European Ombudsman

Putting it Right?

Annex

Detailed analysis of the responses to the Ombudsman's remarks, recommendations and proposals in 2014

December 2015

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A. Star cases

Case 364/2013/PMC: European Medicines Agency's (EMA) refusal to grant a marketing authorisation for a non-prescription medicine

The complainant is a UK-based pharmaceutical company. It applied to EMA for a marketing authorisation for a non-prescription medicine intended for the relief of migraine attacks. EMA refused the marketing authorisation for a number of reasons, including concerns about a high risk of cerebrovascular (brain) and cardiovascular (heart) side effects as well as potential misuse and overuse. The complaint to the Ombudsman alleged that EMA had made procedural errors and manifest errors of assessment.

After an inquiry, the Ombudsman found no maladministration. In particular, EMA had adequately explained why it did not accept the conclusions of a bioequivalence study, submitted by the complainant in support of its application and on the basis of which a few Member States had granted marketing authorisations. The closing decision suggested that EMA inform both the Commission and those Member States in which medicines identical or similar to the one at issue in the present case were granted marketing authorisations, of its findings as regards the bioequivalence study. EMA replied that it informed the Commission of the Ombudsman's decision in this case. The Commission informed the Member States in October 2014 and all the relevant marketing authorisations were withdrawn.

The Ombudsman welcomes EMA’s follow-up action to ensure consistent treatment of the bioequivalence study in the EU, which ultimately led to important action being taken to safeguard public health.

Case 443/2011/ER: Unfair refusal to accept a request for final payment following the termination of a contract

The complainant is an Italian company. In 2008, it entered into a Grant Agreement with the Executive Agency for Competitiveness and Innovation (now the Executive Agency for Small and Medium-sized Enterprises) within the framework of the EU's Marco Polo II programme, which supports actions aimed at transferring freight from transport by road to other, more environmentally friendly, means of transport.

The action proposed by the complainant concerned exports by the Italian ceramic industry to Spain and was awarded a grant of up to EUR 4 million. However, due to the global economic crisis and the sudden decline of the Spanish housing market, demand for transporting ceramics from Italy to Spain decreased dramatically after the Grant Agreement was signed. Consequently, the EACI accepted the complainant's request to suspend the implementation of the action. In June 2010, given that the complainant had not been able to resume the project, it terminated the Grant Agreement and informed the complainant that it had 60 days to submit a final report and to request a final payment. The complainant did not submit a request for a EUR 2 million final payment until January 2011. In the EACI's view, this was too late.

In its complaint, the complainant alleged that the EACI had acted unfairly. The complainant argued that the delay in submitting the request for final payment was justified by its attempts, made in good faith, to resume the action and that, in the absence of a final report, the EACI should at least have based itself on the figures resulting from an interim report submitted to it in October 2009. In its opinion, the EACI took the view that it had fully complied with the provisions of the Grant Agreement.

The Ombudsman recalled that the notion of good administration is broader than that of legality. The Ombudsman stressed that although the EACI was not legally obliged to do so, the Grant Agreement did not prevent it from accepting late requests for final payment. In light of (i) the particularly severe impact that the economic crisis had on the complainant's project, and (ii) the fact that the EACI had already approved the interim report submitted in October 2009, the Ombudsman took the view that the Agency's decision to reject the complainant's request for final payment was not entirely fair. The Ombudsman therefore made a proposal for a solution, inviting the EACI to assess the complainant's request for a EUR 2 million final payment on the basis of the complainant's interim report of October 2009. The EACI accepted the proposal and the Ombudsman closed the case.

Case 299/2014/TN: Improved procedures for persons with disabilities wishing to become freelance interpreters

The complainant alleged that he had been discriminated against by the European Commission, on the basis of his disability, when taking the test to work as a free-lance interpreter for the EU institutions. The Ombudsman found that the Commission had acted reasonably towards the complainant by offering him two opportunities to sit the tests under conditions that took into account his disabilities. The case was therefore closed with a finding of no maladministration.

However, with the aim of further improving the treatment of candidates with disabilities, the Ombudsman made two further remarks. The first stated that the Commission should, when inviting an applicant with special needs for a test, contact the applicant as soon as possible to get a full understanding of his or her needs and to discuss possible technical solutions related thereto. The second asked whether a question about applicants' special needs had been included in the online registration form, as suggested by the Ombudsman in a decision on an earlier case.

