

Article 228 TFEU:
Par. 1: A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them.

179 Article 20 para 2 (d) TFEU: Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia, the right (...) to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

180 Article 24 para 3 TFEU: Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.


182 Article 43 of the Charter: Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.
In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution, body, office or agency concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution, body, office or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

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

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

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

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

Par. 4: The European Parliament acting by means of regulations on its own initiative in accordance with a special legislative procedure shall, after seeking an opinion from the Commission and with the consent of the Council, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.
As enshrined in Article 228 par. 4 TFEU, the Parliament spells out the rules of procedure and the terms and conditions of the European Ombudsman’s performance (hereinafter referred to as the “Ombudsman”) by its regulation. This regulation is the Decision of the European Parliament 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman’s duties, which was adopted by the Parliament on March 9, 1994, and further amended on March 14, 2002, and June 18, 2008 (hereinafter referred to as the “Decision”).

Under Article 6 of the Decision, the Ombudsman is appointed by the European Parliament every time a new Parliament is elected (the choice of person of the Ombudsman therefore depends on who has a political majority in the Parliament). It follows that the Ombudsman “serves” in his mandate for five years. However, a newly elected Parliament can choose the same Ombudsman who has completed his term of office with the previous Parliament, since the Ombudsman may be appointed repeatedly. The person appointed by the Ombudsman must meet certain criteria:

- to be a citizen of the EU,
- to have full civil and political rights,
- to be independent (this entails the obligation not to perform any other political or administrative function or other profitable or non-profitable activity during his duties),
- to meet the conditions for the exercise of the highest judicial office required in the country of origin or have a generally recognized experience and ability to perform the Ombudsman's duties.

The process of appointing the Ombudsman is described in detail in the Rules of Procedure of the European Parliament in Rule 219 (Election of the Ombudsman). I will therefore mention only a few basic passages. Persons wishing to be nominated as European Ombudsman must be supported by at least 40 members of Parliament and the MEPs shall also be nationals of at least two Member States. Each MEP may support only one candidate. Nominations shall be passed on the committee responsible, which shall check out that the criteria required for the Ombudsman have been met. This committee is the petitions committee. The list of admissible candidates is then

forwarded to the Parliament, which will elect the Ombudsman by majority of the votes cast. The Rules also regulate the process in the event that no candidate is selected in this way. A quorum for voting is the presence of at least half of all Members of Parliament.

The incumbent European Ombudsman is Emily O’Reilly. She was appointed to this position in July 2013 and then re-elected in December 2014. O’Reilly is really the person in the right place. In Ireland, she became the first female Ombudsman and Information Commissioner (2003).\(^{184}\)

The institute of the European Ombudsman is totally independent. Article 228 par. 3 TFEU expressly requires that the Ombudsman shall “neither seek nor take instructions from any government, institution, body, office or entity”. The expression of this idea is the Article 9 of the Decision, according to which the Ombudsman takes an oath in the hands of the Court of Justice that he will perform his or her duties completely independently and impartially. The Ombudsman is acting purely in the interest of the Union and its citizens. The Court of Justice, as an institution independent of executive and legislative power, removes the Ombudsman from his office. This is the case if the Ombudsman no longer fulfils the abovementioned criteria or if he commits serious misconduct in his activities. The request for his dismissal is brought before the Court of Justice by the Parliament.\(^{185}\)

### 5.1 Complaint to the European Ombudsman

The main role of the European Ombudsman is investigating complaints against the EU institutions and bodies on the grounds of their maladministration. The Ombudsman may also commence an investigation on his own initiative without the need for a third party complaint. However, it is important that the matter concerns the activities (or inactivity) of the EU institutions, since the European Ombudsman’s competence has no impact on the national authorities. Furthermore, the Ombudsman cannot intervene in the legal proceedings. For better orientation, I present an overview


\(^{185}\) Article 9 of the Decision.
of the activities that are part of his routine activities and an overview of those that do not fall within his competence.\textsuperscript{186,187}

<table>
<thead>
<tr>
<th>What the ombudsman \textit{does:}</th>
<th>What the Ombudsman \textit{does not} do:</th>
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<tbody>
<tr>
<td>• to investigate complaints about maladministration received against the EU institutions, bodies, authorities or other EU entities – so it means mainly against the:</td>
<td>He does not investigate:</td>
</tr>
<tr>
<td>o European Parliament,</td>
<td>• the activity of the European Court of Justice, the General Court and the Civil Service Tribunal, if it is \textit{exercised within their jurisdiction},</td>
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<tr>
<td>o European Council,</td>
<td>• complaints against individual EU officials,</td>
</tr>
<tr>
<td>o Council of the European Union,</td>
<td>• complaints filed against the national, regional or local authorities – even if the subject of the complaint concerns the EU (activities, institutions, etc.),</td>
</tr>
<tr>
<td>o European Commission,</td>
<td>• activities of national ombudsmen or national courts – the European Ombudsman does not have the role of a “court” of appeal against decisions or other measures taken by national courts or national ombudsmen,</td>
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<tr>
<td>o Court of Justice of the European Union (\textit{but} not in its judicial role!),</td>
<td>• cases which have not been the subject of all due administrative procedures</td>
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<tr>
<td>o European Court of Auditors,</td>
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<tr>
<td>o European Economic and Social Committee,</td>
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<td>o European Committee of the Regions,</td>
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<td>o European Central Bank,</td>
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<td>o European Investment Bank,</td>
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<td>o Europol,</td>
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<td>o others... (see chapter 5.1.3 Who do people complain about),</td>
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\textsuperscript{187} European Ombudsman, \textit{The European Ombudsman’s guide to complaints: a publication for staff of the EU institutions, bodies, offices, and agencies} (EUR-OP, 2011) 7.
of maladministration by authorities, offices, institutions or other EU agencies (see the previous point).

within the authorities concerned,

- cases concerning labour relations between the Union authorities and their employees – except where all remedies available within the authorities have already been exhausted,

- complaints against individuals or private companies.

