

## **Putting it Right? - How the EU institutions responded to the Ombudsman in 2016**

Follow-up - 19/12/2017

### **Foreword**

I am pleased to present this year's 'Putting it Right Report' which looks into the compliance of the institutions with my decisions made in 2016. There was an 85% compliance rate in 2016, slightly increased from the 83% result we achieved in 2015.

The institutions reacted positively to 77 out of the 91 proposals I made to correct or improve their behaviour in cases closed in 2016. There were a further 132 cases where I considered that the institutions had taken steps to improve how they work. 12 out of the 14 institutions examined scored 100% while the Commission - which accounts for most cases before my Office - scored 77%.

This year there are changes in the way we try to capture the impact of our work and in the way we present it.

This is the first report to include cases closed under the new 'Implementing Provisions' (IPs). The new IPs were revised in order to allow us to handle cases in a more efficient way and aim to speed things up. The primary focus is on ensuring that the inquiry measures used reflect the specific needs of each inquiry. Furthermore, they provide the Ombudsman with more flexibility as regards obtaining information or documents. The new IPs make it easier and quicker to find solutions that eliminate maladministration and seek to ensure that recommendations are normally used to deal with all findings of maladministration before an inquiry is closed. In the context of measuring compliance, the new IPs have brought changes in the terminology we use.

Moreover, this is the first report not to be accompanied by an Annex. In the past, the Annex included summaries of all cases closed in the relevant year. We have now decided to include in the text of the present report only summaries of selected 'star cases'.

We have also introduced sections which illustrate the impact of our work in areas that are not reflected by the compliance rate, such as the strategic initiatives.

Although I am pleased to note that the compliance rate remains high, I would like to repeat that



every refusal by an institution to comply with a proposal by the Ombudsman should be seen as a missed opportunity to address administrative shortcomings.

Emily O'Reilly

December 2017

## **Report**

# **1. Introduction**

This report describes the extent to which the EU institutions [1] responded to proposals made by the Ombudsman in 2016. These proposals come in the form of solutions, recommendations, suggestions/further remarks and critical remarks.

Section 3 (below) on the impact of the Ombudsman's work explains what Ombudsman solutions, recommendations, suggestions/further remarks, and critical remarks/findings of maladministration entail. The new IPs [2], which entered into force on 1 September 2016, affect to a certain extent the use we make of these terms. By way of example, the terms 'further remarks' and 'critical remarks' will no longer be used. We explain all the changes below in the relevant parts of the section. A number of inquiries in this report were closed after the date of entry into force of the new IPs. The new terminology was therefore used in these cases.

Section 3 also describes the impact of the Ombudsman's work in other cases; where the case is settled by the institution or where the Ombudsman decides to launch a strategic initiative.

In the past, this report was published along with an annex summarising the cases in which solution proposals, recommendations, critical remarks, and further remarks were accepted. From this year, we will no longer publish an annex. However, you will find in the present report summaries of the cases warranting special mention as 'star cases' for each category of follow-up.

# **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. 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 [4] ('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. 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 [5] . The Ombudsman's new IPs make it easier and quicker to find solutions that eliminate maladministration.

#### **b. Recommendations**

The new IPs state 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 a finding of maladministration. If the recommendation is accepted, the Ombudsman will close the case as settled by the institution concerned.

#### **c. Suggestions and further remarks**

The new IPs replace the concept of 'further remarks' with the clearer and more useful concept of 'suggestions for improvement', which seek to ensure systemic improvement in the EU administration. Like further remarks, the suggestions for improvement are not premised on a finding of maladministration and do not imply censure of the institution to which they are addressed.

#### **d. Critical remarks and findings of maladministration**

In the past, the Ombudsman used the term 'critical remark' whenever she closed a case with a finding of maladministration. A critical remark informed the institution of what it had done wrong in the specific case. The remark identified the rule or principle that was breached and (unless it was obvious) explained how the institution should have acted in the context of the case. The institution reported back within six months, if so requested by the Ombudsman.

The new IPs replace 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.

## e. Cases settled by the institutions

The Ombudsman can close an inquiry at an early stage without proposing a solution if the institution spontaneously settles the complainant's case in the course of the inquiry.

### **Case 253/2016/MDC: Refusal of the European Commission to accept certain items of expenditure as eligible costs under the terms of a Grant Agreement**

The complainant was the coordinator of a project co-funded by the Commission in the context of a grant agreement. However, after successful completion of the project, the Commission notified the complainant that many of the costs incurred under the project relating to staff, travel and consultancy expenses, were ineligible.

