



Putting it Right? - How the EU institutions responded to the Ombudsman in 2018

Follow-up - 18/12/2019

Foreword

I am pleased to present this year's 'Putting it Right?' report, which looks into how the EU institutions complied with proposals made in Ombudsman inquiries that were closed in 2018. As in previous years, the EU institutions have reacted positively to the vast majority – 77 per cent – of proposals made, approximately four out of every five. Specifically, they reacted positively or gave effect to 91 of the 118 proposals I made to correct or improve their administrative practices. In addition, I considered 190 cases as settled by the institutions which took steps to improve how they work.

This report records compliance with my proposals at a particular point in time. As a result, it does not capture change that occurs more slowly and which is often the result of wider investigations that take time for the institutions to consider. In other instances, the pressure exerted by a particular investigation focuses greater public attention on an issue and this in turn can lead to the reversal of a negative response to a recommendation at a later stage.

We are currently examining how to measure this broader impact, which would be a clearer reflection of the extent to which the EU institutions effect change as a result of Ombudsman inquiries. Some of the changes I have asked the institutions to make are far-reaching, involve significant efforts and may imply reforming procedures and practices that have been in place for decades. Such changes do not take place overnight.

My job as Ombudsman is to encourage the EU institutions to be their best administrative selves. I will continue to push for the highest standards of administration and transparency, conscious that this is what citizens expect of us. I am confident that, together, we are moving in the right direction.

Emily O'Reilly

December 2019

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 2018. These proposals come in the form of 'solutions', 'recommendations' and 'suggestions'.

Section 3 of this report explains what solutions, recommendations and suggestions are. It also describes the outcome in other cases, where the complaint was settled by the institution or where the Ombudsman decided to launch a strategic initiative [2] .

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

2. The Ombudsman's powers and procedures

The Ombudsman helps individuals, businesses and associations who have a problem with an EU institution [3] . At the same time, the Ombudsman serves the public interest by helping the institutions to improve the quality of the service they provide. In addition to investigating complaints, the Ombudsman can also open inquiries on her own initiative.

The Ombudsman can require an institution to provide information, inspect its files and take testimony from its staff members. These powers are set out in the Statute of the Ombudsman [4] . When necessary or appropriate, the Ombudsman can call on the institution to revise its position, provide redress or make general changes for the future. If the institution's reply to a finding of maladministration is unsatisfactory, the Ombudsman can draw political attention to a case by making a 'special report' to the European Parliament.

3. Outcomes in Ombudsman cases

a. Solutions

If the Ombudsman considers that a complaint can be solved quickly, she can propose a solution to the institution concerned, based on Article 3(5) of the Statute [5] .

b. Recommendations

Whenever the Ombudsman finds maladministration, she may make recommendations to the institution concerned to rectify this.

If the recommendation is accepted, the Ombudsman closes the case noting this. If the institution rejects the recommendation, 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 particular importance. The Ombudsman made one special report to Parliament in 2018 (see section 4c below).

c. Suggestions

Suggestions for improvement seek to ensure systemic improvement in the EU administration. The Ombudsman makes suggestions either in the decision closing the case or at an earlier stage in the inquiry.

d. Cases settled

The Ombudsman may close an inquiry at an early stage, without proposing a solution if the institution spontaneously settles the matters at issue in the case after the Ombudsman raised them.

e. Strategic initiatives

The Ombudsman may choose to pursue strategically important topics without launching an inquiry, by opening a 'strategic initiative' [6]. The purpose of these initiatives is to share suggestions with the institutions on important topics, to draw attention to matters of public importance or to find out more about a particular issue before deciding whether it is necessary to open an inquiry. In 2018, the Ombudsman opened five strategic initiatives and closed three.

Case SI/2/2018/AMF: Dignity at work in the EU institutions

The Ombudsman contacted 26 EU institutions and agencies to find out about their policies and practices in the area of harassment. She asked them to provide her with copies of their anti-harassment policies, as well as information about the number of reported cases of harassment and the outcome of such complaints.

After analysing all the replies received, **the Ombudsman set out in a report a set of best practices with the aim of working towards an EU civil service where there is no place for sexual or psychological harassment**. The Ombudsman strongly encouraged the EU institutions to put in place these practices, which cover awareness raising, workplace risk assessment, regular policy monitoring, mandatory training, swift procedures, and rehabilitation measures. Other important measures include allowing trainees to make formal complaints about harassment, regular training for confidential counsellors, and creating a pool of independent investigators, which institutions can draw upon during formal harassment investigations.