The Commission replied that the online form to register for the freelance interpreter test now features a space for notifying the Test Office about special needs. Furthermore, a protocol has been implemented according to which the Test Office always contacts applicants with special needs in order to come to a mutual understanding about the procedures for the test.

The Ombudsman welcomes the measures taken by the Commission to make freelance interpreter tests more accessible for persons with disabilities.

B. Solutions accepted

1. European Commission

Case 2232/2011/FOR: Access to Common Fisheries Policy documents

The case concerned the European Commission's handling of requests for public access to documents relating to the Commission's proposal for a new regulation on the Common Fisheries Policy.

The Ombudsman inquired into the issue and found that the Commission was not entitled to deny the complainant, a German academic working in the area of transparency of EU public bodies, public access to the documents. The Ombudsman thus made a proposal for a solution calling on the Commission to disclose the documents. The Commission agreed to the Ombudsman's proposal and released the documents. The Ombudsman then closed the inquiry.

Case 2099/2012/JN: Recovery of an EU contribution paid without justification

The complaint in this case was that the European Commission had behaved unfairly in seeking to recover some of the financial support for an EU-funded project. The complainant was a not-for-profit organisation and it said that it was not possible for it to meet the recovery terms as set by the Commission. Having considered the complaint, made in October 2012, the Ombudsman made a proposal to the Commission for a friendly resolution of the issue. The Ombudsman proposed that the Commission should extend the time period over which the money was to be repaid by the complainant and, also, that the Commission should consider waiving the requirement that the complainant put in place a guarantee to cover the amount to be repaid. The Commission accepted this proposal.

Case 2465/2012/PMC: Failure to reply - access to documents

The complainant was the leading partner and contractor of an EU managed project aimed at supporting democratisation and transition to a market economy in Armenia. It asked the European Commission for access to certain documents concerning this project. After the Commission had provided access to a set of documents, the complainant wrote to the Commission pointing out that most of them were already in its possession and that it expected to receive "other kinds of documents which are part of the project dossier". The complaint to the Ombudsman was about the failure of the Commission to deal with this second request as an official request for review, or as a so-called confirmatory application. The Commission took the view that the complainant had not made a confirmatory application but, rather, had made a new request for access.

The Ombudsman did not accept this view, agreeing with the complainant that the Commission should have considered its follow-up letter as a confirmatory application for access. She therefore made a solution proposal, inviting the Commission to deal with this confirmatory application.

The Commission accepted her proposal and replied to the complainant's confirmatory application for access to documents. The Ombudsman thus decided to close her inquiry.

Case 2478/2012/RT: Failure to extend the validity of a reserve list

In 2002, the complainant successfully sat the tests for an internal competition in the European Commission and his name was included in the reserve list of the competition. No validity period was initially indicated for the reserve list. Subsequently, the Commission decided to end the validity on a specific date and informed by e-mail all the successful candidates of the competition except the complainant. As the complainant had, in the meantime, been selected for a post on the basis of the list, he asked the Commission to allow, exceptionally, an extension of the validity of the reserve list in his case. When the Commission refused, the complainant turned to the Ombudsman.

In its opinion, the Commission acknowledged the technical error which prevented the complainant from being directly informed, at the same time as the other persons concerned, of its decision to end the validity of the reserve list for the competition.

The Ombudsman found that the Commission's error could not be counterbalanced by the fact that the Commission's decision was disseminated via other means of communication and made a solution proposal, suggesting that the Commission could exceptionally extend the validity of the reserve list of the competition with regard to the complainant and grant him sufficient time to be able to plan his career.

The Commission accepted the Ombudsman's proposal. The Ombudsman therefore decided to close the case.

Case 1215/2013/JF: Conflicts of interest in the selection of observers for EU Election Observation Missions

The case concerned alleged conflicts of interest in the selection of observers for EU Election Observation Missions. The complainant had learnt that the European Commission allowed that members of national Focal Points, that is, the bodies responsible for pre-selecting observers, be pre-selected as observers themselves.

The Ombudsman made a solution proposal to the Commission suggesting that it develop a procedure for appointing members of Focal Points as observers for EU Election Observation Missions which is separate from that applicable to external candidates. The Commission agreed and the complainant was satisfied with the outcome.