According to the table, it appears that there are plenty of limitations when filing complaints to the Ombudsman, but it should be noted that the possibility of lodging a complaint against any Union institution, body or office in itself represents a very wide scope.

5.1.1 Who can file a complaint

The list of persons who can submit a complaint to the Ombudsman is identical to the list of persons who can petition the European Parliament. These two institutions often cooperate with each other. For example, if a complaint is made to the Ombudsman concerning maladministration, this complaint can also be referred to the European Parliament as a petition. However, reverse procedure is not possible. The complaint can therefore be lodged by all EU citizens, any natural persons residing in the EU or by a legal person (i.e. businesses, associations, organisations, etc.) whose registered office is in the territory of the Union. These persons may contact the Ombudsman directly or through a Member of the European Parliament. Logically, the condition for submitting a complaint is that the subject is directly affected by the alleged maladministration.

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188 Peers S and others (n 133) 1157.
189 Article 2 para 2 of the Decision.
The Ombudsman may initiate an investigation without the initiative of the party concerned, if the reason is known.\(^{190}\)

### 5.1.2 What a complaint may concern

The basic notion in the Ombudsman’s complaints process is the term “maladministration”. What does the *maladministration* mean in the context of a complaint to the European Ombudsman?

Apart from Article 228 TFEU concerning the Ombudsman, the term “maladministration” in the Treaties is mentioned only once. This is the first paragraph of Article 226 TFEU, which states that: “in the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.”

However, the concept of the “maladministration” is not explicitly defined in the Treaties. The definition of the meaning of this term is decisive for determining the Ombudsman’s competence. The first European Ombudsman, Jacob Söderman, has already pointed out this shortcoming. In his report on the activities of the European Ombudsman for 1997 (together with the 1995 report) he explained that the maladministration takes place “when a public body fails to act in accordance with a rule or principle which is binding upon it”\(^{191}\). Basically, this means that maladministration is, when any EU institution, authority etc., acting in its administrative capacity, fails to act in accordance with the founding Treaties or with EU law in general. Among the errors in the proper official procedures, the following may be included: \(^{192}\)

- unjustified irregularities in the administrative procedure,
- omission of some parts of the procedure,

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\(^{190}\) Article 3 para 1 of the Decision.


- neglect of duties,
- abuse of powers,
- illegal practices,
- unfair behaviour,
- discriminatory approach,
- proceedings by an non-competent authority,
- unjustified delays in the proceedings or
- an unjustified refusal to provide information or a lack of information.

The listed enumeration is only an overview of possible situations that can be classified as maladministration in the sense of the abovementioned definition, the list is not exhaustive. Based on the experience of national ombudsmen, it has been proven successful to keep the definition of this concept in practice and not to try to define it legally, as it is a dynamic concept that varies with the gradual development of practice. The idea of leaving some sort of open end to the term maladministration is, among other things, an example of how the Ombudsman’s role differs from the role of a judge.

Of course, there are certain limits to assess the situation as maladministration. These are, for example, cases where a complaint is made against a measure (decision) that is more of a political nature than an administrative one. Such complaints have no choice but to be rejected for their inadmissibility. For a better understanding, I will give an example: a complaint made purely against the contents of the Petitions Committee’s decision will be considered inadmissible, as this decision is of a political nature. If the complaint was filed against the decision on the grounds that the process leading to this decision was not proper (e.g. for discriminatory reasons, due to unjustified delays, etc.) then an administrative error could be considered on the part of the competent institution (body, agency, etc.). Furthermore, the Ombudsman cannot review the substance of legislative acts such as regulations or directives.\footnote{Söderman J. EO, Annual Report 1997, 22 – 23.}

The definition formulated by the first European Ombudsman in 1997 has caught on and become “a tradition”. Therefore, it is applicable even today. The Ombudsman’s official guide to the complaints process from 2011 does not go far from the original definition in the passage explaining what can be classified as maladministration. In
particular, he states that the Ombudsman considers the maladministration “if an institution fails to respect:

- fundamental rights,
- legal rules or principles,
- the principles of good administration.”

It could be said that the role of the Ombudsman is complementary to that of the courts. The Ombudsman launches an investigation to remedy a situation that does not conform to the prescribed rules. However, the fact that the Ombudsman in his inquiry concludes that the rules have not been respected and that there has been maladministration, does not mean that the institution, body or agency concerned has committed unlawful conduct that could be subject to a judicial sanction. As to the subject and possible outcome, these two procedures cannot be confused. We cannot bind the concept of maladministration to the concept of illegality. Maladministration can also occur where no illegal action has been detected. The Ombudsman is so-called an alternative procedural means in addition to an action before a Union court, but his purpose does not necessarily have to be consistent with the purpose of the lawsuit.