The complainant claimed the Commission's decision was unfair. The Ombudsman opened an inquiry and asked the Commission to reply to the complainant's allegations. As regards the staff costs, the Commission noted that the complainant should have informed it of the significant increase of workload of some of his staff members and that he had ample time to do so. Concerning the travel and per diem costs, the Commission considered that the practices, which the complainant claimed were in line with its usual practice, were not documented or sufficiently proven.

However, in relation to the rejected consultancy costs, the Commission stated that it was ready to reconsider its position because of the complainant's explanations, which indicated that the wrong classification of these costs was due to a genuine error. **The Ombudsman is pleased that the Commission reconsidered its position.**

## f. Strategic initiatives

The Ombudsman may also choose to pursue strategically important topics without launching an inquiry, by opening a so-called 'strategic initiative'. The purpose of these strategic initiatives is to share suggestions with the institutions on important topics, to draw attention to matters of public interest and to find out more about a particular issue before deciding whether it is necessary to open an inquiry. In 2016, the Ombudsman launched 10 strategic initiatives.

### [SI/5/2016/EA \[Link\]](#): **Transparency of the Eurogroup**

In March 2016, the Ombudsman wrote to the Eurogroup President to welcome his initiative to table a number of proactive transparency measures, some of which the members of the Eurogroup had already agreed to. This letter was followed by a further exchange of correspondence between the Ombudsman and the Eurogroup President during 2016.



In this correspondence, the Ombudsman raised issues, such as the handling of requests for access to Eurogroup documents, including documents not held by the EU institutions, and the transparency of groups involved in the preparation of Eurogroup meetings, notably the Eurogroup Working Group (EWG). The Ombudsman noted that her Office was not able to identify any official

document relating to the EWG's Rules of Procedure, and that, while the 'Eurogroup Working Methods' presumably make reference to the EWG, this document did not seem to be public either.

The Eurogroup President clarified that requests for access to Eurogroup documents will be dealt with by the EU institution holding the relevant documents or will be redirected to the relevant national institution and handled in accordance with the national legislation on transparency. In 2017, the 'Eurogroup Working Methods' were published on the Eurogroup's webpage.

## **4. How the institutions responded to the Ombudsman in 2016**

### **a. Solution proposals and recommendations accepted in 2016**

In 2016, the EU institutions accepted a total of 9 solution proposals. One solution proposal was rejected by the Commission. [6]

In 2016, the EU institutions also accepted or partially accepted a total of 14 recommendations. [7] Two recommendations were rejected by the Commission and two were rejected by the European Personnel Selection Office (EPSO) [8], although the institutions provided a positive follow-up to the subsequent critical remarks in 3 cases. The other case concerning the Commission resulted in a finding of maladministration.

#### **Institution**

#### **Solutions**

#### **Accepted**

#### **Recommendations accepted**

European Parliament

1

Council of the European Union

5



1

European Commission

6

6

European Personnel Selection Office (EPSO)

4

European Anti-Fraud Office (OLAF)

3

Fundamental Rights Agency (FRA)

1

Research Executive Agency (REA)

1

**Total**

**9**

**14**

**Case 946/2014/PL: The language policy of the Fundamental Rights Agency (FRA) as regards its website and publications**

The complainant, a Spanish citizen, asked the FRA for information on its language policy concerning the use of official languages on its website, in particular as regards publications. He noted that most publications were available in English and French only and sometimes German and Italian. The FRA explained that the different treatment of official languages was due to budgetary and human resources restrictions, as well as to the time required to complete the translation process.

The Ombudsman considered that limited human and financial resources were an insufficient justification for the FRA's practices as regards the translation of its publications. The Ombudsman was pleased to see that the FRA had undertaken to provide a static portal page containing basic information about the FRA in all languages. Although under certain



circumstances translating all documents into all official languages of the EU would be disproportionate, the Ombudsman noted that there were less onerous means to ensure, as far as possible, that citizens have access to publications in their own language. She therefore proposed that the FRA should define and publish a clear policy as regards the EU languages in which its publications are to be made available.