Cases 1510/2011/EIS and 1562/2012/JF

A further two Commission cases were resolved when the Commission accepted the Ombudsman's proposal for a solution, namely case 1510/2011/EIS involving a researcher position that was allegedly offered to the complainant via telephone but finally given to someone else and case 1562/2012/JF which involved the Commission's initial rejection of a request for convalescent cure.

2. European Investment Bank (EIB)

Case 863/2012/FOR: Public access to a document relating to the protection of the environment

The complaint concerned the EIB's refusal to grant a NGO, CEE Bankwatch, public access to a document containing the EIB's global greenhouse gases footprint assessment methodology. That methodology had been used by the EIB in relation to a coal-fired electricity generation plant located in Poland, which was in the process of obtaining funding from the EIB. The complainant's request arose in the context of its efforts to determine the extent to which that project complied with the EIB's screening criteria for new coal power plants.

The Ombudsman found that Article 6(1) of the Aarhus Regulation requires the EU institutions and bodies to carry out a balancing exercise in order to determine whether the public interest in access to environmental information, which always exists, overrides any interests in non-disclosure. The Ombudsman also noted, in relation to the EIB's argument that the methodology in question was "work in progress", that the EIB had applied the methodology in carrying out its appraisal of the project in Poland. The Ombudsman's preliminary view was that the EIB was wrong to invoke the exception in Regulation 1049/2001 pertaining to the protection of the institution's decision-making process. The Ombudsman thus proposed that the EIB consider granting full access to the requested document. The EIB, in response to the Ombudsman's suggestion, agreed to disclose the document. The Ombudsman thus closed the case.

3. European Data Protection Supervisor (EDPS)

Case 1010/2012/JF: Handling of a request that the text of a decision be amended

This case concerned a former member of staff of an office of the European Union, who was President of the Selection Board of an internal competition organised by that office. He turned to the Ombudsman alleging that the EDPS had failed properly to follow-up on his request that an EDPS Decision should be corrected. The EDPS accepted the Ombudsman's solution proposal. By agreeing to issue the necessary corrigendum and to distribute it to all parties concerned, and by taking the initiative to apologise to the complainant, the EDPS demonstrated respect for the principles of fairness and good administration.

4. European Personnel Selection Office (EPSO)

Case 1140/2011/DK: Allegedly erroneous questions in a staff selection competition

The case concerned allegedly erroneous questions put to the complainant in a staff selection competition. EPSO argued that it was not obliged to review its decision as the complainant's request for review was formulated in 'general terms' (the complainant identified allegedly erroneous questions without specifying why they were erroneous).

The Ombudsman noted that EPSO no longer allows candidates to take the test papers away from the examination or even to take notes during the tests. In these circumstances, the Ombudsman found it reasonable that the complainant could not specify in more detail why he considered certain questions to be erroneous. The Ombudsman therefore considered it appropriate to ask EPSO, in a proposal for a solution, to request the Selection Board to verify the allegedly erroneous test questions identified by the complainant.

EPSO accepted the Ombudsman's proposal and asked a panel of three experienced permanent selection board members to examine the contested questions. The panel carefully examined these questions and concluded, unanimously, that none of the questions was defective.

Cases 514/2012/DK and 2045/2012/DK: Exclusion from an open competition

Both cases concerned candidates' exclusion from a staff selection procedure on the basis of a "Talent screener".

In two separate solution proposals, the Ombudsman asked EPSO to request the Selection Board to examine the complainants' answers, and to admit them to the next phase of the competition should the Selection Board conclude that they had reached the pass mark.

EPSO accepted the Ombudsman's proposals and undertook to ask the Selection Board to assess the complainants' answers.

5. Education Audiovisual and Culture Executive Agency (EACEA)

Case 108/2013/JN: Unlawful recovery of funds for an EU funded project

The complainant is a British charitable organisation. The case concerned the lawfulness and fairness of the recovery by the Education, Audiovisual and Culture Executive Agency of funds paid to the complainant in the context of an EU funded project.

The Ombudsman inquired into the issue and took the view that the recovery was unlawful because the Agency missed the relevant time limit for rejecting the project. The Ombudsman made two solution proposals. The Agency ultimately accepted the Ombudsman's proposals and undertook to pay the complainant EUR 49 467.21, as well as interest for late payment. This case is of legal interest for its setting out of the Ombudsman's position on the consequences of administrative silence in a contractual relationship.

