# Putting it Right? - How the EU institutions responded to the Ombudsman in 2013

Follow-up - 25/11/2014

## Foreword

Responding to complaints that the Ombudsman brings to an institution's attention can be a resource-intensive and time-consuming exercise. The sooner a case is resolved, the better for all concerned — complainant, EU institution, Ombudsman. The more lessons are learned from the experience of handling a complaint, the less likelihood there is that others will face the same problem.

These fundamental, but at times forgotten considerations, are what drive the Ombudsman to publish this report, focusing as it does on cases in which the institutions have accepted my proposals and learned from past mistakes. There is much to be pleased about: this report documents real improvements in areas from ethics to the environment, and from tenders to transparency. In four out of every five cases, the institution in question responded constructively. The European Personnel Selection Office (EPSO) should be singled out for setting the standard this year in terms of how to bring about systemic improvements.

Some cases, on the other hand, make for dismal reading. Other responses are simply too vague on detail to know how seriously they should be taken. With the institutions' responses to one out of every five proposals deemed to be unsatisfactory, there is clearly room for improvement.

Since the Ombudsman began the follow-up exercise eight years ago, the point has been made that the focus is on learning and securing improvements for the future. It is in this spirit that I decided to ask myself: what lessons can the Ombudsman draw from this exercise? To my mind, there are three:

**One** : some of the cases referred to in this report have simply gone on for too long. The results obtained should have been secured much earlier in the process. Lesson learned? The Ombudsman will endeavour to find new ways to work with the institutions so that concrete results can be achieved at the earliest possible moment. **Two** : we have seen a rise in the number of further remarks, which aim to help institutions improve the quality of their administration, from 49 in 2012 to 83 in 2013. Not all of them led to a useful follow up. Lesson learned? From now on, to achieve real impact, the Ombudsman will use further remarks to make concrete suggestions for systemic improvement, or to invite the institution to come up with concrete measures itself and report back to us. **Three** : in some cases, we

have not managed to follow up precisely what the institution has said it will do. Lesson learned? In future, when an institution makes a commitment either during an inquiry, or in response to a critical or further remark, we will systematically check that the institution actually does what it says it will do.

In brief, the Ombudsman aims to achieve more concrete results, more quickly. At the same time, we shall pursue issues for as long, and as loudly, as it takes to get real change. I am confident that the European citizen stands to benefit.

Emily O'Reilly

25 November 2014

# Report

## 1. Introduction

This Report aims to provide an account of the extent to which the EU institutions [1] respond constructively to proposals made by the European Ombudsman in a given year. These proposals come in the form of friendly solutions, draft recommendations, critical and further remarks [2] . The report and its annex contain many examples of cases where the Ombudsman has persuaded the EU administration to better its performance and provides an overview of the range of public service improvements generated as a result.

## 2. The Ombudsman's powers and procedures

The Ombudsman helps individuals, companies and associations who have a problem with an EU institution [3] . At the same time, she serves the public interest by helping the institutions to improve the quality of the service they provide.

These two aspects of the Ombudsman's work are closely connected. The right to complain to the Ombudsman about maladministration [4] provides a route to redress when an institution has harmed or neglected the complainant's rights or interests. It is also a mechanism of public participation, allowing people to complain about maladministration that affects other persons, or the general public interest. As well as investigating complaints, the Ombudsman can also open inquiries on her own initiative.

The Ombudsman can require the institution concerned to provide information, inspect its files and take testimony from officials. These powers are contained in the Statute of the Ombudsman [5] ('the Statute'). When she thinks it appropriate to do so in a specific case, the Ombudsman calls on the institution to revise its position, provide redress or make general changes for the future. If the institution refuses to cooperate, she can draw political attention to a case by making a special report to the European Parliament.

## 3. Friendly Solutions

The main way the Ombudsman tries to achieve redress for the complainant is by proposing a ' **friendly solution** ' [6] . Such a proposal aims at a win-win outcome that satisfies both the institution and the complainant.