Within this theme, I would mention Article 41 of the Charter. In this article is incorporated one of the fundamental rights, namely right to good administration. Article 41 requires EU institutions (other bodies, etc.) to deal with every person (not just a citizen or a resident) impartially and fairly. And it demands to resolve affairs of such persons within a reasonable time. The article further specifies that every person should have the right to be heard in his case, have access to his file, and that the decision in the case should be duly justified. Paragraph 3 of the Article provides for an obligation on the European Union to compensate the person concerned for damage caused by its institutions or its public servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States (see Article 340 TFEU). Article 42 of the Charter follows with the cited Article 41. Article 42 regulates

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195 Hofmann HCH and Ziller J (n 181) 12 – 15.
the right of access to documents of EU institutions, agencies and other bodies. However, this right belongs only to EU citizens and residents.

The Fundamental Rights set in Articles 41 and 42 of the Charter are further implemented by the 2001 European Code of Good Administrative Behaviour (hereinafter referred to as the “Code”). The Code is a key document for the work of the Ombudsman. 197

5.1.3 Who do people complain about

The Ombudsman accepts complaints against “the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.”198 But what is hidden under the terms “institutions”, “bodies”, “offices” and “agencies”, and what is the difference between these entities?

The institutions of the European Union are explicitly listed in one of the EU’s founding Treaties, in the Treaty on European Union. A total of seven institutions are listed in Article 13 par. 1 TEU. Institutions are the main decision-making bodies of the EU. The EU agencies are naturally different from the EU institutions. Agencies are decentralized EU components that are specialized in a specific area (protection of the environment, traffic safety, equality, etc.). They are independent of the central authorities, the given tasks are carried out on their own, they are only subject to the central supervision to a certain extent. Currently, there are about 50 EU agencies. The last group is the so-called “other bodies”. These are not formal EU institutions. The European Ombudsman also belongs to the so-called other bodies.

The official website of the European Union provides an overview of all its institutions, bodies, offices etc. The list can be found here: https://europa.eu/european-union/contact/institutions-bodies_en. For an overview I will enumerate some of them – against which eligible persons may lodge a complaint with the Ombudsman.

<table>
<thead>
<tr>
<th>EU institutions:</th>
<th>EU agencies:</th>
<th>Other bodies:</th>
</tr>
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<tbody>
<tr>
<td>• European Parliament</td>
<td>• European Agency for</td>
<td>• European Economic</td>
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</table>

197 European Ombudsman, The European Ombudsman’s guide to complaints (n 187) 12, 14.
198 Article 228 para 1 TFEU.
<table>
<thead>
<tr>
<th>European Council</th>
<th>Safety and Health at Work</th>
<th>and Social Committee</th>
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<tbody>
<tr>
<td>Council of the European Union</td>
<td>European Environment Agency</td>
<td>European Committee of the Regions</td>
</tr>
<tr>
<td>European Commission</td>
<td>European Food Safety Authority</td>
<td>European Investment Bank</td>
</tr>
<tr>
<td>Court of Justice of the European Union (but not if the Ombudsman should interfere with the Court’s judicial activities)</td>
<td>European Centre for Disease Prevention and Control</td>
<td>European Data Protection Supervisor</td>
</tr>
<tr>
<td>European Central Bank</td>
<td>European Fisheries Control Agency</td>
<td>European External Action Service</td>
</tr>
<tr>
<td>Court of Auditors</td>
<td>European Union Agency for Fundamental Rights</td>
<td>Publications Office</td>
</tr>
<tr>
<td></td>
<td>European Institute for Gender Equality etc.</td>
<td>European School of Administration etc.</td>
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</table>

It is not possible to file a complaint against the officials themselves (that is, against the individual persons at the head / or working in one of the Union institutions / bodies / offices, etc.). The Ombudsman investigates the maladministration of the institutions (etc.), not the conduct of officials. For example, if the complainant requested the Ombudsman to initiate action against a person allegedly harassing at the workplace, the Ombudsman would in that case investigate how the responsible organization handled the problem but could not take action directly against the person committing alleged harassment. The Ombudsman does not carry out disciplinary proceedings.\(^{199}\)

If a complaint is filed against an institution or office (etc.) against which no complaint can be made to the Ombudsman, the Ombudsman will endeavour to submit the complaint to the competent authority or, alternatively, advise the complainant on any other appropriate course of action to remedy the situation or to assert his rights.\(^{200}\)

\(^{199}\) European Ombudsman, *The European Ombudsman’s guide to complaints* (n 187) 7.

\(^{200}\) Article 2 para 5 of the Decision.
5.1.4 How is the procedure with the European Ombudsman

In the Ombudsman’s complaints procedure, the statutory time-limits for certain activities are governed directly by the TFEU (Article 228 par. 1) and the Decision. This is indeed an exception compared to other extrajudicial instruments mentioned in this work. The complaint must be lodged in the Ombudsman within two years from the date on which the complainant becomes aware of the facts that led him to file a complaint. However, the complainant should first use the remedies available to the institution or body (etc.) concerned. As with other complaints, it is very important for the complainant to give proper reasons for lodging a complaint and to document it with the relevant annexes. The complainant must describe what the matter is and what he claims.\(^{201}\) It must be apparent from the complaint that it is reasonable.