6. Executive Agency for Small and Medium-sized Enterprises (EASME)

See Case 443/2011/ER above under 'Star cases'

7. Research Executive Agency (REA)

Case 1851/2012/OV: Payment dispute between an expert and the Research Executive Agency

The case concerned a disagreement between an expert and the Research Executive Agency (REA) about the number of working days for which he could claim payment. The Ombudsman made a solution proposal, asking the REA: (i) to pay the complainant for the working days he claimed, and (ii) to make the Specific Conditions annexed to experts' contracts perfectly clear with regard to future payments. The REA did so.

C. Recommendations accepted

1. European Parliament

Case 262/2012/OV: Public access to minutes of Committee Coordinators' meetings

The complainant made a request for public access to the minutes of meetings of Coordinators of several Committees of the European Parliament relating to the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA). Parliament replied that, with some exceptions, no separate minutes of the meetings of Committee Coordinators exist, and that these minutes are included in the minutes of the Committee meetings themselves.

The complainant then turned to the Ombudsman alleging that Parliament fails to include the minutes of Committee Coordinators in its register of documents. The Ombudsman made a recommendation to Parliament that, when such minutes are drawn up, Parliament should include them in its public register of documents. Parliament replied that, in order to promote greater transparency, recommendations or decisions adopted by the Coordinators would, after their endorsement by the Committee, be included in the Committee minutes which

are accessible in the public register. Parliament stated that this new approach would be applicable from July 2014 onwards.

The Ombudsman concluded that Parliament has taken appropriate measures to implement her recommendation. With regard to existing minutes of Committee Coordinators adopted under the 2009-2014 parliamentary term, the Ombudsman stated that she trusts that, for the sake of consistency, Parliament will include them in the public register.

Case 861/2012/RA: Use of Irish on Parliament's website

Parliament also accepted a recommendation in case 861/2012/FOR which concerned the use of Irish on Parliament's website. The complaint was submitted by an Irish citizen on behalf of Stádas, an organisation which seeks to promote the status of the Irish language in the European Union. According to the complainant, Parliament had failed, since 1 January 2007 when Irish was granted the status of official and working language of the EU, to make its home page and other relevant pages on its website available in Irish.

In responding to the Ombudsman's recommendation, the President of Parliament stressed that he himself raised the issue of the use of Irish on Parliament's website during the Parliament's Bureau meeting of 10 June 2013. In that context, he had asked for Irish content to be introduced on Parliament's website. Since then, Parliament's administration has worked to estimate the work and resources needed and to draw up an implementation timetable, building on the experience acquired with the introduction of the Croatian version of the website. The President stated that the issue is of great importance to Parliament and gave an assurance of Parliament's willingness and commitment to respect the status of the Irish language.

Parliament also committed itself to the progressive introduction of Irish on its various online platforms. It put forward an implementation timetable which, however, would depend on technical constraints as well as the availability of resources.

2. European Commission

Case 2521/2011/JF: Alleged unlawful State Aid to four Spanish football clubs

The case concerned the handling by the European Commission's Directorate-General Competition ('DG COMP') of a complaint alleging unlawful state aid to four Spanish football clubs. The complaint was made to the Commission in 2009 by a representative of a number of investors and shareholders in European football clubs. The Ombudsman's inquiry found that DG COMP had failed to comply with the provisions of its own Code of Best Practice by failing to decide on the complaint within the relevant deadline; nor did it properly justify why it had failed to make a decision. The complainant had argued that the

Commissioner for Competition supported one of the clubs in question and that this explained why no decision had been taken. The Ombudsman in May 2013 invited the Commission to make a decision on the complaint or to explain why it was not able to do so. The Ombudsman's proposal pointed in particular to the need to avoid giving the impression of a conflict of interest.

DG COMP accepted the Ombudsman's proposal. But after a further two months there was no evidence that the proposal was being acted upon. In the circumstances, the Ombudsman concluded that the Commission had not implemented the proposal. On 16 December 2013 she recommended to the Commission that it make a decision, as soon as possible and, in any event not later than 30 June 2014, on whether or not to start infringement.