While friendly solution proposals may include a provisional finding of maladministration, the Ombudsman often considers it more constructive to avoid stating, even provisionally, that there could be maladministration. Rather, she identifies a problem or shortcoming in the institution's behaviour that could be solved if the institution adopted the proposed friendly solution.

Where redress should be provided, it is best if the institution concerned takes the initiative, when it receives the complaint, to acknowledge the problem and offer suitable redress. This could take the form of compensation to the complainant or a sincere apology.

Whilst friendly solution proposals often achieve good outcomes for the complainant, they are rarely an effective instrument to achieve systemic change in the public interest.

## 4. Draft recommendations

If the institution rejects a friendly solution proposal without good reason, or such a proposal is unlikely to be effective, the next step is usually what Article 3(6) of the Statute terms a ' **draft recommendation** '. It is better for all concerned if the institution accepts a friendly solution than if it first rejects a friendly solution proposal and then accepts a draft recommendation. Draft recommendations addressed to the institutions are, simultaneously, published on the Ombudsman's website. The Ombudsman may also choose to draw public attention to the case and to her efforts to obtain a solution, by issuing a press release at this stage on the maladministration identified. With a view to avoiding such publicity, institutions should seriously consider the added benefit, for their own work and for the image of the Union more generally, of accepting a friendly solution proposal rather than waiting for the Ombudsman to make a draft recommendation.

## 5. Critical remarks and further remarks

The institution’s rejection of a friendly solution proposal or draft recommendation may lead to a number of possible outcomes, including closing the case with a critical remark. In no less than 80% of cases where maladministration was found in 2013, the case was closed with a critical remark.

A **critical remark** informs the institution of what it has done wrong in the specific case. The remark identifies the rule or principle that was breached and (unless it is obvious) explains

what the institution should have done in the particular circumstances of the case. The institution itself is expected to follow up by asking *"why did we get it wrong in that case? Can we reduce the risk of making the same mistake again?"* It should then report back within six months.

A critical remark does not constitute redress for the complainant. In many cases, a better outcome would have been for the institution concerned to settle the matter itself by acknowledging the maladministration and offering suitable redress. [7]

A **further remark** aims to serve the public interest by helping the institution concerned to raise the quality of its administration in the future. Unlike a draft recommendation or a critical remark, a further remark is not premised on a finding of maladministration. It should not, therefore, be understood as implying censure of the institution to which it is addressed.

# 6. Friendly solution proposals and draft recommendations accepted in 2013

In 2013, the EU institutions accepted a total of nine proposals for friendly solutions, while nine draft recommendations were accepted wholly or partially [8] .

Table 1 - Distribution of friendly solutions and draft recommendations accepted by institution

**Institution**

**Friendly solutions accepted**

**Draft recommendations accepted**

European Commission

5

4

Council of the EU

1

European Food Safety Authority

2

European Medicines Agency

1

1

European Parliament

1

Court of Justice of the EU

1

European External Action Service (EEAS)

1

Frontex

1

**Total**

**9**

**9**

The annex to this Report summarises the cases in which a friendly solution proposal or a draft recommendation was accepted [9] . One of these cases warrants special mention as a " *star case* ", which should serve as a model for other institutions of how best to react to the Ombudsman's proposals.

# 7. Follow-up given to critical remarks and further remarks made in 2013

In 2013, 50 critical remarks were made in 40 decisions, while 83 further remarks were made in 53 decisions. A single decision may contain more than one remark, and both kinds of remark may be included in the same decision.

Table 2 - Distribution of critical and further remarks by institution in 2013

**Institution**

**Critical remarks**

**Further remarks**

5

European Commission

19

39

European Personnel Selection Office (EPSO)

5

8

European Anti-Fraud Office (OLAF)

8

3

European Banking Authority (EBA)

3

4

European Food Safety Authority (EFSA)

2

5

European Securities and Markets Authority (ESMA)

3

4

European Parliament

0

6

European Aviation Safety Agency (EASA)

2

6

2

European Medicines Agency (EMA)

2

2

Publications Office

2

1

European Central Bank (ECB)

0

2

European External Action Service (EEAS)

2

0

European Investment Bank (EIB)

0

2

Frontex

2

0

European Chemicals Agency (ECHA)

0

2

Research Executive Agency (REA)

7

0

2

Council of the EU

0

1

**Total**

**50**

**83**

The institutions concerned were invited to respond to the remarks within a period of six months. Responses were received to all the remarks made in 2013 although with a delay in some cases.