The Ombudsman concluded that all **personnel working in EU institutions and agencies, regardless of their status, should be protected against any attempt to undermine their**



dignity at work, notably via harassment. This protection should extend to acts committed by all categories of personnel.

4. How the institutions responded to the Ombudsman in cases closed in 2018

a. Solutions achieved or partly achieved

EU institutions accepted or gave effect to all 20 solutions proposed by the Ombudsman in cases closed in 2018. [7] This 100% compliance figure is higher than last year's rate of 90%.

Table 1 - Solutions achieved or partly achieved by institution

Institution

Solutions

(partly) achieved

European Parliament

1

European Commission

10

Council of the EU

1

European External Action Service (EEAS)

1

Committee of the Regions of the European Union

1

European Insurance and Occupational Pensions Authority (EIOPA)

1

4



European Institute for Gender Equality (EIGE)

1

European Asylum Support Office (EASO)

1

European Police Office (Europol)

1

Education, Audiovisual and Culture Executive Agency (EACEA)

2

Total

20

Case 1677/2015/DR: European Commission's refusal to disclose the names and CVs of the members of an 'expert group' on radioactive health risks

This case concerned the refusal by the Commission to disclose the names and CVs of the members of an 'expert group' that provides the Commission with advice on basic standards for protecting the health of workers and the general public against the dangers of radiation. The Commission justified its decision on the basis of data protection and its transparency rules.

In the course of the inquiry, the Commission revised its position and disclosed details of the members of the current expert group . Additionally, it committed to disclose the names and CVs of the experts who were members of the group in 1998 and 2012, in compliance with data protection requirements, and to take further steps to enhance the transparency of the group.

However, the Commission had not delivered on its commitment within one year of its reply and, therefore, the Ombudsman proposed a solution in which she urged the Commission to act on its commitment. In reply, the Commission explained the steps it had taken to deliver on its commitment. In particular, it communicated to the complainant the names and CVs of the members of the group in 1998 and 2012 and adopted new rules of procedure for the group. The rules now contain provisions on transparency and measures to manage conflicts of interest.

The Ombudsman found that the Commission had accepted and implemented her solution proposal and closed the case.

5



Case 1956/2017/THH: The European Parliament's failure to grant the complainant access to the names of members of parliament affiliated to two European political parties

The case concerned the European Parliament's refusal to grant public access to the lists of members affiliated to two European political parties for specified financial years. The request concerned the lists of members affiliated to the Movement for a Europe of Nations and Liberties (MENL) for the financial years 2015 and 2016, and to the Alliance for Direct Democracy in Europe (ADDE) for the financial years 2015, 2016 and 2017. The documents provided by Parliament had included only the European political party, the country and the public mandate of the relevant individuals; all names of the members had been redacted.

In the course of the Ombudsman's inquiry, the complainant set out new arguments as to why the names should be disclosed. The Ombudsman found that the simplest way of achieving a solution would be for the complainant to submit a new request for access to documents, including all the arguments from the outset. The complainant agreed and submitted a new request to Parliament, which, based on the new arguments, provided him with full, unredacted versions of the relevant lists.

The Ombudsman considered that a solution had been achieved, which resulted in the full disclosure of the requested documents.

Case 803/2018/THH: The European Asylum Support Office's refusal to grant public access to the report of the study carried out by a consultancy concerning the asylum system in Greece

The complaint concerned the refusal by the European Asylum Support Office (EASO) to grant public access to a report concerning the asylum system in Greece. EASO considered that it was not possible to disclose the report without redacting a significant amount of sensitive information, which would pose an excessive administrative burden on it. The Ombudsman proposed, as a solution, that EASO disclose a redacted summary of the report, together with a list of the sections of the report. This could enable the complainant to identify specific sections of interest, and potentially make a new, more targeted request for public access.

EASO accepted the solution proposal. The Ombudsman welcomed the EASO's positive response and closed the inquiry.

b. Recommendations accepted or partly accepted

EU institutions accepted 18 out of 33 recommendations in cases closed in 2018. This is similar to last year (57% in 2017; 55% in 2018).