On 18 December 2013, more than four years after first receiving the complaint, the Commission decided to open an investigation against Spain. In subsequent correspondence the Commissioner made some critical observations on the Ombudsman's inquiry. The Ombudsman replied to these observations. This exchange of correspondence is published on the Ombudsman's website in conjunction with this decision.

3. European External Action Service (EEAS)

Case 1576/2011/ANA: Review of the complainant's evaluation report

The EEAS accepted a recommendation in case 1576/2011/ANA which concerned its review of the complainant's evaluation report, following a successful complaint under Article 90(2) of the Staff Regulation.

4. European Personnel Selection Office (EPSO)

Case 814/2012/TN: Access to evaluation of qualifications in open competitions

The complainant applied for an EU recruitment competition, but was not invited to participate because his qualifications were not deemed sufficient. The complainant asked for a copy of the evaluation sheet concerning his qualifications. EPSO refused to give him a copy of the evaluation sheet. The complainant then turned to the Ombudsman.

EPSO first argued that the evaluation sheet was covered by the secrecy surrounding the proceedings of the selection board. The Ombudsman noted, however, that EPSO allowed candidates access to their evaluation sheets during a ten-day period after having been informed of their results. The Ombudsman could not see how the evaluation sheet, which was not previously considered to be secret, could become covered by the secrecy surrounding the proceedings of the selection board after that period. The Ombudsman therefore made a recommendation to EPSO, asking it to provide the complainant with a copy of the evaluation sheet.

EPSO accepted the Ombudsman's recommendation and provided the complainant with the requested evaluation sheet. EPSO also informed the Ombudsman that it now automatically provides candidates with information about the evaluation of their qualifications.

The Ombudsman thanked EPSO for its constructive and transparent approach to the matter.

Case 901/2012/JF: Refunding of expenses incurred due to a contractor's mistake

The case concerned a candidate in an open competition run by EPSO. Because of a mistake by the contractor organising EPSO competitions in Portugal, the candidate made an unnecessary trip from Porto to Lisbon to attend computer-based tests which, in fact, did not take place on the scheduled date. Subsequently when the contractor failed to pay the complainant the expenses incurred, she contacted the Ombudsman.

Following contact by the Ombudsman, EPSO agreed to refund the complainant's travel expenses. However, EPSO refused to compensate her for having missed a day of work unnecessarily. Subsequently, following a recommendation by the Ombudsman, EPSO agreed to compensate the complainant for the lost day of work. The complainant was satisfied and the Ombudsman closed the case.

5. European Anti-Fraud Office (OLAF)

Case 1183/2012/MMN: Duty to state the reasons for closing an investigation

The case concerned a complaint lodged with the European Anti-Fraud Office ('OLAF') by a former employee of the Fundamental Rights Agency ('FRA') against the latter. The complainant brought to the attention of OLAF certain irregularities allegedly committed within the FRA. OLAF informed the complainant that, following its investigation, it had concluded that no further action should be taken but addressed a number of issues to the management of the FRA. The complainant contacted the Ombudsman, considering that OLAF infringed its duty to state the reasons for its decision to close the investigation. Indeed, OLAF had said that it is not its policy to explain or give reasons for its decision to close an investigation.

The Ombudsman inquired into the issue and recommended that OLAF should inform the complainant of the reasons for its decision to close its investigation in the case. OLAF accepted the recommendation as well as the general principle and policy underlying it.

6. European Aviation Safety Agency (EASA)

Case 1174/2011/OV: Access to documents regarding four aircraft maintenance service providers

The case concerned EASA's refusal to grant access to documents (namely, (i) EASA's surveillance plans and (ii) EASA's approval recommendation reports) regarding four aircraft maintenance service providers established in Asia. The Ombudsman inquired into the issue and found that EASA's reliance on the protection of commercial interests and the protection of the purpose of inspections, investigations, and audits was not convincing. Following a recommendation from the Ombudsman, EASA decided to release the requested documents.

Case 726/2012/FOR: Access to European Aviation Safety Agency meeting minutes

The case concerned a failure of EASA to give stakeholders copies of minutes of a meeting of the EASA Advisory Group of National Authorities in which modifications to flight and duty time limitations, and rest requirements for commercial air transport, were discussed.

The Ombudsman inquired into the issue and found that EASA was wrong to withhold access to the minutes. She thus made a recommendation that the minutes be released. EASA agreed to release the minutes and committed to ensuring that similar minutes be released in future.