If the Ombudsman sees a probable breach of good governance rules – maladministration, he will initiate an investigation in this case and inform the relevant EU institution or body accordingly. The entities concerned are required to provide the Ombudsman with assistance – to forward the requested information and to make available all necessary documentation. In the event that classified information should be made available, the institution or body concerned shall inform the Ombudsman according. Before the Ombudsman starts dealing with classified information, it is necessary to agree with the institution or body on the conditions under which he will treat the information so as not to disclose it. Where the documents of a Member State that are subject to confidentiality are required to supplement the investigation, the EU institution or body may not provide it to the Ombudsman until the Member State has given its consent. For the use of other documentation (not subject to confidentiality), just a prior notification to the Member State is sufficient. However, in any of these cases, the Ombudsman may not arbitrarily spread the content of these documents. Further significant evidence in the investigation of the complaint is the testimony of officials and other staff of the EU institutions or bodies concerned. The mentioned persons must testify at the request of the Ombudsman. When giving testimony, they are bound by professional secrecy and they testify on behalf of their office and in accordance with its instructions. If the addressed entities refused to cooperate, the Ombudsman shall inform the Parliament accordingly, which shall take appropriate action against the entities concerned. The Ombudsman’s main objective is to find a

\(^{201}\) Article 2 of the Decision.
suitable solution to correct the maladministration. If the Ombudsman reveals errors in the administrative procedure, he shall immediately inform the institution or body of the EU concerned and, if appropriate, present a proposal for correction. The parties concerned have *three months* to respond to the Ombudsman’s request and to send him a reasoned opinion. The Ombudsman shall, after receiving and examining the opinion, send a report to the European Parliament and to the institution or body concerned. The report should include recommendations on how to proceed. At this stage, the Ombudsman sends a notice to the complainant indicating the results of the investigation so far and what recommendations he proposes.202 If the Ombudsman finds in the course of an investigation that the matter could have a criminal background, he will immediately notify the competent national authorities and the competent Union institution, body or agency203 – e.g. the European Anti-Fraud Office (OLAF).

The complaint to the Ombudsman can also be used as a kind of recourse after the complainant was unsuccessful with his complaint with the Commission. The complainant *de facto* lodges a complaint against the European Commission, because he is not satisfied with how his complaint has been handled by the Commission. If the Ombudsman finds a breach of the principle of good administration, he, of course, can be active in this matter. He can contact the Commission and invite it to remedy the situation. But if the Commission does not voluntarily rectify the situation, the Ombudsman cannot ask it to change its decision or to act in a certain way.204 I will return to this topic in chapter 5.1.6 Sample case of handling a complaint by the Ombudsman.

And what outcome can be expected after the Ombudsman’s inquiry?

In particular, the Ombudsman seeks to find a *friendly solution*. The proposal for a friendly solution usually includes defining deficiencies in the behaviour of the institution or body concerned. Shortcomings are often rectified based on a solution proposed by the institution or body itself – this remedy may be in the form of an excuse or in the form of other compensation. In a friendly solution proposal, the Ombudsman rather avoids clearly stating that maladministration has occurred. The Ombudsman identifies the misconduct he sees in the case and informally suggests a remedy.

202 Article 3 of the Decision.
203 Article 4 para 2 of the Decision.
204 Pinedo MEM, ‘LÖG244F: EU – EEA Law II’ (Reykjavík, Faculty of Law, University of Iceland, Lögberg 201, spring 2015) class 5.
Where the friendly solution proves impossible (the institution / body rejects an amicable solution or it does not appear to be effective), Article 3 par. 6 of the Decision\textsuperscript{205} applies – thus, so-called \textit{draft recommendation}. Draft recommendations are publicly accessible on the Ombudsman’s official website – as opposed to the proposals for friendly resolution of the case. The Ombudsman may also take advantage of the media’s influence and issue a press release stating the existence of maladministration by a particular institution or body. This will increase pressure on the institution / body concerned. Once the draft recommendation has been sent, the institution / body concerned has \textit{three months} to respond.

If, at this stage, the EU institution or body does not take action to remedy maladministration, the Ombudsman will most likely close the case with a \textit{critical remark} (this is the way most of the cases, such as 80 % in which maladministration was detected in 2013, ends). The critical remark is intended to inform the entity concerned, in particular, what it has wronged, what rule it has violated and what should be avoided in such a situation.\textsuperscript{206} If there is no response to the draft recommendation or the response is not satisfactory, the Ombudsman may (but he is not obliged to do so) send a special report to the Parliament, it may contain recommendations. The special report should also be sent to the relevant institution (authority, etc.) and to the complainant. The Ombudsman’s function is therefore more or less recommendatory.\textsuperscript{207}

These phases (using draft recommendation and critical remark) are premised on a finding of maladministration. The complainant is informed of the results of the complaint investigation in the shortest possible time.\textsuperscript{208}

The Ombudsman can have a strong say on EU institutions and bodies, but what is important to note is that the Ombudsman cannot change EU legislation by his measures, his measures are not judicially enforceable or legally binding. The Ombudsman may send his opinion to the institution of the Union (or body etc.) and encourage it to act in a certain way. Even though these opinions and recommendations

\textsuperscript{205} Article 3 para 6 of the Decision: \textit{If the Ombudsman finds there has been maladministration, he shall inform the institution or body concerned, where appropriate making draft recommendations. The institution or body so informed shall send the Ombudsman a detailed opinion within three months.}


\textsuperscript{207} Hofmann HCH and Ziller J (n 181) 17.

\textsuperscript{208} Article 2 para 9 of the Decision.
are not legally binding, the addressees usually take them very seriously in a view of the respected position the Ombudsman enjoys.\footnote{Gallop P and Stefanova A (n 65) 10.}

Under Article 340\footnote{Article 340 paras 2, 3 TFEU: (2) In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. (3) Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.} (referred to above) and Article 268\footnote{Article 268 TFEU: The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340.} TFEU, a complainant may seek damages, but such compensation is subject to the common rules of the Member States on non-contractual liability. The European Court of Justice is competent for the proceedings.

