

# **Putting it Right? - How the EU institutions responded to the Ombudsman in 2017**

Follow-up - 20/12/2018

## **Foreword**

I am pleased to present this year's 'Putting it Right?' report, which looks into how the EU's institutions complied with proposals made in my inquiries. The EU institutions respond well in the vast majority of inquiries and there was an overall 81% compliance rate in cases closed in 2017. This is a good result but more needs to be done by the institutions to raise compliance, particularly when I make a recommendation to address a finding of maladministration.

The institutions reacted positively to 80 out of the 99 proposals I made to correct or improve their administrative practice. There were 148 other cases in which I considered that the institutions had taken steps to improve how they work. Eight out of the 14 institutions had a 100% compliance rate, while the European Commission - which accounts for most cases - had a 76% compliance rate.

Citizens expect the EU administration to put things right when they go wrong and to improve things for the future. This is what an Ombudsman seeks to achieve. I will continue to monitor implementation of my suggestions and recommendations so that citizens can be confident that their grievances are being addressed and they are being listened to.

I encourage the EU administration to continue working towards improving how it interacts with the public. I look forward to learning about examples of the good work the institutions and bodies do as part of our upcoming 'Good Administration Award', the second edition of which we launched recently.

Emily O'Reilly

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## **Report**



## 1. Introduction

This report gives an account of how the EU institutions [1] responded to proposals made by the Ombudsman in cases closed in 2017. These proposals come in the form of solutions, recommendations and suggestions.

Section 3 on the impact of the Ombudsman's work explains what Ombudsman solutions, recommendations and suggestions are. The new Implementing Provisions [2] ('IPs'), which entered into force on 1 September 2016, have affected to a certain extent the terms we use [3]. All inquiries covered in this report were closed after the new IPs entered into force.

Section 3 also describes the impact of the Ombudsman's work in other cases, where the complaint was settled by the institution or where the Ombudsman decided to launch a strategic initiative [4].

There are also summaries of cases warranting a 'special mention' as leading examples under each category.

## 2. The Ombudsman's powers and procedures

The Ombudsman helps individuals, companies and associations who have a problem with an EU institution [5]. At the same time, the Ombudsman serves the public interest by helping the institutions to improve the quality of the service they provide. As well as investigating complaints, the Ombudsman can also open inquiries on her own initiative.

Institutions are required to provide the Ombudsman with the information necessary to carry out an inquiry. The Ombudsman can inspect any file held by an institution and take testimony from staff members. These powers are set out in the Statute of the Ombudsman [6] ('the Statute'). Where necessary or appropriate in a case, the Ombudsman can call on the institution to revise its position, provide redress or make general changes for the future. If the institution replies to a finding of maladministration in an unsatisfactory way, the Ombudsman can draw political attention to a case by making a special report to the European Parliament.

## 3. The impact of the Ombudsman's work

### a. Solutions

If the Ombudsman considers that a complaint can be solved quickly, she can make a solution proposal to the institution concerned, based on Article 3(5) of the Statute [7]. The new IPs have made it easier and quicker to find solutions that address maladministration.



## **b. Recommendations**

Recommendations can be made whenever the Ombudsman finds maladministration. Recommendations addressed to the institutions are simultaneously published on the Ombudsman's website.

If the recommendation is rejected by the institution, the Ombudsman closes the case by confirming her finding of maladministration. The Ombudsman may submit a Special Report to the European Parliament on any inquiry closed with a finding of maladministration, which the Ombudsman considers to be of significant public interest. If the recommendation is accepted, the Ombudsman closes the case noting this.

## **c. Suggestions**

Suggestions for improvement seek to ensure systemic improvement in the EU administration. They are made either in the decision closing the case or at an earlier stage in the inquiry.

## **d. Cases settled**

The Ombudsman can close an inquiry at an early stage without proposing a solution if the institution spontaneously settles the case after being informed about it.

## **e. Strategic initiatives**

The Ombudsman may choose to pursue strategically important topics without launching an inquiry, by opening a so-called 'strategic initiative' [8]. The purpose of these initiatives is to share suggestions with the institutions on important topics, to draw attention to matters of public interest or to find out more about a particular issue before deciding whether it is necessary to open an inquiry. In 2017, the Ombudsman opened 8 strategic initiatives and closed 6.

# **4. How the institutions responded to the Ombudsman in cases closed in 2017**

## **a. Solutions achieved or partly achieved**

EU institutions accepted a total of 20 solution proposals in cases closed in 2017 [9]. Two solution proposals were rejected by the Commission [10].