**The Ombudsman was pleased to see that the FRA accepted her solution. The FRA currently has an online language policy and a publications policy available on its website. In addition, the FRA has also put measures in place to ensure that publications are translated in as many languages as possible.**

**Case 1398/2013/ANA : The European Commission's refusal to give access to documents relating to the US Foreign Account Tax Compliance Act ('FATCA')**

A Member of the European Parliament (MEP) made a request for public access to the documents held by the Commission about negotiations between certain EU Member States and the USA on the consequences of the FATCA, US legislation that requires financial institutions outside the US to report to the Internal Revenue Service about their clients.

The Commission gave full or partial access to several documents while refusing access to others. The Commission considered part of the MEP's request to be very broad and asked her to narrow the scope of the request. The MEP was dissatisfied with the Commission's position and turned to the Ombudsman.

The Ombudsman recommended that the Commission make a new attempt to define the scope of the requested documents and, eventually, to decide whether these documents should be given without undue delay. In turn, the Commission identified the number of documents covered by the request, carried out an assessment and disclosed many of these documents. **The Ombudsman acknowledges that the Commission followed her suggestion and made considerable efforts to implement this recommendation.**

The Ombudsman also recommended that the Commission re-examine the request for access to the non-disclosed documents with a view to granting

broader public access. The Commission either gave access to additional documents or provided more detailed and convincing explanations for its refusal to do so. **The Ombudsman examined the Commission's decision and considers that it is correct.**

**Case 852/2014/LP : The European Commission's compliance with the Tobacco Control Convention**

This case concerned the Commission's failure to meet its obligation under Article 5(3) of the World Health Organisation (WHO) Framework Convention on Tobacco Control ('the Convention'), to which the EU is a party. The complainant, the NGO Corporate Europe Observatory, argued specifically that the Commission, with the exception of its



Directorate-General for Health (DG Health), was not proactively making public all information on meetings with the tobacco industry.

The Ombudsman opened an inquiry and found that the Commission's current practice (with the exception of DG Health) was unsatisfactory and inadequate. The Ombudsman's view was that Article 5(3) of the Convention, and the Guidelines giving effect to it, require that public bodies take a proactive approach, rather than a reactive or passive one, to ensure transparency when interacting with the tobacco industry. She also considered that the transparency obligation covers any meetings between the Commission's Legal Service and the tobacco industry. She did not either see why the transparency requirements should apply only to the Commission's most senior officials. The Ombudsman thus recommended to the Commission to proactively publish online all meetings with tobacco lobbyists, or their legal representatives, as well as the minutes of those meetings and that this policy apply to all Commission officials, irrespective of their seniority.

In its reply, the Commission maintained its initial position that it does not need to extend DG Health's proactive practice to the rest of the Commission. In its view the current general ethical and transparency rules were enough to prevent undue influence from the tobacco industry and ensure compliance with the Convention.

**The Ombudsman strongly regrets that the Commission failed to avail of the opportunity to set standards which comply with the requirements of Article 5(3) and ensure that a proactive transparency policy regarding meetings with tobacco lobbyists applies across all Commission services and staff. She therefore closed the case with a finding of maladministration, emphasising that the Commission had not provided any good reasons for refusing to take the steps proposed by her office.**

## **b. Follow-up to critical remarks and suggestions/further remarks made in 2016**

In 2016, 16 critical remarks were made in 11 decisions, while 47 suggestions/further remarks were made in 26 decisions. [9] A single decision may contain more than one remark, and both critical remarks and suggestions/further remarks may be included in the same decision.

The suggestions for improvement have been used by the Ombudsman mostly in her decisions closing own-initiative inquiries.

The institutions were invited to respond to the remarks/suggestions within a period of six months. Responses were received to all the remarks/suggestions made in 2016, although with a delay in some cases.

### **i) Follow-up to critical remarks made in 2016**





The follow-up to critical remarks was 63%. This is much higher than last year' rate of 41%, which was a record low. The highest figure recorded to date, as regards positive follow-up to critical remarks, has been the rate of 88% in 2014. A review of the institutions' responses to critical remarks suggests that, even after an inquiry has ended, some continue to contest the Ombudsman's findings and to reiterate the arguments they have put forward during the inquiry. While it is in some way possible to understand that, having faced public criticism by the Ombudsman, an institution finds it hard to follow-up constructively, it is important that institutions are willing to learn lessons from Ombudsman inquiries and seek to reduce the risk of similar problems arising in future.