In conclusion of this chapter, of course, I will mention how complaints can be submitted. Complaints can be lodged by mail or electronically (for the use of an electronic form, it is necessary to register in advance on the official website of the European Ombudsman). All information, forms and other documents can be found here: \url{https://www.ombudsman.europa.eu/en/atyourservice/secured/complaintform.faces}.

If you are interested in sending a complaint by post, you can address it to:

\begin{verbatim}
Médiateur européen
1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex
\end{verbatim}

\section*{5.1.5 Complaints to the Ombudsman in numbers}

Even though the Ombudsman cannot guarantee that an institution or authority violating its good governance rules will make a correction, the level of complaints is stable every year, with about 2.100 complaints. According to the Ombudsman’s annual reports, the largest percentage of complaints includes complaints from individuals (for example, complaints from natural persons accounted for 87 \% in 2014). This is very controversial with the statistics of the European Court of Justice, where the plaintiffs are mainly legal persons. The problem remains a large number of complaints that are rejected because of inadmissibility – on average 70 \% of complaints per year.\footnote{Hofmann HCH and Ziller J (n 181) 18.}
The grounds for inadmissibility are mostly that complaints do not fall under the mandate of the Ombudsman, since they do not concern the activities of the Union institutions, agencies or other bodies, or they concern those entities, but only oppose political issues such as judicial activity or legislation. Furthermore, they include also the complaints directed against the national authorities. The Ombudsman carefully considers all complaints and, if they do not fall within the scope of his competence, will refer them to the competent authorities. Or, the Ombudsman will try to advise the complainants on what other options they have. The office of the European Ombudsman seeks to reduce cases of inadmissible complaints through more effective communication with EU citizens and residents. For example, an interactive guide to the complaints process is available online.

The following table compares the number of admissible and the number of inadmissible complaints over the last five years.

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Admissible x Inadmissible complaints: 2012 - 2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Admissible</th>
<th>Inadmissible</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>1720</td>
<td>1665</td>
</tr>
<tr>
<td>2013</td>
<td>740</td>
<td>750</td>
</tr>
<tr>
<td>2014</td>
<td>736</td>
<td>707</td>
</tr>
<tr>
<td>2015</td>
<td>711</td>
<td>1169</td>
</tr>
<tr>
<td>2016</td>
<td>711</td>
<td>1169</td>
</tr>
</tbody>
</table>

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214 ibid 35.
In 2016, the overwhelming majority of the complaints was against the European Commission. The following chart shows which institutions and other bodies were most frequently investigated in 2016.215

The most frequent areas are consumer protection, social welfare and health, banking, and taxes.216 The complainants mostly see shortcomings on the part of the EU institutions and bodies in lack of transparency (e.g. regarding access to information and documents), poor handling of EU staff matters (e.g. recruitment of new staff), negligent provision of services (e.g. language barriers, delays). These three listed areas were the subject of an average of 80% of complaints in 2016. The problem of maladministration (complainants mainly pointed to insufficient use of the Commission's powers) in the infringement proceedings filled about 50% of the complaints. The last place occupied complaints regarding the observance of procedural and fundamental rights, with four percent of the total number of inquiries initiated in 2016.217

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216 ibid 34.
217 ibid 37.
5.1.6 Sample case of handling a complaint by the Ombudsman

Case: 2591/2010/GG – on the European Commission’s maladministration under Article 258 TFEU

In 2006, a total of 27 complainants were submitted to the European Commission for a complaint concerning the extension of the airport in Vienna and its detrimental environmental impact. In its investigation, the Commission concluded that the work had been carried out without an environmental impact assessment (EIA), which is mandatory under the Directive 85/337/EEC. In order to remedy this omission, the Commission has agreed with the competent authorities of Austria that the EIA will be carried out ex post – in such a way that the conditions for the EIA ex ante are simulated in the best possible way to allow a full assessment of the impact of the projects on the environment.

However, the complainants were not satisfied with the process of the EIA ex post. Their criticism was that, for the implementation of the EIA ex post, the same authority which authorized the work at the airport was responsible, and that the complainants did not have access to the review procedure.

In 2008, the complainants therefore decided to turn to the European Ombudsman in a complaint against the European Commission (the complaint was registered under No. 1532/2008). The Ombudsman considered the complaint to be well founded, but also noted that without further information he was not able to determine with certainty whether the Commission had ensured or did not ensure that the EIA was properly carried out. The Commission’s proceedings were still underway at that time, and the Commission, after being contacted by the Ombudsman and finding that it had probably committed maladministration in its activities, stated that the proceedings would continue until the competent Austrian authorities had taken the necessary measures that the Commission found to be satisfactory. In the belief that the Commission will take care of the due process and that it is not necessary to take any action on its part, the Ombudsman closed the complaint in December 2009.

However, in November 2010, the complainants turned to the Ombudsman for the second time (complaint No. 2591/2010). The Ombudsman launched a second investigation. He studied the Commission’s file and found that there was almost no relevant communication between the Commission and the Austrian authorities during
the EIA *ex post*. There was nothing to suggest that the complaint of the complainants was properly debated or that the Commission has taken action depending on communication with the Ombudsman in 2009. The Ombudsman therefore made a straightforward draft of recommendations, in which he urged the Commission to reconsider its position. However, the Commission did not respond positively to the Ombudsman’s proposal.

