

Keynote speech by the European Ombudsman, Emily O'Reilly - First conference on alternative dispute resolution in the energy sector

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Introduction

- Mr Chairman, Monsieur Rochefort, my ombudsman colleague Lewis Shand Smith, ladies and gentlemen.
- It is a real pleasure for me to be with you in Brussels today for this, the first conference organised by NEON - the National Energy Ombudsmen Network.
- I have followed the development of NEON with great interest since its establishment and have been aware for many years of the important work being done by two of its founding members - Ombudsman Services in the UK and the Sindic de Greuges of Catalonia.
- In my previous role as Ombudsman of Ireland, and as former Chair of the British and Irish Ombudsman Association, I have known Lewis for over a decade, both in his current role as Head of Ombudsman Services and in his previous role as Deputy Public Services Ombudsman in Scotland.
- One of the first ombudsmen that I got to know on the international stage back in 2004 was Rafael Ribó, the Ombudsman of Catalonia, and my office continues to cooperate closely with his.
- The two other founding members of NEON - the *Médiateur national de l'énergie* from France and the *Service de médiation de l'énergie* from Belgium, represent the two countries where my institution is based and where I spend most of my time both professionally and personally. So it is a great reassurance to me to know of the excellent work being done by Jean Gaubert in France, as well as by Philippe Devuyt and Eric Houtman in Belgium.
- Before continuing, I would like to congratulate the organisers for the excellent programme that



has been put together for this afternoon's conference. I look forward to listening to the panel discussion on alternative dispute resolution, with the speakers representing not only two of the European Commission Directorates-General that I supervise - DG Justice and DG Energy - but also an organisation that has submitted several complaints to my office over the years - the European Consumers' Organisation (BEUC).

A brief history of ombudsmanship

- For those of you who may not be so familiar with the role of ombudsmen, let me present you with a brief history.
- The first parliamentary ombudsman was created in Sweden over 200 years ago, in 1809. It took over 100 years for the concept to spread, with Finland becoming the second country to establish an ombudsman in 1919, following its independence from Russia.
- But it was only after the Second World War that the institution really established itself internationally, spreading throughout Europe, Oceania, Latin America, Africa, and Asia in the second half of the twentieth century.
- One of the newest ombudsman institutions in Europe was created in Turkey in 2013. Indeed, all six candidate countries for EU membership have already established ombudsman institutions and the existence of such an institution is a prerequisite for accession to the European Union.
- Only two EU Member States do not have ombudsmen at the national level - Germany, which instead has a Federal Committee on Petitions, and Italy, which only has ombudsmen at the regional level.
- One of the essential conditions for an effective ombudsman institution is independence. Ombudsmen must be able to perform their functions independently of the bodies over which they have jurisdiction and must not receive instructions from any such body which could compromise their independence.
- Another key feature of ombudsman institutions is that they are free of charge. Complainants may submit their complaints directly, without having to hire a lawyer to assist them. This makes ombudsmen far more accessible than the courts in most countries.
- And ombudsmen are usually a much faster means of redress than the courts, with inquiries being concluded and decisions issued in less than a year in most cases.
- But perhaps the most important difference between ombudsmen and the courts is that, in most countries, ombudsmen's decisions are non-binding. Whereas courts can oblige the losing party to correct an injustice or to pay compensation, ombudsmen usually only recommend a course of action.



- Although this can initially seem like a weakness, it is actually the greatest strength of ombudsmen compared to courts.
- For while court judgements are almost always a zero-sum game, creating winners and losers, ombudsmen can enable both sides in a dispute to come out as winners, through friendly solutions to complaints, through mediation, or through apologies.
- A further important weapon in the arsenal of many ombudsmen is the possibility to launch investigations on their own-initiative. Through such investigations, systemic problems can be identified and solutions proposed to improve the service provided to all citizens, not just to those who turn to the ombudsman for help.
- But why should organisations complained against accept the friendly solutions proposed by an ombudsman, agree to mediation, or accept to pay compensation?
- The answer is very simple. The ombudsman is an institution whose success entirely depends on the extent to which it is able to establish its moral authority.
- The proposals made by the ombudsman must not only be impartial and fair, they must also be seen to be impartial and fair by both the bodies over which the ombudsman has jurisdiction and by the complainants who turn to it for help.
- The same is true with regard to the ombudsman's own-initiative inquiries. My recommendations will be accepted in such inquiries only if my moral authority to make recommendations is accepted by the institution concerned, so that even if the institution does not entirely agree with my proposal, it trusts my judgement sufficiently to agree nevertheless to heed my advice.
- Such a relationship of trust takes a long time to build, but can be destroyed in an instant if an ombudsman is perceived to have betrayed the trust placed in them, to have lacked impartiality or objectivity in reaching a conclusion, or to not be practising what it preaches.
- And the relationship of trust must be one of reciprocity. The ombudsman must trust the bodies in its jurisdiction to do the right thing once a solution has been found, unless evidence shows this not to be the case.
- You may recall the old joke: How many psychotherapists does it take to change a light bulb? One, but only if the light bulb wants to change!
- The same is true for the work of ombudsmen. It takes just one ombudsman to change an institution, but only if the institution wants to change!