**Table 1 - Solutions achieved or partly achieved by institution**



## **Institution**

### **Solutions**

#### **(partly) achieved**

European Commission

9

European External Action Service

1

European Investment Bank

2

European Anti-Fraud Office (OLAF)

1

European Border and Coast Guard Agency (Frontex)

4

European Food Safety Authority

1

Education, Audiovisual and Culture Executive Agency

2

#### **Total**

**20**

**Case 1616/2016/MDC : How the European Border and Coast Guard Agency (Frontex) dealt with a request for public access to reports about 'serious incidents' with its operations in Bulgaria**

A journalist, who had sought and received public access to 'serious incident reports' (SIRs) [11]

4



from Frontex 'operations' in Bulgaria, considered that Frontex had not identified all the SIRs from the period falling under his request. He complained to the Ombudsman that (i) Frontex consistently fails to identify all SIRs about operations in Bulgaria; and (ii) when dealing with requests for public access, Frontex redacts SIRs in a manner that is not consistent with EU rules on public access to documents [12] .

Following her inquiry, the Ombudsman proposed that Frontex: (i) disclose additional SIRs that were identified during the Ombudsman's inspection; (ii) develop, as soon as possible, tools to make it easier to identify documents in its record system; (iii) commit to better explaining why it is redacting or not disclosing documents; and (iv) reassess the redactions it made to some of the SIRs requested by the complainant, with a view to granting further partial access to them.

**Frontex accepted the solution proposals and took measures to implement them. The Ombudsman therefore concluded that a solution had been found and closed the inquiry.**

## **b. Recommendations accepted or partly accepted**

EU institutions accepted or partially accepted a total of 11 recommendations in cases closed in 2017 [13] .

Five recommendations were rejected by the Commission, one was rejected by the European External Action Service, one by the EIB, and one by the European Anti-Fraud Office (OLAF). These cases were closed with findings of maladministration.

**Table 2 - Recommendations accepted or partly accepted by institution**

### **Institution**

#### **Recommendations (partly) accepted**

European Commission

7

European Central Bank

1

European External Action Service

1

European Economic and Social Committee

5



2

**Total**

**11**

**Case OI/6/2014/NF : The composition and transparency of the European Commission's expert groups**

This strategic inquiry looked at the groups set up by the Commission to provide advice from external experts in specific policy areas. The Ombudsman carried out a public consultation and made a range of suggestions to the Commission on how to: ensure a balanced composition of expert groups, including how to improve the procedures for selecting their members; improve compatibility and synergies with the Transparency Register [14] ; strengthen the conflict of interest policy for individual experts appointed in a personal capacity; and improve the information available on the public register on expert groups. The Ombudsman

also made two specific recommendations to the Commission with a view to improving the transparency of expert groups' work: that minutes of expert group meetings be meaningful and detailed, and that the groups' deliberations be non-confidential by default.

**In the course of the inquiry, the Commission reformed its expert group system largely in line with the Ombudsman's suggestions** , revising the applicable rules [15] . In particular, the Commission made the selection procedure for expert group members more transparent, put in place a new conflict of interest policy for individual experts, and introduced the requirement that organisations and self-employed individuals be registered in the Transparency Register in order to be appointed to expert groups.

**The Commission also improved the transparency of expert groups' work** . Meeting minutes must now be "meaningful and complete", and expert groups may decide to deliberate publicly. **The Ombudsman considered this to represent good progress, but will monitor how the Commission continues to improve the transparency of its expert groups' work.**

**Case 454/2014/PMC : The practice by the European External Action Service (EEAS) of offering unpaid traineeships in EU Delegations**

The Ombudsman looked into the EEAS's practice of offering only unpaid traineeships in EU Delegations, following a complaint from a former trainee who argued that this discriminated against young people from less well-off backgrounds.

The Ombudsman found that unpaid traineeships may lead to a discriminatory situation, since persons from less privileged backgrounds are more likely to lack the financial means to undertake such traineeships. She found that the EEAS's practice constituted maladministration



and therefore recommended to the EEAS that it pay all its trainees, including those in EU Delegations, an appropriate allowance.

**The EEAS accepted the recommendation** and, after receiving the approval of the ‘budgetary authorities’, introduced new rules to ensure these traineeships are now paid [16] .

**Case 1688/2015/JAP : The European Commission’s decision to recover funds from a participant in an EU project on older people and ICT**

The complainant is a Belgian-based non-profit organisation that took part in an EU-funded project aimed at addressing the issues faced by older people using ICT solutions. A financial audit found that the system used by the complainant for recording working time was unreliable. As a consequence, the Commission sought to recover more than EUR 85 000 from the complainant.

