



## The European Ombudsman - Good for business

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Whether you are a big multinational or an SME, and wherever in the EU you are based, you can complain to the European Ombudsman about poor or failed administration at the EU level. If you encounter problems in the framework of an EU-funded project or programme, if you are dissatisfied following contacts with the EU institutions in the context of tenders and contracts, consultation procedures, lobbying activities, or attempts to get access to important documents or information, the European Ombudsman can help.

Emily O'Reilly European Ombudsman

Problems faced by companies and business associations in dealings with the EU administration include:

- **Late payments**
- **Contractual disputes**
- **Problems with calls for tender**
- **Lack of transparency/refusal of access to documents**
- **Procedural errors**
- **Unnecessary delays**
- **Violations of fundamental rights**

In all these cases, the European Ombudsman is good for business.

This overview presents key cases submitted to the Ombudsman by companies and business associations.

### **If you are facing similar problems, we'd like to hear from you.**

Late payment by the European Commission

The Ombudsman has resolved many complaints about late payment by the Commission from companies, research centres, NGOs, universities, and other associations involved in EU-funded projects and contracts.

The Ombudsman regularly consults businesses about this problem and other bureaucratic difficulties. Every year, the Ombudsman also asks the Commission for updates about the situation and measures it is taking to resolve the problem. The Commission's successive reports point to a decrease in the number and monetary value of delayed payments. However, problems remain. For instance, the interest accruing from delays in payment has increased.

**Are you the victim of late payment or excessive Commission bureaucracy? If so, the**



Ombudsman is ready to **take action if you submit a complaint.**

Delay in dealing with infringement complaint about Spanish football clubs

Investors in European football clubs complained to the Commission that Spain is infringing EU State Aid Rules by granting unfair tax advantages to four Spanish football clubs. The Commission normally has 12 months to decide on the opening of infringement proceedings. In this case, more than four years passed without any decision. After the Ombudsman called on the Commission to act on this complaint, the Commission opened an investigation into the funding of the Spanish football clubs. The Ombudsman commended this step, stressing that it is important for the European public to see that the Commission deals rapidly with concerns about the breach of state aid rules.

**Have you experienced excessive delays or other problems relating to infringement procedures? If so, please turn to the European Ombudsman.**

Review of the Commission's Early Warning System

The European Commission's Early Warning System (EWS) allows EU officials to check whether participants in an EU call for tenders are suspected of fraud. The EU administration may block or suspend contracts or payments if the person or company concerned is listed on the EWS. The Ombudsman received several complaints about the EWS and launched an inquiry, including a public consultation. Participants criticised the fact that individuals and companies are not systematically informed about their inclusion in the EWS.

Following a recommendation from the Ombudsman, the Commission has agreed to ensure that the EWS respects fundamental rights. In particular, by guaranteeing the rights of persons or companies to be heard before they are included in the EWS, informing them of their rights to complain to the Ombudsman or to go to court, and respecting their right of access to the file.

**Have your company's rights been respected as regards the EWS? If not, the Ombudsman wants to hear from you.**

Intel complaint about an anti-trust investigation

Following an anti-trust investigation, the Commission imposed a fine of more than one billion Euro on microchip producer Intel for abuse of a dominant market position. Intel complained to the Ombudsman that during its investigation, the Commission failed to take minutes of an important meeting which it held with the computer producer Dell, which directly concerned the investigation.

The Ombudsman criticised the Commission for failing to make a proper note of that meeting, and for not including the agenda of the meeting in its investigation file. The Ombudsman recommended that, in future, proper notes should be made of any meetings or telephone calls with third parties concerning important procedural issues. The Commission improved its investigation procedures accordingly.

**Has your company been affected by administrative shortcomings in the Commission? If so, turn to the Ombudsman.**

Composition of the European Banking Authority's stakeholder group

The role of the European Banking Authority (EBA) is to ensure effective and consistent



regulation and supervision across the European banking sector. Before adopting standards, guidelines, and recommendations, the EBA is obliged to consult its Banking Stakeholder Group (BSG). The group consists of 30 representatives of the banking industry and its employees, SMEs, consumers, and users of banking services, among others. The Ombudsman has investigated several complaints about alleged geographical and gender imbalances in the BSG.

The Ombudsman's inquiries indeed identified an imbalance in the EBA's selection of industry, consumer, user, and employee representatives. In particular, the Ombudsman criticised the EBA for not ensuring a geographical balance within each category. She added that the EBA should, in future, avoid the risk that one Member State might be seen as over-represented. The Authority expressed willingness to review its approach in light of the Ombudsman's criticism.

**Are you aware of other examples of unbalanced supervisory bodies? If so, please let us know .**

Restrictive language policy for public consultations

The European Commission regularly carries out public consultations in order to allow companies, citizens, associations, and other stakeholders to participate in the EU's decision-making process. The Ombudsman investigated a complaint that the Commission publishes the documents for many such consultations only in English, and that its language policy is arbitrary and contrary to the principles of openness, good administration, and non-discrimination.

The Ombudsman concluded that the Commission's language policy is unduly restrictive and called on the institution to publish its public consultation documents in all EU languages or to provide translations upon request. In 2012, the European Parliament also adopted a resolution urging the Commission to review its restrictive language policy for public consultations. The Ombudsman's view is that European businesses cannot be expected to participate in a consultation which they are unable to understand.

**Is your voice being silenced by language discrimination ? The Ombudsman is here to listen .**

Inaccurate information about air passenger rights

Two airline associations complained to the Ombudsman that the Commission had published inaccurate and misleading information on the rights of air travellers to compensation and assistance in the event of denied boarding, cancellation of flights, or long delays. This information was contained in leaflets, posters, and a video presentation on the Commission's website.

Following the Ombudsman's investigation, the Commission withdrew the erroneous information. It supplied new information materials after consulting the stakeholders concerned, including the complainants.

**Is wrong information from the Commission hurting your company? The Ombudsman can help put it right.**



### Lack of transparency at the European Medicines Agency

The role of the European Medicines Agency (EMA) is to approve and monitor medicines placed on the EU market so as to protect public health. It receives information from the competent authorities in the Member States and from pharmaceutical companies. The Ombudsman investigated several complaints that the Agency was refusing to disclose adverse reaction reports, clinical studies, and trial reports. The Ombudsman also dealt with complaints from pharmaceutical companies about lack of transparency concerning EMA's decision-making process.

After investigating the complaints, the Ombudsman called on the Agency to disclose the requested clinical data and to provide additional clarifications so that people can easily understand the data and their significance. As a result, the Agency announced that it would release the reports, and adopted a new proactive transparency policy.

### **Have you been refused access to information that should be public? Please give the Ombudsman access to your experience!**

Ryanair complaint about confidentiality breach

Ryanair complained to the Ombudsman that the Commission had improperly disclosed to third parties highly sensitive information it had provided to the Commission in a planned merger procedure with Aer Lingus. The Ombudsman's investigation found that leaks to the press had indeed taken place and that the leaks constituted a serious breach of confidentiality, but did not find any evidence that the Commission was their source.

The Ombudsman, however, criticised the inadequate wording of the Commission's standard confidentiality declaration, which the Commission had asked Aer Lingus to sign. The declaration did not sufficiently clarify the carrier's obligation to ensure that the document remain secret. Subsequently, the Commission amended the declaration.

### **Has your company's commercial secrecy been compromised by the EU? If so, you can complain confidentially to the Ombudsman.**

If you require a large print version of this publication, please contact the European Ombudsman's office. We shall also endeavour to provide an audio version upon request.

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