This case is an example of a regrettable situation and a demonstration of the limits of Ombudsman’s powers. The Commission did not voluntarily take corrective action, despite repeated calls from the Ombudsman, even though it clearly violated EU law. The Ombudsman closed the complaint in a special report for the European Parliament, describing the procedure and outcome of his inquiry.218

5.2 Summary of the European Ombudsman’s complaints mechanism

It is a pity that the European Ombudsman cannot intervene even where the rights of citizens have been abridged by the maladministration of national bodies and other authorities, as these situations are very common among ordinary people, and it is necessary to allow them a high-quality and rapid protection also at the transnational level. The European Ombudsman is aware of these difficulties and therefore cooperates with national ombudsmen as part of his activities.

The existence of the European Ombudsman may seem redundant if one takes into account the fact that his competences overlap in many ways with the scope of activity of the Committee on Petitions and the fact that the Ombudsman’s scope does not extend to the maladministration of national institutions. However, the Ombudsman is still an important EU part in the fight to protect the rights of Union citizens and residents. *Firstly*, it represents a quick and economical way to find a remedy for situations that are the subject of proper complaints. In this respect, it can be said that the European Ombudsman is the most effective non-judicial tool to protect the rights of EU citizens and residents. *Secondly*, it makes a significant contribution to the development and promotion of good administration standards in EU institutions, bodies (etc.). *Thirdly*, its existence undoubtedly accentuates the democratic character of the EU.219

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218 Case 2591/2010/GG *Complaint against the European Commission* [2010].
<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>- the Ombudsman is an independent institution of the Union whose main purpose is to act for the benefit of EU citizens and residents and to defend their rights</td>
<td></td>
</tr>
<tr>
<td>- from his position he can cooperate closely with all the EU institutions and bodies</td>
<td></td>
</tr>
<tr>
<td>- he is highly respected</td>
<td></td>
</tr>
<tr>
<td>- he represents an economical, very effective and often swift solution to the problem</td>
<td></td>
</tr>
<tr>
<td>- a complaint may be submitted only by EU citizens or by persons legally residing in the EU</td>
<td></td>
</tr>
<tr>
<td>- the complainant must meet the deadline of two years from the date when he finds the facts that are relevant to the filing of the complaint</td>
<td></td>
</tr>
<tr>
<td>- the outcome of the Ombudsman is not legally binding, but it may be a driving force for the Union institutions (etc.) to take the required steps</td>
<td></td>
</tr>
<tr>
<td>- a complaint cannot be brought against the national bodies, authorities or offices if they commit maladministration</td>
<td></td>
</tr>
<tr>
<td>- if more in-depth investigations are needed, or if it becomes more demanding to obtain the necessary information, the Ombudsman’s complaints process may be quite lengthy, but in other cases it is possible for the Ombudsman to resolve the problem very quickly, for example, even in a few days by simply contacting the institution concerned</td>
<td></td>
</tr>
</tbody>
</table>

220 Gallop P and Stefanova A (n 65) 9 – 10.
6. European Citizens’ Initiative

European Citizens’ Initiative is in the field of the European Union a relatively new institute. It was incorporated into the EU primary law due to the Lisbon Treaty in 2009. The growing criticism of the so-called democratic deficit in the EU helped creation of this institute. The absence of this element made it impossible for EU citizens to participate in the process of drafting legislation. Until the birth of the Lisbon Treaty, the legislative power of EU citizens was restricted to the opportunity to participate in the direct elections of members of the European Parliament, which then participates in the adoption of new laws (in a limited extent).

Article 11 par. 4 TEU:

Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens’ initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.\(^{221}\)

The objective of Article 11 of the TEU is to enable EU citizens to initiate, under the conditions laid down, the Commission’s activity within its legislative competence. The TEU only establishes the framework of the European Citizens’ Initiative (hereinafter referred to as the “ECI”), in more details it is elaborated in the Regulation 211/2011/EC\(^{222}\) (hereinafter referred to as the “Regulation”). According to the Regulation, the ECI process is divided into four main phases:

- organization and registration of the ECI,

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\(^{221}\) Article 24 para 1 TFEU: The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens’ initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

• collection of the sufficient number of signatures,
• ECI certification by the relevant national authorities, and
• assessment by the European Commission.

6.1 Organization and registration of the ECI

Before the organizers, who can only be natural persons who are EU citizens, start the process of ECI preparation, it must be registered with the European Commission. Otherwise, the Commission will refuse to review it even if the condition of a sufficient number of signatures is met.

The Regulation sets out what procedural and substantive conditions are to be met for ECI registration purposes. As regards procedural demands, an organizing committee must be set up, which can only consist of EU citizens who have reached the age at which they are entitled to vote for members of the European Parliament. Furthermore, it must be fulfilled that at least seven members of the organizing committee are residents in at least seven different Member States and are not members of the European Parliament. The registration must indicate the name of the ECI, what it is concerned with and what it claims and the relevant Articles of the Treaties that are affected. From the date of the submission of the application for registration, the Commission has two months to register ECI. The Commission registers ECI except in the case when the above conditions for the composition of the organizing committee are not met, or the subject of the ECI falls evidently outside the EU’s sphere of competence, or it is highly offensive, violent or totally absurd, or it is against the fundamental rights and values, on which the EU stands. By July 2017, registration was refused at 19 ECIs. The newly emerging jurisprudence of the Court of Justice has so far shown the problem of the application of Article 4 par. 2 (b) of the Regulation whereby the Commission registers the initiative if “the proposed citizens’ initiative does not manifestly fall outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties”. In this