The European Ombudsman



- Happily for me, the institutions that I investigate do want to change. The majority of cases where I identify a problem are resolved by the institution settling the matter or a friendly solution being agreed between the two parties. To date over 80% of the recommendations made by this office are accepted each year, with the institutions demonstrating to me how they have implemented those recommendations in the follow-up studies that I conduct. However, I have set myself and my colleagues the challenge of increasing that 80% figure as I believe that unless an Ombudsman's recommendation is demonstrably flawed it should be accepted.
- As you may know, my mandate is limited to investigating complaints alleging maladministration by the EU institutions, bodies, offices, and agencies.
- Around 60% of the inquiries that I conduct each year concern the European Commission, while our host today, the European Parliament, accounted for just 3.5% of my inquiries last year - a very low figure as of course I do not deal with the parliament acting in its political role.
- The most common subject matter of complaints is lack of transparency, and to that end I recently completed a major own initiative investigation into the transparency of the Transatlantic Trade and Investment Partnership negotiations. The Commission has already, and commendably, moved to make more records publically available and I await its response to the more detailed suggestions I have made to it in this regard.
- While almost 90% of my inquiries result from complaints from individual citizens, over 10% concern complaints submitted by companies and associations, and other legal entities.
- As I mentioned earlier, the European Consumers' Organisation (BEUC) has submitted several complaints to my office over the years. In a case that I closed last year, I upheld BEUC's complaint about the composition of Stakeholder Groups advising the European Insurance and Occupational Pensions Authority and issued several recommendations for improving future selections. I reached similar conclusions and recommendations in a case closed in 2013 following a complaint from BEUC regarding the European Banking Authority's Stakeholder Groups. If ever you have complaints regarding Stakeholder Groups in the field of energy, I would be delighted to hear from you.
- As regards DG Energy, I should say that I do not receive many complaints. In the only inquiry I closed last year concerning DG Energy, I found that the explanations provided by the Commission in the course of my inquiry were satisfactory.
- Although my office does not receive many complaints regarding EU energy policy, we are closely involved in ensuring the transparency of EU lobbying through the recommendations we have made over the years. This could well be of interest to you, given that almost half of the companies spending 2.5 million Euros or more on lobbying the EU each year are energy companies, with ExxonMobil spending close to 5 million, followed by Shell, GDF, and Total, according to the EU's Transparency Register.



The European Network of Ombudsmen

- Before concluding, I would like briefly to present the work of the European Network of Ombudsmen, which was established almost 20 years ago, in 1996, by the first European Ombudsman, Jacob Söderman.
- Very much like NEON, the Network was created to promote knowledge about EU law amongst national and regional ombudsmen in Europe, and to facilitate the exchange of best practices between members.
- The Network now comprises over one hundred national and regional ombudsmen in the EU Member States, the candidate countries for EU membership, and the other European Economic Area countries.
- The Network holds regular seminars for its members, publishes a quarterly newsletter and a daily electronic news service, has an active discussion forum, and a query service to allow all members to obtain assistance from the European Ombudsman on matters relating to EU law and policy.
- As NEON develops over the coming years, my office would be happy to share its experiences of coordinating the European Network of Ombudsmen with you, as well as its advice on how to develop an active and effective cooperation between ombudsmen.

Conclusion

- In conclusion, I believe that the added value that ombudsmen bring in providing alternative dispute resolution services to the citizens and residents of Europe is clear to see.
- As long as we always keep in mind that an ombudsman can only be as effective as their reputation allows them to be, and that our moral authority must be nurtured and protected above all else, then we can achieve outcomes that we are uniquely positioned to accomplish.
- And by working together, and sharing our experiences and best practices, we can achieve far more than is possible alone.
- I wish you every success with the development of NEON and look forward to listening to the excellent panel of speakers that you have brought together.
- Thank you very much for your attention!