## **Institution**

### **Critical**

### **remarks**

### **Satisfactory replies**

### **% of**

### **satisfactory replies**

European Commission

10

5

50%

European Personnel Selection Office (EPSO)

3

2

67%

European Centre for Disease Prevention and Control (ECDC)

2

2

100%

9



Eurojust

1

1

100%

**Total**

**16**

**10**

**63%**

**Case 2063/2014/PMC : The European Commission's transfer of the complainant's personal data to a third party without his consent**

The case was about the Commission's allegedly unlawful disclosure of the complainant's name to his employer without his consent. The Commission did so in order to verify that the complainant actually existed, for the purposes of dealing with his request for public access to documents. Given the particularly invasive nature of the measure taken by the Commission, which could have caused the complainant reputational damage vis-à-vis the organisation for which he worked, the Ombudsman made a finding of serious maladministration and closed the case with a critical remark.

Following the Ombudsman's critical remark, the Commission acknowledged that contacting the complainant's employer without informing him beforehand may not have been appropriate. It apologised. The Commission added that confirming an individual's identity is not a practice applied regularly.

**The Ombudsman notes the Commission's acknowledgment that its action in this case was not appropriate.**

**Case 1409/2014/MHZ : European Commission agrees to carry out an in-depth human rights impact assessment in ongoing or upcoming trade negotiations with countries of the Association of Southeast Asian Nations (ASEAN)**

The case concerned whether the Commission should have carried out a human rights impact assessment in the context of its negotiations to conclude a free trade agreement (FTA) with Vietnam. The Commission considered that such an assessment was not necessary, noting that a sustainability impact assessment (SIA) had already been carried out in 2009 on a proposed EU/ASEAN free trade agreement, which included Vietnam. The Ombudsman found that the



Commission's failure to carry out a specific human rights impact assessment constituted maladministration. She recommended that the Commission carry out such an assessment without further delay. The Commission refused and the Ombudsman closed the case with a critical remark.

In its follow-up reply, the Commission maintained that it was justified in not carrying out an *ex ante* human rights impact assessment due to the specific timing of the negotiations. At the same time, the Commission agreed that systematic *ex ante* analysis of all likely impacts on human rights “*is a key element of better trade policy making*”. The Commission informed the Ombudsman that, in April 2016, DG Trade had published a revised version of the SIA Handbook, which now contains a particular focus on ensuring that an in-depth analysis of the impacts on human rights is carried out. The Commission also committed in the *Trade for All* communication to further enhance the analysis of the impact of trade policy on human rights in both impact assessments and *ex post* evaluations, based on DG Trade's recently developed guidelines.

The Commission further explained that the analysis to assess the impacts on human rights had been expanded and strengthened. To support this, the Commission pointed towards the draft final report of the SIA in support of the EU Myanmar investment protection agreement negotiations, which was published for comments on 18 March 2016. A SIA with a human rights impact assessment was also being prepared for negotiations with the Philippines and

Indonesia. The Commission reassured the Ombudsman that the same would apply if negotiations were to be resumed with Malaysia and Thailand and similarly with India. Finally, the Commission stated that it was convinced that the promotion of human rights needed to be undertaken primarily through engagement and dialogue in order to ensure the greatest impact.

**The Ombudsman agrees with the Commission that *ex ante* human rights impact assessments are a key element of better trade policy making. She welcomes the series of measures announced in the Commission's reply, which should help ensure that the risk of the maladministration identified in this case reoccurring is minimised.**

## **ii) Follow-up to suggestions/further remarks made in 2016**

The follow-up to suggestions/further remarks was satisfactory in 94% of cases. This is higher than last year's rate of 92%. The highest figure recorded to date, as regards positive follow-up to further remarks, has been the rate of 100% in 2008.

### **Institution**

### **Suggestions/ further remarks**

### **Satisfactory replies**



**% of**

**satisfactory replies**

European Commission

22

19

86%

Court of Justice of the European Union

3

3

100%

European External Action Service (EEAS)

2

2

100%

European Economic and Social Committee (EESC)

1

1

100%

European Personnel Selection Office (EPSO)

9

9

100%

European Anti-Fraud Office (OLAF)

12



2

2

100%

European Centre for Disease Prevention and Control (ECDC)

1

1

100%

European Medicines Agency (EMA)

5

5

100%

European Network for Information Security (ENISA)

2

2

100%

**Total**

**47**

**44**

**94%**

**Case [OI/8/2015/JAS \[Link\]](#): Transparency of trilogues**

This strategic inquiry concerned the transparency of trilogues, informal negotiations between representatives of the European Parliament (Parliament) and the Council of the European Union (Council) and assisted by the Commission aiming at reaching agreement on proposed legislation.