Taking critical and further remarks together, the rate of satisfactory follow-up was 81%. The follow-up to further remarks was satisfactory in 83% of cases, whilst the rate of satisfactory follow-up of critical remarks was 78%. These results are slightly lower than those achieved last year, when the rate of satisfactory follow-up to critical and further remarks was 83%. The follow-up to further remarks was satisfactory in 90% of cases in the 2012 report, whilst the rate of satisfactory follow-up of critical remarks was the same, at 78%. Finally, it is noteworthy that the Commission provided a satisfactory follow¤up in only 72% of cases, compared to 88% in the 2012 report.

Table 3 - Number and percentage of satisfactory replies to remarks by institution

**Institution**

**Critical and further remarks**

**Satisfactory replies**

**% of**

**satisfactory replies**

European Commission

58

42

72%

European Personnel Selection Office (EPSO)

13

12

92%

European Anti-Fraud Office (OLAF)

11

10

91%

European Banking Authority (EBA)

7

7

100%

European Food Safety Authority (EFSA)

7

6

86%

European Securities and Markets Authority (ESMA)

7

7

100%

European Parliament

9

6

5

83%

European Aviation Safety Agency (EASA)

4

4

100%

European Medicines Agency (EMA)

4

3

75%

Publications Office

3

2

67%

European Central Bank (ECB)

2

2

100%

European External Action Service (EEAS)

2

0

0%

European Investment Bank (EIB)

2

2

100%

Frontex

2

2

100%

European Chemicals Agency (ECHA)

2

2

100%

Research Executive Agency

2

2

100%

Council of the EU

1

0

0%

**Total**

**133**

**108**

11

**81%**

The annex to this Report includes a detailed analysis of each of the cases in which one or more critical remarks and/or further remarks were made. Four of the follow-ups warrant special mention as " *star cases* ".

# 8. Rate of overall compliance by institution

The overall figure in terms of compliance with the Ombudsman's proposals in 2013 is 80%, which is the same as that achieved last year. The rate of compliance is based on the number of positive replies to the friendly solution proposals, draft recommendations, critical and further remarks made in cases closed in 2013. All in all, out of the 158 instances in which the Ombudsman made friendly solution proposals, draft recommendations, critical or further remarks in the context of cases closed in 2013 [10] , the institutions provided 126 positive replies.

As is clear from Table 4 below, the compliance rate varies significantly from one institution to another — from 100% in some cases to 25% in the worst instance. While these statistics are, in certain instances, based on very few cases, the fact remains that any result lower than 100% represents a failure to comply with a proposal made by the Ombudsman.

Cases closed as " *settled by the institution* " are, in principle, not included in this report. Nevertheless, in order to provide a complete picture of positive outcomes resulting from the Ombudsman's intervention, we have taken account of cases settled as a result of contacts between the Ombudsman's services and those of the institution in question. The inclusion of these cases results in an overall compliance rate of 86%.

Table 4 - Rate of overall compliance by institution

**Institution**

**Remarks and recommendations**

**Satisfactory replies**

**% of**

**satisfactory replies**

European Commission

70

51

73%

European Personnel Selection Office (EPSO)

13

12

92%

European Anti-Fraud Office (OLAF)

11

10

91%

European Food Safety Authority (EFSA)

11

8

73%

European Banking Authority (EBA)

7

7

100%

European Securities and Markets Authority (ESMA)

7

7

100%

European Parliament

7

6

86%

European Medicines Agency (EMA)

6

5

83%

European Aviation Safety Agency (EASA)

4

4

100%

Frontex

4

3

75%

European External Action Service (EEAS)