During the inquiry, the Ombudsman noted that the auditors had also recognised that the work done by the complainant on two specific ‘deliverables’ was legitimate, as was the related working time. She thus found it unfair and

disproportionate that the Commission wanted to recover all funds because of the general flaws with the time recording system. The Ombudsman found maladministration in the Commission’s conduct and recommended that it revise its decision and reduce the amount it was seeking to recover accordingly.

The Commission fully accepted the Ombudsman’s recommendation and agreed to reduce the amount to be recovered by nearly EUR 37 000.

The following example concerns a case where the Ombudsman’s recommendations were not accepted and the Ombudsman closed the case confirming her findings of maladministration.

**Case 682/2014/JF : The requirement by the European Commission that individuals requesting public access to documents provide their postal address**

This case concerned the Commission’s refusal to register a request for public access to documents by a non-governmental organisation, as it had not provided a postal address. While the Ombudsman agreed that EU institutions have to take appropriate and proportionate measures to verify the identity of those seeking public access to documents, she considered that they should also ensure the widest and easiest access possible.

The Ombudsman made recommendations to address this. In particular, she asked the Commission to register and promptly deal with the complainant’s request and to no longer require a postal address from those requesting access to documents if they provided a suitable alternative form of contact (such as an email address). As the Commission rejected the recommendations, the Ombudsman closed the case with two findings of maladministration.



In the context of this inquiry, the Ombudsman also made suggestions to the Commission to modernise how it deals with requests for access to documents. One of the suggestions was that the Commission should consider alternative online systems or electronic means of communication. After the inquiry was closed, the Commission indicated to the Ombudsman that it was analysing the possibility to set up a new electronic notification system for access to document requests.

### **c. Follow-up to suggestions for improvement**

A total of 58 suggestions were made in 26 cases that were closed in 2017 [ 17] . Many of these suggestions were made in own-initiative inquiries. The follow-up to suggestions was satisfactory in 84% of cases. This is lower than last year's rate of 94%.

**Table 3 - Satisfactory replies to suggestions made in 2017 by institution**

#### **Institution**

#### **Suggestions**

#### **Satisfactory replies**

**% of**

#### **satisfactory replies**

European Parliament

1

0

0%

European Commission

35

28

80%

European External Action Service

3

8





3

100%

European Economic and Social Committee

1

1

100%

European Investment Bank

1

1

100%

European Personnel Selection Office

7

6

86%

European Environment Agency

1

1

100%

European Food Safety Authority

1

1

100%

9



European Medicines Agency

5

5

100%

European Asylum Support Office

1

1

100%

Education, Audiovisual, and Culture Executive Agency

2

2

100%

**Total**

**58**

**49**

**84%**

[Own-initiative inquiry OI/2/2016/RH \[Link\]](#): **How the European Commission dealt with files on the toxicity of chemical substances**

The case concerned how the Commission dealt with files on the evaluation of chemical substances under the EU's REACH rules [18] . In particular, the inquiry looked at delays in processing files evaluating the reproductive toxicity of 216 chemical substances. Because of the progress made in the course of her inquiry, the Ombudsman closed the case but invited the Commission to report back to confirm that it had taken the agreed measures. The Ombudsman also invited all parties involved in following-up on the evaluations of chemical substances under REACH to address a systemic shortcoming identified in her inquiry, namely, the lack of incentives for those registering chemical substances to update their files.

The Commission reported back to the Ombudsman, describing the progress it had made in



processing the files. It acknowledged that problems remained in getting companies to update their registration files, and that it would make proposals to address this in 2019, after consulting with the relevant parties, including through new secondary legislation.

**Own-initiative inquiry OI/6/2016/AB [Link]: Preventing conflicts of interests with the European Commission's 'special advisers'**

This strategic inquiry looked into the Commission's rules and practices for ensuring that its 'special advisers', who give advice to Commissioners, do not have conflicts of interests arising from their activities outside the Commission. During the inquiry, the Ombudsman welcomed that the Commission had improved how the duties of special advisers are formulated. She was also positive about the measures

it had drawn up to mitigate the risks of possible conflicts of interest. However, she observed that the Commission did not always provide a convincing explanation as to why it considered outside activities of special advisers not to pose potential risks.

The Ombudsman concluded that the Commission could further improve its practices and made ten suggestions. These focused on: adopting a more proactive approach to assessing risks of conflicts before they develop into real problems; using clear and effective mitigating measures to address risks that arise; and enhancing public access to information on special advisers.

The Commission agreed it needed to make further progress in assessing risks of conflicts of interests and in applying more specific and operational mitigation measures to address these risks. It acknowledged that it could better formulate the mandates of special advisers and adopt examples for assessing potential conflicts.