The Ombudsman thus found that EASA had accepted her recommendation and she closed the inquiry.

7. European Centre for Disease Prevention and Control (ECDC)

Case 2241/2012/JF: Refusal to draw up an appraisal report for a former member of staff

The case concerned the refusal by the European Centre for Disease Prevention and Control ('ECDC') to draw up an annual appraisal report concerning a former member of its staff.

During the inquiry, the Ombudsman pointed out that the Staff Regulations of the Officials of the European Union lay down an obligation for Institutions to issue appraisal reports to all staff, both current and past, and in any circumstances. She therefore issued a recommendation that the ECDC do so in the complainant's case. The ECDC accepted the recommendation. In addition, she recommended that the ECDC review its rules on appraisals. Since the Commission is in the process of reviewing these rules, the Ombudsman, in a further remark, invited the ECDC to inform her about the developments in that review.

8. European Network and Information Security Agency (ENISA)

Case 1125/2011/ANA: Reassignment of tasks and changes to the working environment of an ENISA employee

The case concerned the manner in which ENISA reassigned the tasks and carried out changes in the working environment of the complainant, an ENISA employee. The Ombudsman inquired into the issue and made a proposal for a solution, which ENISA did not accept. The Ombudsman then made recommendations, in which she asked ENISA: 1) to acknowledge that it failed (a) to consult the complainant before adopting the reassignment decisions, (b) to give reasons for its actions, (c) to properly communicate its reassignment decisions, (d) to reply to the complainant's relevant requests, and (e) to have proper regard for the complainant's welfare; 2) to offer the complainant an apology; 3) to make an ex gratia payment of EUR 1 000 to the complainant; and 4) to give the Ombudsman a formal undertaking that it will not commit such instances of maladministration in the future. ENISA accepted the Ombudsman's recommendations and took steps to implement them. Therefore, the Ombudsman closed the case.

D. Recommendations partly accepted by the institution

1. European Commission

Case 1184/2012/PMC: The timeliness of the Commission's handling of a state aid complaint

The complainant in the case at hand is an Italian airline company that, in December 2003, submitted a state aid complaint to the Commission concerning allegedly unlawful state aid received by one of its competitors for the flights operated from and to a regional airport in Italy. In September 2007, the Commission initiated the procedure provided for in Article 108(2) TFEU against Italy. Unhappy with the Commission's delay in taking a decision concerning its state aid complaint, the complainant turned to the Ombudsman in June 2012.

In its opinion, the Commission argued that the length of the investigation was justified in the present case. It submitted that various factors had to be considered, such as the complexity of the matter, the repeatedly changing scope of the investigation, the pending adoption of new Aviation Guidelines, as well as the need to commission various studies and translate several documents submitted in English into Italian.

In her assessment of the case, the Ombudsman was not convinced by the Commission's arguments and noted that it had been approximately *ten years* since the complainant submitted its state aid complaint. She therefore concluded that the Commission had failed to take a timely decision on the

complainant's state aid complaint, and, consequently, made a recommendation. She asked the Commission to take a decision on the complainant's state aid complaint as rapidly as possible but in any event not later than 30 June 2014.

The Commission subsequently agreed with "*the main points*" of the Ombudsman's recommendations, but requested that the Ombudsman extend the deadline to complete its assessment to 31 October 2014, since that would allow it to complete its assessment on the basis of the new Aviation Guidelines, which were adopted on 20 February 2014. The Ombudsman was not however convinced by the reason which the Commission had invoked, considering that the Commission (i) had been dealing with the complainant's state aid complaint for approximately ten years, and (ii) had also a thorough knowledge of the Guidelines, since it drafted and adopted them itself. The Ombudsman thus regretted that the Commission did not take this opportunity to correct its maladministration. This notwithstanding, the Ombudsman recognised that the prospect of a definitive outcome by the end of October 2014 represented some progress. In these circumstances and considering that, in its observations, the complainant did not seek compliance with the Ombudsman's recommended deadline of 30 June 2014, the Ombudsman saw no need for further inquiries. Considering also that the Commission had apologised to the complainant for the delay incurred, she closed the case.