4

1

25%

Publications Office

3

2

67%

European Central Bank (ECB)

14

2

2

100%

European Investment Bank (EIB)

2

2

100%

European Chemicals Agency (ECHA)

2

2

100%

Research Executive Agency (REA)

2

2

100%

Council of the EU

2

1

50%

Court of Justice of the EU

1

1

100%

15

**Total**

**158**

**126**

**80%**

Cases settled via contacts between services

75

75

**Total**

**233**

**201**

**86%**

# 9. Cases that are particularly significant for the Ombudsman's strategy

As explained in the Strategy 2014-2019, the Ombudsman's mission is " *to serve democracy by working with the institutions of the European Union to create a more effective, accountable, transparent and ethical administration."*

The Ombudsman empowers citizens by helping them to realise their fundamental rights. In addition to the right to good administration, citizens have the right to know what the EU institutions are doing (transparency) and the right to participate in their activities. The Ombudsman is central to the task of ensuring that these rights are enforced and protected by the EU institutions. The Ombudsman also promotes good governance and a culture of public service by helping the EU administration to work openly, effectively, and with integrity.

The Ombudsman's work in these areas is outlined below under the headings of (i) fundamental rights, (ii) the empowerment of citizens and (iii) EU governance.

## Fundamental rights

### Mechanisms for ensuring protection

Case **OI/5/2012/BEH-MHZ** concerned the extent to which Frontex complies with its obligations in the field of fundamental rights. The Ombudsman made detailed recommendations as to how Frontex could improve and render more effective its mechanism to monitor respect for fundamental rights in all its activities. While Frontex responded positively to many of these recommendations, it failed to take on board the Ombudsman's recommendation that its Fundamental Rights Officer should deal with complaints. The Ombudsman made a special report to Parliament on this issue.

**In its helpful follow-up reply to the Ombudsman's critical remarks in c** ase **1560/2010/FOR , OLAF explained that its** new Guidelines on Investigation Procedures for staff aim to ensure that its investigations are conducted with full respect for human rights and fundamental freedoms. OLAF mentioned, in particular, the principle of fairness, the right of persons involved to express their views on the facts concerning them and the principle that the conclusions of an investigation may be based solely on elements which have evidential value.

The Ombudsman closed case **532/2011/CK** , which concerned age discrimination by the EULEX-Kosovo mission, with two critical remarks. In the follow-up response provided by the European External Action Service (EEAS), the EEAS insisted that it cannot be held responsible for the maladministration identified by the Ombudsman. This case led the Ombudsman to conclude that no one is willing to accept responsibility when the Ombudsman finds maladministration in relation to an EU mission. This indicates a systemic problem in the protection of fundamental rights vis-à-vis EU Missions, a problem that the Ombudsman will draw to Parliament's attention. By way of contrast, in case **1519/2011/AN** , which concerned the EU military mission to Bosnia and Herzegovina 'EUFOR Althea', the responsible Operation Commander accepted the Ombudsman's friendly solution proposal, after the Council acted as a bridge between the Ombudsman and the Operation Commander.

## The right to good administration

Case **2515/2011/CK** concerned alleged irregularities and discrimination in the way that OLAF conducted administrative investigations into the complainant and three other MEPs. The Ombudsman found no maladministration. To help secure improvements for the future, the Ombudsman suggested that OLAF **inform the person concerned of the outcome as rapidly as possible after an investigation has been completed.** In response, OLAF explained that the new Regulation governing its activities provides for the person concerned to be informed within 10 working days of the closure of an investigation when no evidence has been found. OLAF added that its services generally inform the person concerned within the same deadline where an investigation reveals the existence of evidence against that person, unless there is a risk of prejudicing follow-up actions taken by a competent authority.

## Principle of equal treatment

Case **637/2009/FOR** concerned equal treatment under the Early Warning System (EWS), a

computerised information system intended to identify threats to the EU's financial interests and reputation. The Ombudsman found that OLAF's interpretation of the conditions for issuing warnings could result in persons in comparable situations being categorised differently according to the national legal system which applies to them. The Ombudsman regretted that OLAF, in its response to the critical remark she made in that case, did not address the issue of how to ensure that differences between national legal systems do not result in unequal treatment for the purposes of the EWS.