The Commission also committed to fully apply the existing contractual obligation on special advisers to declare any new activity they take on. It also agreed to consider publishing online the declarations of the activities of and statements of assurance by special advisers. The Ombudsman welcomed the Commission's commitment to further improve its practices and committed to following-up on the inquiry within two years.

**Case 1475/2016/JAS [Link]: How the European Medicines Agency (EMA) carried out a risk assessment related to human papillomavirus ('HPV') vaccines**

This case concerned how EMA carried out a risk assessment related to HPV vaccines. The so-called 'referral procedure' aimed to examine whether there is any evidence of a causal link between HPV vaccination and two syndromes, but found no link. The complainants disagreed with the scientific work on which this finding was based, and expressed concerns about the transparency and impartiality of the procedure.

The Ombudsman opened an inquiry to assess whether EMA had the necessary procedural safeguards to ensure that the examination of scientific evidence is complete and independent, and whether these safeguards were applied properly in this case.



In response to a suggestion made by the Ombudsman during her inquiry, EMA agreed to review the confidentiality requirements on its experts so that they may publicly discuss details of the scientific debate, once that debate has been completed. The Ombudsman concluded that there was no maladministration by EMA, however she suggested that it proactively make public as much information as possible on the scientific work of its internal advisory committees, and that it consider making public lists of all relevant documents related to each referral procedure or consider other ways of helping interested individuals to identify the documents they would like to obtain.

**The Ombudsman is pleased that, overall, EMA has shown a willingness to act on her suggestions.** It is reviewing its confidentiality requirements. It has also committed to improve access to product information, and is developing more public-friendly information about its evaluation procedures. EMA is also redeveloping its website to improve usability and the search function for documents. EMA disagreed with the Ombudsman's suggestion to make lists of

relevant documents public. However, by creating a team to help with access to documents requests, the Ombudsman considers that EMA has found an acceptable alternative.

**Case 7/2016/PL [\[Link\]](#): The languages available in public consultations organised by the European Commission**

The case concerned the fact that public consultations on the Commission's website were often not available in all the official languages of the EU. The Ombudsman opened an inquiry, in the course of which the Commission prepared a new language policy on public consultations. The new measures include, for example, translating the public consultations related to the Commission's Work Programme into all official EU languages. The new policy also introduced a procedure to determine into which languages other public consultations should be translated.

The Ombudsman closed the inquiry, but suggested that the Commission closely monitor the impact of its new language policy and the extent to which it respects the principle that public consultations should be made available in all the official EU languages. The Ombudsman also suggested that, in its dedicated website on public consultations, the Commission include a section describing its new language policy and an explanation of why some consultations are not available in all EU languages.

In its follow-up reply, the Commission stated that there has already been a considerable increase in the amount of public consultations that are translated. It has also included an explanation of its language policy online. The Ombudsman will continue to monitor the situation in the context of a broader public consultation she launched on the use of languages in the EU institutions.

#### **d. Compliance rates for cases closed in 2017**



There was an overall compliance rate of 81% with the Ombudsman's proposals for cases closed in 2017. The institutions reacted positively to 80 out of the 99 proposals that the Ombudsman made to correct or improve their administrative practices [19] . The compliance rate is based on the number of positive replies to the solution proposals, recommendations, and suggestions made in cases closed in 2017. There were a further 148 cases where the Ombudsman considered that the institutions had taken steps to improve how they work.

As is clear from Table 4 below, the compliance rate varies from one institution to another. Eight out of the 14 institutions examined had a 100% compliance rate, while the Commission - which accounts for most cases - had a compliance rate of 76%.

While these statistics are often based on very few cases, any result lower than 100% means the institution failed to comply with a proposal made by the Ombudsman.

There was a lower rate of compliance for Ombudsman recommendations than for solution proposals or suggestions. The institutions accepted 11 out of the 19 recommendations made.

**Table 4 - Rate of overall compliance by institution**

**Institution**

**Solutions,**

**recommendations, suggestions**

**Satisfactory replies**

**% of**

**Satisfactory replies**

European Parliament

1

0

0%

European Commission

58

44

13



76%

European Central Bank

1

1

100%

European External Action Service

6

5

83%

European Economic and Social Committee

3

3

100%

European Investment Bank

4

3

75%

European Personnel Selection Office

7

6

86%

European Anti-Fraud Office (OLAF)

2

14



1

50%

European Border and Coast Guard Agency (Frontex)

4

4

100%

European Environment Agency

1

1

100%

European Food Safety Authority

2

2

100%

European Medicines Agency

5

5

100%

European Asylum Support Office

1

1

100%

15



Education, Audiovisual, and Culture Executive Agency

4

4

100%

**Total**

**99**

**80**

**81%**

## 5. Conclusion

This report constitutes an annual effort to measure compliance with the Ombudsman's proposals from a statistical point of view. For some cases, the impact is not necessarily captured in an annual compliance rate. There are, for example, cases where institutions may comply at a later date with a proposal made by the Ombudsman.