223 Article 4 para 1 of the Regulation.
224 Article 3 paras 1, 2 of the Regulation.
225 Annex II. of the Regulation.
226 Article 4 para 2 of the Regulation.
context, the first actions against the Commission’s decisions to refuse to register a citizens’ initiative have appeared.\textsuperscript{228}

\textbf{6.2 Collection of statements of support}

The absolute centrepiece of the ECI process is the collection of signatures. Expression of support for registered ECI can be done electronically via the official ECI website (see following web address: http://ec.europa.eu/citizens-initiative/public/welcome) or in paper form.\textsuperscript{229} As with organizing committee members, supporters must meet certain requirements – they must also be EU citizens and must have the necessary age for the election of members of the European Parliament. The basic question that is offered here is – how many signatures are needed? The ECI organizing committee has 12 months from the date of ECI’s registration to meet the following points:

- The organizing committee must have at least \textit{1 million signatures} from the supporters of the ECI.
- Signatories must come from at least a quarter of all Member States (at present, from at least seven Member States).
- This number is the same as the multiple of the number of members of the European Parliament from the Member State in question and number 750.\textsuperscript{230}

These claims represent a challenging task. On the other hand, good-quality ECIs are selected from the poor-quality and rather spontaneous movements. Therefore, ECI and the registration proposal need to be very carefully prepared. The “ECI group” needs to be represented in several EU areas and needs to be well organized to hold regular meetings. Regional or disorganized movements are likely to be unsuccessful.

\textsuperscript{229} Article 5 para 2 of the Regulation.
\textsuperscript{230} Chalmers D, Davies G and Monti G (n 58) 390.
6.3 Verification and certification of the ECI

Once the organizing committee has been able to collect enough statements of support, it has to have the ECI verified and certified by the relevant national authority before submitting ECI to the European Commission. The committee has to submit the ECI for verification and certification to the national authorities of all signatories. The process of determining which specific national authorities are responsible for the ECI certification is quite complicated.

Different rules apply to different Member States. The procedure is described in Article 8 par. 1 of the Regulation and in its Annex III. For some Member States, the main determinant is who is a resident on their territory. This applies to Ireland, the Netherlands and the UK. Other Member States follow the rules concerning who is a resident in their territory and who is their national but who resides in another State. This is the criterion for Estonia, Finland and Slovakia. Other Member States have a similar approach, except that signatories residing in the State in which the signatories are foreign nationals must inform the relevant national authorities in order to be verified. This is the case for Belgium, Denmark and Germany. The last group is Member States which issue a personal identification number for verification, or the signatory must submit a residence permit, ID card or a passport. This concerns Austria, Bulgaria, Cyprus, Czech Republic, France, Greece, Hungary, Italy, Lithuania, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

It can be really a tough nut to crack for the organizing committee to co-ordinate and arrange verification of all signatories across national authorities. However, this does not change the fact that the national authorities have three months to issue a certificate indicating the number of valid signatories. If, after the certification process, ECI meets the eligibility criteria, it can move to the final stage – sending the ECI to the European Commission.

6.4 Examination of the ECI

The Treaty on European Union does not communicate much in this respect. Details are contained in the Regulation, namely in Articles 10 and 11.

Upon receipt of the ECI, the Commission has the obligation to publish it in the register without any delay. The ECI organizers should get the chance to be given the floor to clarify their intentions. The communication can take three months, after which
the Commission should express its opinion. The content of the opinion should be legal conclusions, a proposal on what steps should be taken in relation to the ECI and the reasons which led the Commission to those conclusions. The opinion is sent to the organizers of the initiative, the European Parliament and the Council. The opinion shall also be made public. The organizers should then be given the opportunity to present the citizens’ initiative at a public hearing. This takes place in the European Parliament. Other EU institutions, agencies or other bodies may also participate in the hearing. The Commission must have a proper representation at the hearing.

After this process, however, the Commission is not obliged to make any legislative proposal within the meaning of the ECI, and if the Commission does so, it is not a guarantee that the proposal will be accepted by the other responsible EU institutions.231

To date, only three successful Citizens’ Initiatives have been recorded by the European Commission, with success being defined by the fact that ECI has managed to undergo registration, certification and at the same time receive a sufficient number of signatures. This is really not a big number when it comes to the fact that ECI can be submitted from April 2012, when the Regulation came into force. Three of these initiatives concerned the protection of animals ("Stop vivisection"), the protection of human dignity and the right to life ("One of us") and the provision of drinking water and sanitation ("Water and sanitation are a human right! Water is a public good, not a commodity!"). Only the latter one has prompted the EU institutions to adopt new legislation. An amendment to the Drinking Water Directive 98/83/EC, which aims to improve drinking water in Europe, entered into force on 28 October 2015.232

6.5 ECI and its comparison with other mechanisms of redress

The European Citizens’ Initiative is comparable in particular to a petition to the European Parliament.