Ten recommendations were rejected by the Commission, one by the European Personnel Selection Office and two by the European Anti-Fraud Office. The European Central Bank did



not reply satisfactorily in one case, while the Council did not reply on time to the Ombudsman's recommendations in her strategic inquiry on Council legislative transparency.

Table 2 - Recommendations accepted or partly accepted by institution

Institution

Recommendations (partly) accepted

European Commission

9

European Investment Bank (EIB)

2

European Personnel Selection Office (EPSO)

3

European Aviation Safety Agency (EASA)

1

European Medicines Agency (EMA)

2

Community Plant Variety Office

1

Total

18

Case 1311/2016/TM: How the European Aviation Safety Agency dealt with a whistleblowing complaint from aircraft maintenance mechanics at an airport in the EU

The case concerned how the European Aviation Safety Agency (EASA) dealt with a 'safety report' submitted by an aircraft maintenance mechanic, who was working at a maintenance base at an airport in the EU. The complainant was unhappy that the EASA had failed to inform him about the follow-up to his report, even though this should have been the case under the applicable rules.

7



The Ombudsman found the EASA's practice, of not providing follow-up information on the reports it received, constituted maladministration. The Ombudsman recommended to the EASA that it amend the applicable rules to ensure that those who report safety concerns receive feedback to the greatest extent possible without compromising the integrity of the EASA's actions.

The EASA accepted the Ombudsman's recommendation and changed the practice of how it gives feedback to those reporting safety concerns. The Ombudsman welcomed the immediate steps taken by the EASA.

Case 2030/2015/PL: The European Medicines Agency's refusal to disclose the name of a company that made a request for public access to safety reports

The case concerned the refusal by the European Medicines Agency (EMA) to disclose the name of a company that had asked for public access to the latest 'periodic safety update report' on the drug Zyclara. The complainant was the pharmaceutical company that markets Zyclara. Since 2015, EMA's policy had been to refuse to disclose the names of companies that request access to documents, in order to protect their commercial interests.

The Ombudsman found that this amounted to maladministration and recommended that EMA review its policy of outright refusal to release the identity of organisations that request public access to documents. Instead, EMA should consult the company that made the initial request for access, before deciding whether or not the name should be withheld.

EMA accepted the Ombudsman's recommendation and changed its policy. EMA also subsequently reconsidered the complainant's request for the identity of the company.

c. Recommendation leading to a special report

Following her strategic inquiry (OI/2/2017/TE) concerning the transparency of the Council's legislative process, the Ombudsman sent a special report to the European Parliament.

The Ombudsman considered that, for European citizens properly to exercise their democratic right to participate in the EU's decision-making process, and hold those involved to account, legislative deliberations must be sufficiently transparent. She also considered that, for citizens to be able to hold their governments to account for the decisions they make on EU laws, they need to know how their governments positioned themselves during the legislative process.

To this end, the Ombudsman made a number of recommendations and suggestions to the Council to enable the public to follow the EU legislative process more easily. She recommended that the Council systematically record the identities of Member States' positions in preparatory bodies, as well as develop clear criteria for when it classifies documents as 'LIMITE' (restricted access). She also proposed that Council develop a



dedicated webpage for each legislative proposal, and that it improve the user-friendliness of its public register of documents.

The Council did not reply to the Ombudsman's recommendations and suggestions within the legally-prescribed timeline of three months. Since the Ombudsman considered that the transparency of the Council's legislative process is of great importance, she brought this issue to the attention of the European Parliament and sought its support. The Ombudsman's special report was supported by an overwhelming majority of Members of the European Parliament, when they voted on the report in January 2019.

d. Follow-up to suggestions for improvement

A total of 65 suggestions were made in 40 cases that were closed in 2018. 82% of the follow-ups to suggestions were satisfactory (84% in 2017).