By way of example, in July 2015, the Ombudsman invited the Commission to proactively publish decisions it makes to authorise post term-of-office activities taken up by former Commissioners, as well as the opinions on those activities by the Ad Hoc Ethical Committee, a three-member advisory body [20] . The Commission declined at the time for privacy reasons and to protect commercial information. However, in September 2017, the Commission presented a new draft Code of Conduct for Commissioners, which provides for the proactive publication of these decisions and the related opinions of the Committee. This was formally adopted in February 2018 [21] . The Ombudsman welcomes this progress.

Where possible, it is preferable to bring about improvements sooner. This is the first report to include cases closed exclusively under the new IPs. The main purpose of the new IPs is to allow us to handle cases in a more efficient way and to speed things up. We are in the process of evaluating their impact and will report on that in the coming year.

[1] For brevity, this report uses the term "*institution*" to refer to all the EU institutions, bodies, offices, and agencies.

[2] <https://www.ombudsman.europa.eu/en/resources/provisions.faces> [Link]





[3] Under the new IPs, 'recommendations' are normally used to deal with all findings of maladministration before an inquiry is closed. In the past, the Ombudsman used the term 'critical remark' when she closed a case with a finding of maladministration. The new IPs replaced the concept of 'critical remarks' with the simple and clear concept of 'findings of maladministration'. If a recommendation is rejected by the institution, the case is closed with a 'finding of maladministration'.

The new IPs also replaced the concept of 'further remarks' with the concept of 'suggestions for improvement', which seek to ensure systemic improvement in the EU administration.

[4] See Section 3e below.

[5] Article 228 of the Treaty on the Functioning of the European Union empowers the Ombudsman to inquire into maladministration in the activities of the Union institutions, with the exception of the Court of Justice of the European Union acting in its judicial role.

[6] European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.

[7] Article 3(5) of the Statute provides that *"As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint."*

[8] For more information on the Ombudsman's strategic initiatives, you may consult the following link: <https://www.ombudsman.europa.eu/en/strategic-issues/strategic-initiatives> [Link]

[9] In two of these cases, while there was no formal solution proposal, the institutions accepted proposals made by the Ombudsman in the course of the inquiry. The outcome of these cases was recorded as "solution (partly) achieved".

[10] In four cases, the institutions rejected solution proposals and the subsequent recommendations. In order to avoid double counting, the statistics include only the negative follow-up to the recommendations in these cases.

[11] A 'serious incident' is defined by Frontex as an event or occurrence, which may affect, or be relevant to a Frontex mission or its image, or the safety and security of the participants on the mission. Examples include violations of fundamental rights, EU law, international laws related to access to international protection and the Frontex Code of Conduct. Serious Incident Reports are collected and analysed by a Frontex 'Situation Centre'.

[12] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L145, p. 43.



[13] Partial acceptance of a recommendation occurs when the institution has genuinely responded to central points in the recommendation in a constructive manner.

[14] The EU Transparency Register is a public register run jointly by the Commission and the European Parliament, which seeks to provide information on the organisations and interest representatives that interact with the institutions.

[15] Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, 30 May 2016, C (2016) 3301 final.

[16] Decision of the Director-General for Budget and Administration of the European External Action Service of 21 December 2017, available at the following link:  
[https://eeas.europa.eu/sites/eeas/files/admin2017\\_28\\_of\\_21.12.2017\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/admin2017_28_of_21.12.2017_0.pdf) [Link]

[17] When a suggestion is made in a decision closing an inquiry, the institution is normally invited to respond within a period of six months. As the institutions concerned have not yet replied, the statistics in this report do not include:

i) two suggestions made in the decision closing case 266/2016/PMC against the Commission, and

ii) one suggestion made in the decision closing case 639/2017/TN against the European Personnel Selection Office.

[18] Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals, OJ L 396, 30.12.2006, p. 1–849.

[19] See footnotes 9-10 above.

[20] <https://www.ombudsman.europa.eu/en/correspondence/en/61417> [Link]

[21] Commission decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission which repeals and replaces the Code of Conduct of 20 April 2011 and the Commission decision establishing the Ad Hoc Ethical Committee of 21 October 2003.