This is pointed out, for example, by the Advocate General Niël Jääskinen in his Opinion of 17 July 2014 to the Case C-261/13 P Peter Schönberger v the European Parliament. Jääskinen states that the right to petition and the right to complain to the European Ombudsman represent a means of enabling European citizens to exercise their

231 Chalmers D, Davies G and Monti G (n 58) 391.
direct democratic civil rights and, in this respect, the European Citizens’ Initiative is a comparable instrument. He also stresses in the Opinion that the accessible mechanisms of redress can and should complement each other.\textsuperscript{233}

The Rules of Procedure in the European Parliament at the ECI explicitly recall and modify in Rule 218 the procedure if there is an ECI submission that concerns a matter relevant to the issue of some of the petitions proceedings. The Rules also regulate the procedure if the ECI could not be submitted to the Commission on the basis of its inadmissibility under Article 9 of the Regulation. In the event that ECI could relate to the subject of a petition that has already been submitted to the Parliament, the Committee on Petitions will inform the petitioners. The Rules allow the petitions committee to review the ECI, which could not be submitted to the Commission for its examination, if it deems it appropriate. However, this procedure is not mandatory.

**Rule 218 : Citizens' initiative**

Par. 1. *When Parliament is informed that the Commission has been invited to submit a proposal for a legal act under Article 11(4) of the Treaty on European Union and in accordance with Regulation (EU) No 211/2011, the committee responsible for petitions shall ascertain whether this is likely to affect its work and, if need be, shall inform those petitioners who have addressed petitions on related subjects.*

Par. 2. *Proposed citizens' initiatives which have been registered in accordance with Article 4 of Regulation (EU) No 211/2011, but which cannot be submitted to the Commission in accordance with Article 9 of that Regulation since not all the relevant procedures and conditions laid down have been complied with, may be examined by the committee responsible for petitions if it considers that follow-up is appropriate. Rules 215, 216, 216a and 217 shall apply mutatis mutandis.*

As in the event of a complaint to the European Commission, the European Ombudsman can also serve as the “last resort” in the case of ECI. An example is a complaint filed against the European Commission, which, according to the complainant (the organizers of the initiative), failed to discuss ECI’s “Stop Vivisection”. The ECI

aimed to prevent animal experiments. The complainants were not satisfied particularly with the response and the Commission’s proposals, they considered them inadequate. The Ombudsman then closed the complaint, stating that there had been no maladministration.  

**IV. Part: Conclusions**

Protection of rights by the judiciary can at times seem an unattainable goal. Judicial instruments need to be supplemented by alternative ways of protecting human rights, and not only at the level of domestic law. Protecting the fundamental rights is one of the principles on which the European Union stands, and it provides several means of protection for this purpose.

This work discusses four fundamental non-judicial mechanisms through which the European Union allows its citizens, residents, companies having their registered office in the Union, and possibly other persons, to claim their rights and freedoms in the event of their violation by the institutions, bodies, or other Union’s or Member States’ authorities. Complaints system is an expression of the development of democracy at the Union level. It is every individual’s democratic right to make use of it in the event of activities or omissions which are contrary to the legislation protecting fundamental rights. The Union complaints mechanism consists of: infringement proceedings with the European Commission, petitions process with the European Parliament, and complaints procedure with the European Ombudsman. These mechanisms are complemented by the European Citizens’ Initiative – an instrument enabling citizens to participate in the Union’s legislative process.

If I compare the particular mechanisms, I have to evaluate them as follows:

One can say that the infringement proceedings conducted by the Commission is the leader of the European Union’s complaints methods. This idea is also supported by the fact that this process is enshrined directly in the provisions of the founding Treaties. A complaint to the Commission is a powerful tool with a possibly very strong result.

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Anyone can file a complaint without having to prove that he or she has been directly affected by the case in question. It is probably the most direct and fastest way to draw attention to the case where the national law is not in conformity with EU law. On the other hand, it might be a very lengthy process that can consist of a large number of procedural steps. The complainant has no position in the proceedings and no certainty as to whether the Commission will deal with the complaint. However, if the complaint is found to be reasonable, the infringement procedure may lead to a judicial enforcement to remedy the situation.

In case the Commission does not intervene properly and the state of non-compliance of the national legislation with Union law continues, it is possible to complain to the European Parliament through the petition mechanism, or contact the European Ombudsman. The European Parliament works as a supervisor of the Commission, therefore, the petition might bring more attention and pressure to the case. An “appeal” to the Ombudsman might be useful in the situations dealing with maladministration. The Ombudsman may represent, in the figurative sense, rescue for a complainant. He / she investigates properly every complaint and request and tries to seek a proper and efficient redress. However, the Ombudsman is not entrusted with any significant powers to fight injustice. His / her power lies in communication and respect for his / her position.

As far as the European Citizens’ Initiative is concerned, it requires very careful preparation and its organizers must undergo complicated bureaucratic steps. On the other hand, it is a powerful means by which the desired result can be achieved. Through the ECI, the European Union has come closer to its citizens than ever before. It is not common to put the possibility of influencing legislation into the hands of citizens in individual Member States, either.

These instruments may overlap each other. In a specific situation, various ways of resolving the problem can be used, or, alternatively, the possibilities for correcting the situation can be chained (e.g. when complaining to the Ombudsman after the Commission refuses to discuss the same complaint in the infringement procedure).

It is very important for the EU to move closer to its citizens (residents) by enabling communication between them and the EU institutions, as well as enabling the voice of the citizens (residents) to be heard and making sure their voice has a weight in the field of EU institutions. There is general mistrust in the EU practice, which often stems from ignorance of the Union law and from poor orientation in its activities. The
main aim of this work was to create a coherent document that takes into account the possibilities of individuals (citizens, residents, private companies, etc.), how to directly contact the EU institutions and how to protect the rights guaranteed by the Union law in situations where these rights were abridged. I believe that I have succeeded in achieving the set goal.
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