# Empowerment of citizens

## Transparency and the right to know

Case **277/2012/RA** concerned the Commission's Register of Interest Representatives. Since the Commission and Parliament were in the process of reviewing what is now their Joint Transparency Register, the Ombudsman made a number of suggestions to which the Commission reacted positively. However, the Commission's response to other elements of the case, notably in relation to access to documents, providing adequate reasons and disclosing the names of lobbyists was unsatisfactory.The Ombudsman will continue to take a keen interest in the operation of the Joint Register and the handling of complaints and requests for access to information and documents, as well as proposals that may result from the public debate about a possible mandatory Register.

In its follow-up reply in case **1339/2012/FOR** , the European Central Bank (ECB) announced that its Executive Board and Governing Council decided to make improved communication one of the key priorities of the ECB's medium-term strategic planning for 2013-15. The ECB initiated a review of its communication policy, which also included communication issues arising from the establishment of the single supervisory mechanism (SSM).

In response to Parliament's follow-up in case **2393/2011/RA** , which related to the transparency of international trade negotiations, the Ombudsman issued a press release welcoming the announcement that future trade negotiations will be more transparent and open for stakeholder involvement. Notwithstanding the improvements cited by Parliament, notably in relation to the transparency of and public participation in the on-going TTIP negotiations, the Ombudsman subsequently opened an own-initiative inquiry in this area.

The Ombudsman regrets that the Council did not take the opportunity, in the context of case **1649/2012/RA** , to engage with the question of possible EU participation in the Open Government Partnership, a multilateral initiative that aims to increase the transparency, accountability and responsiveness of governments to citizens. The Ombudsman will continue to do whatever she can to help the EU administration to live up to the expectations of openness, accountability, and citizen participation, in line with the provisions of the Union Treaties.

Case **2575/2009/RA** concerned the European Medicines Agency's procedures for deciding

whether pharmaceutical companies should be obliged to carry out studies to investigate whether and how their product could be used to treat children. To avoid, in the future, the problems encountered in this case, the Ombudsman called on the Agency to adopt measures to make its work in this area more transparent. The Agency agreed, setting out the initiatives it had already taken and those that are in the pipeline. The Ombudsman welcomed these measures, which should help to avoid similar problems reoccurring and to instil even greater trust of citizens in the Agency's work.

Three cases involved individuals seeking further information about how their applications for funding had been evaluated. In case **2781/2008/FOR** , the Ombudsman encouraged the Commission to review its overall approach concerning the release of individual expert reports on applications for funding and to consider granting public access to anonymised individual reports. In its response, the Commission merely referred to its existing practices rather than taking the opportunity to review those practices. Case **202/2010/VL** concerned the issue of disclosing the identity of evaluators for EU-funded projects. The Ombudsman suggested that, in order to improve transparency, the Commission could consider changing its rules to allow evaluators' identity to be disclosed to applicants once the evaluations have taken place and the results have been communicated. The Ombudsman was not convinced by the arguments put forward by the Commission not to do so. Case **2111/2011/RA** also related to the possibility of making public the names of individual expert evaluators, this time of research proposals submitted to the Research Executive Agency. The Agency signalled the Ombudsman's suggestion to the Commission's DG Research and Innovation, which was to discuss the issue with all DGs and Agencies concerned when preparing for the new framework programme Horizon 2020.

## Fundamental right of public access to documents

Many cases in this report concern the fundamental right of public access to documents, laid down in Article 42 of the Charter, Article 15(3) TFEU and Regulation 1049/2001 [11] .