Table 3 - Satisfactory replies to suggestions made in 2018 by institution

Institution

Suggestions

Satisfactory replies

% of

satisfactory replies

European Parliament

5

4

80%

European Commission

33

25

76%

9



European Central Bank (ECB)

2

2

100%

European External Action Service (EEAS)

4

4

100%

Committee of the Regions of the European Union

1

1

100%

European Investment Bank (EIB)

7

5

71%

European Personnel Selection Office (EPSO)

3

3

100%

European Anti-Fraud Office (OLAF)

6

5

10



83%

European Food Safety Authority (EFSA)

1

1

100%

European Institute for Gender Equality (EIGE)

1

1

100%

Education, Audiovisual and Culture Executive Agency (EACEA)

2

2

100%

Total

65

53

82%

Case 1693/2017/MDC: The Commission's decision to terminate a contract concerning a project to assist the artisanal fishing industry in Somalia

The case concerned the Commission's decision to terminate a grant contract concerning a project to assist the artisanal fishing industry in Somalia. The complainant considered the Commission breached the applicable rules by refusing to meet with it to try to settle the dispute. The Ombudsman found that, although the applicable rules do not oblige the Commission to meet with contractors prior to deciding to terminate contracts, they oblige the Commission to reply to a request for an amicable settlement. The Ombudsman took the view that, if the Commission considers that a meeting would not be conducive to settling a dispute amicably, it should give reasons for its position. The Commission complied with this obligation in the course of the Ombudsman's inquiry and the Ombudsman thus closed her



inquiry.

Nonetheless, the Ombudsman suggested that, in future, the Commission should do its utmost to settle amicably any dispute that arises between it and organisations with which it has contracts for grants on projects, including by holding meetings with them, if they so request. The Ombudsman also suggested that the Commission should reply promptly to requests for meetings made with a view to settling disputes.

In response, the Commission decided to update the internal manual that provides guidance to staff members dealing with grant contracts by following the Ombudsman's suggestions.

Case 811/2017/EA: The transparency of a group that influences the development of EU defence policy

The complaint concerned the transparency of a group that provides the European Commission with advice on defence and security research. The complainant was concerned that the Group of Personalities on defence research did not appear on the Commission's register of expert groups and other similar entities.

In her decision, the Ombudsman considered that it would be difficult for the Group of Personalities - in view of its composition - to be classified as an 'expert group', which is the more typical form of advisory body. However, the Group of Personalities provided advice in relation to the preparation of policy in the same way as an expert group. She thus concluded that a level of transparency, broadly equivalent to that applicable in the case of an expert group, would be appropriate for the Group of Personalities and suggested that the Commission provide for this, retrospectively and for future similar groups.

The Commission agreed to publish meeting agendas, minutes, as well as participants' submissions related to the work of the Group of Personalities.

For the future, the Commission agreed that the rules applying to expert groups should apply to any new version of the Group of Personalities and to other similar bodies that provide the Commission with advice in relation to EU policy.

Strategic inquiry OI/6/2017/EA: How the European Commission ensures that persons with disabilities can access its websites

This strategic inquiry was a follow-up to correspondence in 2016 between the Ombudsman and the Commission concerning web accessibility in the light of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

The Ombudsman looked into how the Commission ensures that its websites and other online tools are accessible for persons with disabilities. Based on the inquiry, the Ombudsman was satisfied that the Commission had taken steps to enhance the accessibility of its websites and online tools, and that it was committed to further improvements.



However, to encourage the Commission to implement these commitments and take further steps, she made six suggestions for improvement.

In its follow-up reply, the Commission set out concrete actions, which it had already undertaken in 2018, as well as its plans for future improvements. For example, it has expanded efforts to make more information available in an easy-to-read format, committed to meet higher international standards, intends to adopt a web accessibility action plan, and will introduce mandatory training on web accessibility standards in 2020.

The Ombudsman welcomed these steps and is continuing to monitor how the Commission is delivering on its commitments.

Case 2175/2017/NF: How the European Personnel Selection Office covers accommodation costs for candidates who participate in the advanced stage of selection procedures for recruiting EU civil servants

The case concerned how the European Personnel Selection Office (EPSO) covered the accommodation costs of a candidate who participated in the advanced stage (assessment centre) of a selection procedure for recruiting EU civil servants. The complainant requested an allowance for three nights' accommodation: the night before the test started, the night between the two test days and the night after the test ended. However, EPSO granted her the accommodation allowance for one night only.

The Ombudsman inquired into the issue and found that EPSO had correctly applied the applicable rule on accommodation allowances for candidates. However, the Ombudsman suggested that EPSO clarify the applicable rule to make clear that no allowance is paid to cover the accommodation costs the night before a test starts or after a test ends.