E. Follow-up to critical and further remarks by institution

1. European Parliament

Case 262/2012/OV: Registration in Parliament's public register of the minutes of meetings of Committee Coordinators

As outlined in the section above entitled 'Recommendations accepted', the complainant made a request for public access to the minutes of meetings of Coordinators of several Committees of the European Parliament relating to the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA). Parliament replied that, with some exceptions, no separate minutes of the meetings of Committee Coordinators exist, and that these minutes are included in the minutes of the Committee meetings themselves. The complainant turned to the Ombudsman alleging that Parliament fails to include the minutes of Committee Coordinators' meetings in its register of documents. The Ombudsman made a recommendation to Parliament that, when such minutes are drawn up, Parliament should include them in its public register of documents. Parliament replied that, in order to promote greater transparency, recommendations or decisions adopted by the Coordinators would, after their endorsement by the Committee, be included in the Committee minutes which are accessible in the public register. Parliament stated that this new approach would be applicable from July 2014 onwards. The Ombudsman thus concluded that Parliament had taken appropriate measures to implement her recommendation. With regard to existing minutes of Committee Coordinator meetings adopted during the 2009-

2014 parliamentary term, the Ombudsman made a further remark to the effect that she trusted that, for the sake of consistency, Parliament would include them in its public register.

Parliament accepted the Ombudsman's suggestion and created a new heading in its public register, enabling the registration of minutes of Coordinators' meetings held during the 2009-2014 legislative term, where they exist.

The Ombudsman welcomes Parliament's constructive follow-up to the further remark in this case.

Case 1092/2012/OV: Request of a bilingual Parliament official to change his main language for an internal competition

The complainant, a French-Italian bilingual Parliament official, asked Parliament to allow him to take written tests in an internal competition in Italian despite the fact that, according to the competition notice, he should take the tests in French, namely his main language registered as such in Parliament's human resources database. Parliament refused, arguing that this request was based solely on personal grounds of expediency. The Ombudsman found no maladministration by Parliament, but made two further remarks that Parliament could (i) make it possible for bilingual staff to declare both their languages in annual staff reports as their main languages and (ii) add to the annual staff reports' section "*knowledge of languages*", a note that the data in this section will serve for all human resource purposes in the following year.

In its reply, Parliament stated that it would from now on, as a transparency measure, ask officials and other servants to fill in a declaration attached to their job offer indicating their main language and - if they are bilingual - the second language of which they have a thorough knowledge. The declaration, which will be included in the personal file of the staff member concerned, will contain a note informing the official or other servant that the declared main language will be encoded in Parliament's human resource database and taken into consideration for all interactions with the administration, in particular for internal competitions.

The Ombudsman considers that Parliament's follow-up to her further remarks is partly satisfactory. New Parliament staff members who are bilingual will from now on be informed, when declaring their main language upon recruitment, that their main language choice will be taken into consideration for human resource purposes in the future, including for internal competitions. However, the relevant declaration does not foresee the possibility for bilingual staff to declare two main languages. They can only declare one main language and a second language of which they have a thorough knowledge. This means that a bilingual official could only sit an internal competition using his or her second declared language after having asked Parliament to register his/her second language as the main one. Although Parliament does not seem to share the view that bilingual officials can declare two languages as their main ones, the fact that upon request and with the necessary supporting documentation such officials can change the

order of the two relevant languages, nevertheless addresses the issue underlying the remark made by the Ombudsman.

Case 219/2013/PMC: Alleged unfair transfer of an EU civil servant to new place of employment

A Parliament official, who had served in Parliament's Information Office in a European capital for several years, was transferred against his will. Having examined the case, the Ombudsman found that Parliament had acted wrongly when deciding that the complainant's transfer should take effect before the formal transfer decision was taken. The Ombudsman also noted that Parliament had failed to determine, in good time, the complainant's duties following his transfer. She therefore closed her inquiry with two critical remarks.

In response to the critical remarks, Parliament informed the Ombudsman that, in the future, it will try to avoid taking transfer decisions with retroactive effect, especially when transferring an official to a new place of employment. Parliament also stated that it had adopted new rules ensuring that officials transferred to new posts within Parliament will be informed of their duties in writing when taking up their new post.

Parliament has expressed a general commitment to avoid taking transfer decisions with retroactive effects. In her decision, the Ombudsman stated that principles of good administration do not exclude the possibility of giving retroactive effect to decisions, so long as the institution provides valid reasons for doing so. Moreover, Parliament has adopted rules requiring it to determine the duties of transferred officials. The Ombudsman welcomes the measures taken by Parliament.