In case **693/2011/RA** , which concerned EMA's refusal to provide public access to clinical studies carried out on a multiple sclerosis drug, the Ombudsman made a friendly solution proposal, according to which EMA should (i) diligently search its archives for the documents requested by the complainant; (ii) if the documents are found, provide the complainant with full access to them, or explain why one of the exceptions laid down in Article 4 of Regulation 1049/2001 applies; (iii) provide the Ombudsman with detailed information on its e-archive plan. EMA fully accepted the Ombudsman's friendly solution proposal. In case **1877/2010/FOR** , on the other hand, EMA failed to acknowledge the legal and administrative reasons for it to develop a comprehensive register of documents.

In the context of case **217/2008/FOR** , which concerned public access to policy notes of DG Trade, the Commission assured the Ombudsman that it always assists persons to identify documents for which public access is sought and that it has made efforts to identify the most important documents in its possession on a public register. It suggested that further improvements might be made in this regard.

The Ombudsman regrets that, in the context of case **2335/2008/CK** concerning public access to documents covering proposed investments in nuclear energy, the Commission maintained its narrow interpretation of Article 44 of the Euratom Treaty. This raises questions about the Union's compliance with its obligations under the Aarhus Convention. On a more positive note, the Commission undertook to elaborate and adopt a set of procedural rules for access to such documents in the form of publicly available guidelines. It also informed the Ombudsman of its proactive approach regarding: (i) the drafting of its viewpoints and (ii) the publishing on its website of information on nuclear installations.

In a further remark in case **1108/2012/RT** , the Ombudsman offered general guidance on how to handle requests where access might be sought under either Regulation 45/2001 on the protection of personal data or Regulation 1049/2001 on public access. In response, the Commission set out an efficient and effective way of handling requests for public access when the applicant also has a right of access as a data subject. In the rare situation where an applicant seeks access to a particular document using the procedures under both Regulation 45/2001 and Regulation 1049/2001, the Commission confirmed that it would apply the procedure that leads to the widest possible access for the applicant.

## The right to participate in the Union’s activities

Case **1682/2010/BEH** concerned the operation of expert groups, which the Commission relies upon to draw up legislation and policy. The Commission accepted a range of proposals made by the Ombudsman, including an overall review of expert groups to help ensure a more balanced composition. In order to keep a watchful eye on the situation, the Ombudsman announced her intention to open an own-initiative inquiry, which she did in May 2014.

Cases **1321/2011/LP, 1875/2011/LP, 1876/2011/LP and 1966/2011/LP** concerned the 30-member Banking Stakeholder Group set up by the European Banking Authority (EBA). In its follow-up response, EBA indicated its willingness to implement all of the Ombudsman's suggestions when renewing the Group. These included avoiding the risk that one or more Member States may appear to be over-represented and publishing future calls for expression of interest not only on its own website, but also in the specialised financial press **.** Similarly, in case **1967/2011/LP** , the European Securities and Markets Authority assured the Ombudsman that it is endeavouring to implement all of her suggestions as it constitutes its new Stakeholder Group.

In case **2558/2009/DK** , which concerned alleged irregularities in the establishment and operation of one of the Commission's scientific committees, the Ombudsman made a draft recommendation to the effect that the Commission should consider modifying its rules concerning the establishment of such committees to require that a call inviting experts to express their interest be published with the aim of identifying the best possible candidates. In reply, the Commission explained that it had adopted a new decision which provides that, when selecting experts for working groups, it will carry out a search in the 'Pool of Scientific

Advisors on Risk Assessment', established by the Decision in question, as well as in its database of external experts and will issue a web-based call for experts.

For citizens who want to participate in, or to scrutinise, the application of EU law, the infringement procedure (through which the Commission fulfils its duties as guardian of the Treaties) is a natural focus of interest. In case **846/2010/PB** , the Ombudsman commended the Commission for giving due consideration to the systemic issues raised, notably the imprecise wording of the Strategic Environmental Assessment Directive. The Commission referred to concrete improvements that it intended to introduce with a view to pursuing the objective of greater certainty and transparency in the application of the legislation in question. In case **583/2013/MHZ** , on the other hand, the Ombudsman noted with regret that the Commission did not appear to understand that national ombudsmen often succeed in obtaining redress for individuals where Member States fail to apply EU law correctly. The Ombudsman will make further efforts to help the Commission understand the role that national ombudsmen can play in this area.