EPSO updated the relevant section of its website in accordance with the Ombudsman's suggestion.

Case 1943/2017/NF: How the European Personnel Selection Office handled a complaint about a technical problem in a selection procedure for recruiting translators

The complainant experienced a technical problem when sitting an exam as part of a selection procedure for recruiting translators for the EU civil service. He contended that EPSO had not dealt properly with his subsequent complaint. As a consequence of EPSO's poor communication with the complainant, he had also missed the deadline for making an administrative complaint about his results.

In the course of the inquiry, EPSO agreed to deal with an administrative complaint from the complainant. The Ombudsman thus considered the case to be resolved and closed her inquiry. However, she suggested to EPSO that it revise the information manual it provides to candidates in selection procedures.

EPSO updated the relevant section of its website in accordance with the Ombudsman's



suggestion.

e. Compliance rate for cases closed in 2018

The EU institutions reacted positively or gave effect to 91 out of 118 proposals that the Ombudsman made to correct or improve their administrative practices in 2018. There were a further 190 cases that the Ombudsman considered as settled by the institutions since they took steps to improve how they work. Eleven out of 18 institutions examined had a 100% compliance rate, while the Commission which, due to its size, is the subject of most of the cases, had a compliance rate of 71%.

Table 4 - Rate of overall compliance by institution

Institution

Solutions,

recommendations, suggestions

Satisfactory replies

% of

satisfactory replies

European Parliament

6

5

83%

European Commission

62

44

71%

Council of the European Union

2

14



1

50%

European Central Bank (ECB)

3

2

67%

European External Action Service (EEAS)

5

5

100%

Committee of the Regions of the EU

2

2

100%

European Investment Bank (EIB)

9

7

78%

European Personnel Selection Office (EPSO)

7

6

86%

European Anti-Fraud Office (OLAF)

15



8

5

63%

European Aviation Safety Agency (EASA)

1

1

100%

European Food Safety Authority (EFSA)

1

1

100%

European Insurance and Occupational Pensions Authority (EIOPA)

1

1

100%

European Medicines Agency (EMA)

2

2

100%

European Institute for Gender Equality (EIGE)

2

2

100%

16



European Police Office (Europol)

1

1

100%

European Asylum Support Office (EASO)

1

1

100%

Education, Audiovisual and Culture Executive Agency (EACEA)

4

4

100%

Community Plant Variety Office

1

1

100%

Total

118

91

77%

5. Conclusion

As in previous years, in 2018, the EU institutions complied with the Ombudsman's proposals to put things right in a clear majority of instances. While the institutions have a very good level of compliance with solution proposals and suggestions, there is a need to look at how



to ensure better compliance by the EU institutions with the Ombudsman's recommendations.

The Ombudsman acknowledges that, sometimes, the changes she is pursuing via recommendations simply take time. Improvements introduced by the institutions may occur too late to be captured in the Ombudsman's annual compliance figure.

Two examples stand out. One concerns the Ombudsman's inquiry into the appointment of the Commission's Secretary-General, which was closed in 2019. The Ombudsman, in her inquiry, recommended that the next time the appointment is being filled that it be done with a specific appointment procedure, separate from other high level appointments, and with the publication of a vacancy notice. While the Commission initially rejected the recommendations in this case, the Ombudsman notes the recent decision of the Von der Leyen Commission to follow up on what the Ombudsman recommended.

A second example concerns the changes introduced by the ECB following recommendations made by the Ombudsman in a case concerning membership of the Group of 30, a private Washington-based organisation.

The Ombudsman will continue to work with the institutions to bring about change, both immediately in response to individual complaints and, more generally, over time.

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

[2] See Section 3e below.

[3] 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.

[4] Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, as amended by the European Parliament Decision 2008/587 of 18 June 2008. A consolidated version of the Statute can be found at: <https://www.ombudsman.europa.eu/en/legal-basis/statute/en> .

[5] 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.*"

[6] 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> .

[7] In order to avoid double-counting, the statistics do not include the following solution



proposals: (a) In case 445/2016/PB the Commission rejected a solution proposal and a subsequent recommendation; this has been recorded only as a negative follow-up to the recommendation; (b) In case 212/2016/JN, the Commission rejected three solution proposals but subsequently accepted the three corresponding recommendations; this has thus been recorded as a positive follow-up to the recommendations.