13



The Ombudsman examined which information could be made proactively available, and at what point in time, to increase the accountability of and the public participation in EU law-making. In her closing decision, the Ombudsman made eight proposals as to how to enhance the transparency of trilogue negotiations.

The Parliament, Council and Commission replied that they had initiated discussions on making more information publicly available, including a trilogue calendar, trilogue agendas, the political decision-makers involved and the institutions' negotiation mandates. A dedicated joint legislative database, to be established based on the 2016 Inter-institutional Agreement on Better Law-making, could provide such information in an easily accessible way.

Regarding the Ombudsman's proposals on the publication of key documents produced during trilogues, the institutions stated that they would have to wait for the Court of Justice's ruling in the related on-going case *De Capitani v Parliament* (T-540/15).

**The Ombudsman welcomes the commitment of the Parliament, Council and Commission to initiate discussions on the implementation of her proposals. She specifically encourages their initiative to create a joint legislative database and will follow up on its development.**

**Case [OI/10/2015/NF \[Link\]](#): EPSO's procedure for dealing with requests for review made by candidates in open competitions**

This own-initiative inquiry concerned EPSO's handling of requests for review made by unsuccessful candidates in selection competitions. In particular, the inquiry focused on delays by EPSO in responding to candidates' review requests. The purpose of the inquiry was to establish if there were systemic issues giving rise to the delays and, if so, to help EPSO bring about improvements to the procedure. The Ombudsman closed her inquiry with six suggestions for improvement.

Regarding the suggestion that EPSO provide better support to selection boards so that they can give more detailed reasons for their decisions on requests for review, EPSO introduced a new template for recording selection board decisions at the admission stage and has enhanced its training programme for selection board members. EPSO is further reflecting on how to improve its guidance on recording selection board decisions.

EPSO has put in place a new IT system, which has had a positive impact on the efficiency of its processing of requests for review, and it now uses teleconference technology to conduct selection board review meetings.

As suggested by the Ombudsman, EPSO now systematically estimates the number of requests for review it expects to receive in ongoing competitions, with a view to being able to allocate sufficient resources to their handling.



The fourth and fifth suggestions were about ensuring that clear and accurate information about the request for review procedure is provided to candidates. EPSO now informs candidates of expected delays and of the fact that it gives priority to sending out replies to successful requests. EPSO has also updated

and expanded its online FAQ webpage with more information on complaint procedures.

**The Ombudsman welcomes the range of actions initiated by EPSO with a view to putting in place her suggestions for improvement.**

**Case [OI/11/2015/EIS \[Link\]](#): Timeliness of payments by the Commission**

This inquiry concerned the timeliness of payments made by the Commission under direct and indirect management, with an emphasis on payments to private contractors and beneficiaries. It followed four inquiries on the same subject matter.

The aim was to gather statistical data concerning the Commission's late payments and to assess both the causes of these delays and the remedial measures taken by the Commission. The Ombudsman closed her inquiry with two suggestions, encouraging the Commission to pursue its efforts in specific areas and to publish additional information in its annual activity reports.

In its reply, the Commission emphasised that there had been an overall improvement in its management of the payment process in 2016. It stated that this resulted in particular from a more rigorous monitoring of invoices and payment claims, through the development of online reporting tools, and from parallel analysis of reports by operational and financial agents with common deadlines. The Commission also pointed out that it had tabled a proposal for the revision of the Financial Regulation in 2016 and introduced provisions encouraging a more extensive use of simplified grant forms.

As regards the suggestion to include information about the Commission's gross payment time, which is the time beneficiaries must wait before receiving a payment, the Commission agreed to publish this information as from 2017.

**The Ombudsman welcomes the steps taken by the Commission in relation to its payment process. She applauds the Commission for its efforts, which led to the improvement of its statistics on the management of late payments and payment suspensions in 2016.**

### **iii) Follow-up to remarks/suggestions made in 2016**

Taking critical remarks and suggestions/further remarks together, the rate of satisfactory follow-up was 86%. This is higher than last year's rate of 81%, and down from 2014's record high of 94%.