Many infringement cases brought to the Ombudsman's attention concern procedure and the Commission's application of its own Communication on the handling of relations with the complainant in respect of the application of Union law ('the Communication') [12] . The annex to this report contains many examples of infringement cases, in which the Ombudsman had to make a critical remark in relation to delays. Others related to the Commission's failure to provide adequate reasons for not opening infringement proceedings. As outlined under 'Conclusions' below, the Commission's follow-up responses in this area have been mixed.

# EU Governance

## Ethical behaviour

The Ombudsman made the following suggestion in the context of case **1533/2010/MMN** , which concerned the duty of Commissioners to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits: w *hen carrying out the necessary in-depth assessment of possible conflicts of interest affecting former Commissioners, it would be advisable for the Commission to ensure that all the necessary inquiries or other investigative measures undertaken in the context of that assessment are duly completed and that adequate records are kept as regards all these steps.* Given the Commission's unsatisfactory follow-up reply, the Ombudsman continues to take an active interest in the Commission's handling of ethical issues such as possible conflicts of interest.

Following an inquiry in the context of case **297/2013/FOR** into the Commission's Ad Hoc Ethical Committee and alleged conflicts of interest, the Ombudsman made a further remark, to the effect that the Commission should comply with its commitment to create a specific page on the EUROPA website relating to the Committee and its work. In response, the Commission informed the Ombudsman that it intends to create such a webpage, containing

the relevant Commission decisions creating the Committee and appointing its members, as well as their CVs and "declarations of honour" attesting the absence of conflict of interests between their function as members of the Committee and their other activities or interests. The Ombudsman welcomes the fact that the web page in question has now been made available [13] .

## Conflicts of interest and revolving doors

The Ombudsman found, in her decision in case **775/2010/ANA** , that EFSA had taken action to strengthen its rules and procedures with regard to negotiations by serving staff members concerning future jobs of the 'revolving doors' type and to require serving staff members to disclose them in a timely manner. EFSA also acted to ensure that, if a similar case arises in the future, it obtains sufficient information, proceeds with an assessment that is as thorough as possible, and properly records the results of its assessment. EFSA, however, did not duly acknowledge its failure to observe the relevant procedural rules and to carry out a sufficiently thorough assessment of the potential conflict of interest in the case at hand. Neither did it respond adequately to the Ombudsman's critical remark in this regard. In response to her further remarks on the other hand, EFSA substantially improved its rules and procedures on questions of conflicts of interest and revolving doors. In case **622/2012/ANA** , which also concerned the handling of an alleged conflict of interest, this time concerning the Chair of an EFSA Scientific Panel, EFSA undertook to continue its efforts to increase staff awareness of good administrative principles and ethical standards.

In the context of case **51/2011/AN** , the Ombudsman welcomed the new provisions on conflicts of interest contained in EASA's Code of Conduct for staff. The Ombudsman also insisted that EASA provide adequate feedback to persons who report serious safety concerns. Such feedback provides assurance that EASA has dealt properly with the matter and reached a grounded conclusion. It thus ensures accountability and also encourages reporting, which is in the public interest.

## Whistleblowing

In its follow-up to the critical remarks in case **1697/2010/JN,** OLAF explained the improvements it had made to its internal procedures concerning whistleblowing. Rules for the handling of information provided by whistleblowers have been included in OLAF Instructions to Staff on Investigative Procedures (ISIP), it said. Moreover, the Director General issued an internal note prohibiting the inclusion of whistleblowers' personal data in final reports forwarded to the EU institutions and to national judicial authorities. This has the effect of significantly limiting the risk of disclosing a whistleblower's identity. In addition, OLAF now has a single assessment point for incoming information, which provides a consistent approach to whistleblowers. Finally, specific provisions concerning whistleblowers form part of the working arrangements which are being concluded between OLAF and other Union institutions and bodies.