## Institution

### Critical remarks and suggestions/ further remarks

### Satisfactory replies

% of

### satisfactory replies

European Commission

32

24

75%

Court of Justice of the European Union

3

3

100%

European External Action Service (EEAS)

2

2

100%

European Economic and Social Committee (EESC)

1

1

100%

European Personnel Selection Office (EPSO)

12

16





11

92%

European Anti-Fraud Office (OLAF)

2

2

100%

European Centre for Disease Prevention and Control (ECDC)

3

3

100%

European Medicines Agency (EMA)

5

5

100%

European Network for Information Security (ENISA)

2

2

100%

Eurojust

1

1

100%

17



**Total**

**63**

**54**

**86%**

### c. Rate of overall compliance by institution in 2016

The overall figure in terms of compliance with the Ombudsman's proposals in 2016 is 85%. The institutions reacted positively to 77 out of the 91 proposals that the Ombudsman made to correct or improve their behaviour. [11] The rate of compliance is based on the number of positive replies to the solution proposals, recommendations, critical remarks, suggestions/further remarks made in cases closed in 2016. There were a further 132 cases where the Ombudsman considered that the institutions had taken steps to improve how they work.

As is clear from Table 5 below, the compliance rate varies from one institution to another — from 100% in many cases to 77% in the worst instance. 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.

**Institution**

**Solutions,**

**recommendations, remarks and suggestions**

**Satisfactory replies**

**% of**

**Satisfactory replies**

European Parliament

1

1 100%

Council of the European Union

1

18



1 100%

European Commission

47

36 77%

Court of Justice of the European Union

3

3 100%

European External Action Service (EEAS)

2

2 100%

European Economic and Social Committee (EESC)

1

1 100%

European Personnel Selection Office (EPSO)

18

15 83%

European Anti-Fraud Office (OLAF)

5

5 100%

European Centre for Disease Prevention and Control (ECDC)

3

3 100%

19



European Medicines Agency (EMA)

5

5 100%

European Network for Information Security (ENISA)

2

2 100%

Fundamental Rights Agency (FRA)

1

1 100%

Eurojust

1

1 100%

Research Executive Agency (REA)

1

1 100%

**Total**

**91**

**77 85%**

## 5. Conclusion

This report constitutes an annual effort to measure compliance with the Ombudsman's proposals from a statistical point of view. However, in the case of some of the Ombudsman's work, the impact cannot be measured in conventional ways. For example, this is the case with the Ombudsman's strategic initiatives, through which she engages in a constructive dialogue with the institutions on important topics. This could also include a number of cases settled by the institutions every year, following an intervention by the Ombudsman, which does not take



the form of a solution, recommendation, remark or suggestion. This year, we added such examples in the report, so as to illustrate in a better way the Ombudsman's impact. Moreover, there are cases where compliance with the Ombudsman's proposals may come somewhat later than the year during which the inquiry was closed.

We should bear in mind that the essential change is a change in institutional culture. It is difficult to pinpoint when a significant change in culture becomes embedded. The Ombudsman is aiming to achieve this cultural change. Her continuous impact on good administration is not necessarily reflected in compliance rates.

[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] 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] 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.

[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] In one case, the institution rejected a solution proposal but accepted the subsequent recommendation. In order to avoid double counting, the statistics include only the recommendation in this case and not the solution proposal.

[7] We have partial acceptance of the recommendation when the institution has genuinely responded to central points in the recommendation in a constructive manner.

[8] In one case, the institution rejected a recommendation and subsequently failed to follow up satisfactorily to the critical remark. Again, to avoid double counting, only the negative follow-up to the critical remark is included in the statistics.

[9] The statistics in this report do not include:

i) The four suggestions made in the decision closing joint inquiry into cases 1853/2013/TN & 2077/2012/TN, as they will be examined under the Ombudsman's ongoing own-initiative inquiry into the Commission's management of 'revolving doors' situations concerning EU staff



(OI/3/2017/AB),

ii) Two of the suggestions regarding the transparency of trilogues (OI/8/2015/JAS), as the relevant institutions are waiting for a ruling of the Court of Justice in order to provide a follow-up.

[10] For the purposes of the statistics in this report, the suggestions regarding the transparency of trilogues (OI/8/2015/JAS) appear to be addressed only to the Commission. However, the inquiry concerned three institutions; the Council of the European Union, the European Parliament, and the Commission.

[11] See footnotes 6-8, 9-10 above.