# 10. Conclusions

In addition to the key cases highlighted above, the annex to this report includes many further cases in which the institutions have introduced systemic improvements for the benefit of citizens. Once again this year, the institutions have tended to engage constructively with the Ombudsman most notably in the area of tenders and grants [14] . The improvements introduced as a result should help avoid complaints, to both the EU institutions themselves and to the Ombudsman, in the future.

Two excellent examples of avoiding future complaints relate to EPSO. In its follow-up reply in the context of case **962/2011/AN** , EPSO explained that, as a result of the various improvements made in the area of recognition of diplomas, none of the Article 90 complaints made by candidates in 2013 concerned diploma issues. Similarly, in its follow-up to case **2518/2011/MHZ** which concerned its "request for review" procedure, EPSO signalled that a strong indication that its new procedure is working well can be derived from the 65% reduction in the number of complaints to the Ombudsman that provided grounds for addressing an inquiry to EPSO in 2013.

Moreover, it is worth noting in relation to infringement complaints, that none of the cases in this year's report relates to problems in registering complaints, an issue that led to many cases before the Ombudsman in the past. It is reasonable to assume that this is, in part, a result of the Ombudsman's past remarks and recommendations.

With an eye to the future, specifically in relation to infringement complaints, it is difficult to draw a firm conclusion on the basis of the cases contained in the annex to this report. On a positive note, in case **851/2011/KM** , the Commission committed itself to review its procedures to ensure that it replies to citizens within a reasonable timeframe, while in case **583/2013/MHZ** , the Commission confirmed that it would handle infringement complaints in a timely way. The Commission's follow-up reply in relation to delays was also satisfactory in cases **1146/2012/AN** and **1786/2011/MHZ** . In the context of case **349/2013/EIS** , the Commission explained that it informs complainants of each procedural step regarding their case and that it is common practice for Commission services to apologise when delays occur in this respect.

On the other hand, the Commission’s follow-up replies in cases **563/2009/VL, 295/2012/MMN, 412/2012/MHZ, 519/2012/AN** and **547/2012/AN** , which also concerned delays in infringement cases, provided no indication that the Commission had learned any lessons from the cases.

The Ombudsman has outlined in the foreword to this report the lessons that she has drawn from this exercise and the approach she intends to adopt in the future.

[1] For brevity, this report uses the term " *institution* " to refer to all the EU Institutions,

bodies, offices, and agencies.

[2] The report covers cases closed by the Ombudsman in a given year with a critical remark, further remark, or a finding that the institution concerned has accepted a friendly solution or a draft recommendation. In general, cases closed as " *settled by the institution* " are not included as they do not normally involve a specific Ombudsman proposal.

[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, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

[4] The right to complain to the Ombudsman is included in the Charter of Fundamental Rights of the European Union (Article 43).

[5] 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.

[6] Such proposals are based on Article 3(5) of the Statute, which 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."*

[7] The complainant, however, is not always right and the institution concerned is entitled to defend its position. About half of the cases that are not settled by the institution at an early stage eventually give rise to a finding of no maladministration.

[8] A case is closed with partial acceptance of the draft recommendation when the institution has genuinely responded to central points in the draft recommendation in a constructive manner. See, for example, cases **775/2010/ANA** and **OI/5/2012/BEH-MHZ** in the annex to this report.

[9] The Ombudsman also made a further remark in some of these cases, which are therefore mentioned more than once in the annex to this report.

[10] It is possible that a number of further cases closed in 2013 contained friendly solution proposals and draft recommendations that were not accepted, but which did not lead to a critical remark.

[11] 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 L 145, p. 43.

[12] Communication from the Commission to the Council and the European Parliament updating the handling of relations with the complainant in respect of the application of Union law; COM(2012) 154 final.

[13] http://ec.europa.eu/about/ethics-transparency/index_en.htm

[14] See cases **2741/2008/CK, OI/10/2010/JF** , **828/2010/JF** , **1922/2010/ER** , **513/2011/EIS, 452/2012/CK** , **1832/2012/EIS** , and **2347/2012/PMC.**