2. Council of the EU

Case 167/2013/AN: Reasoning for partial refusal of public access

The Council partially rejected a request for access to an opinion of its Legal Service on the ground that disclosure would undermine some of the protected interests listed in Regulation 1049/2001. Having inspected the document, the Ombudsman criticised the Council for having failed to demonstrate the existence of a concrete risk that disclosure would undermine the interests protected by the exceptions invoked by the Council.

In its follow-up, the Council maintained its view that it could not have provided more detailed explanations in the given case without undermining the protected interests. The Council also stated its commitment to providing full and adequate explanations in cases in which it refuses to disclose a document.

The Ombudsman considers that the difference of view about the adequacy of the reasoning in this specific case has no general implications.

3. European Commission

Case 216/2009/TN: Insufficient reasons for refusing public access to documents

The Commission refused to grant an NGO public access to background documents on the Commission Communication on the application of Community law. The Ombudsman was not convinced by the Commission's explanations as to why it considered the exceptions to public access to be applicable to the documents. The Ombudsman therefore recommended that the Commission provide access to the documents and gave the Commission detailed and constructive advice on how best to apply the legislation governing public access to documents (Regulation 1049/2001). The Commission simply replied that it considered that it had already provided valid reasons for refusing access. The Ombudsman considered this reply unsatisfactory and closed the case with critical remarks to the effect that the Commission had shown a flagrant unwillingness to engage in a constructive dialogue on the issue of public access to these important documents.

In response, the Commission acknowledged that it could have provided a more detailed and specific reply to the Ombudsman's recommendation. The Commission accepted the Ombudsman's critical remarks and committed itself to take note of them for the treatment of future cases.

The Ombudsman welcomes the Commission's willingness to engage, in the future, in a more constructive dialogue on how to apply the rules on public access to documents.

OI/2/2011/OV: The Commission's role as Guardian of the Treaties

In April 2011, the Ombudsman launched an own-initiative inquiry to clarify the implications of the *EU Pilot* Project (introduced by a Commission Communication of 5 September 2007[1]) and the accompanying new complaints registration system (CHAP, introduced in 2009), for the procedural guarantees for complainants set out in the Commission's 2002 *Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law*[2] ("the 2002 Communication").

The Commission asked for an extension to the deadline for its opinion and in the end sent its opinion nearly three months after the initial deadline. It stated that it intended to revise the 2002 Communication, but gave no details or timetable.

After informal contacts had revealed that the procedure within the Commission appeared to be blocked, the Ombudsman made a recommendation on 28 March 2012. The recommendation included concrete proposals for revision of the 2002 Communication.

[1] Communication COM (2007)502 final of 5 September 2007 "*A Europe of Results - Applying Community Law*".
[2] COM(2002) 141 final, OJ 2002 C 244, p. 5.

On 2 April 2012, with no prior information to the Ombudsman or the public, the Commission adopted the 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[3] (hereafter "the 2012 Communication"). In its delayed opinion on the recommendation, finally sent to the Ombudsman on 25 July 2012, the Commission expressed the view that the 2012 Communication dealt with the Ombudsman's concerns as expressed in the recommendation.

On 10 April 2014, after repeated unsuccessful efforts to convince the Commission to look again at various aspects of the matter, the Ombudsman closed the inquiry. The closing decision criticised the Commission's failure to engage constructively with the Ombudsman in a substantive discussion of how to improve its relations with citizens who complain about infringements. The Ombudsman sent a copy of her decision to the President of Parliament so that it could be taken into account both in dealing with the Commission's Annual Report on the Monitoring of the Application of EU law and in Parliament's future discussions of an EU law on administrative procedures.

In response, the Commission maintained its earlier position.

The Commission's role as Guardian of the Treaties is of major importance for the Union and its citizens. It is regrettable that the Commission did not consult the Ombudsman as regards the revision of the 2002 Communication and that it has refused to consider the Ombudsman's suggestions in that regard. The Ombudsman will continue to monitor carefully how the Commission discharges its administrative responsibilities as Guardian of the Treaties.

Case OI/6/2011/VL and 415/2011/VL: Irregularities concerning a recruitment procedure for a contractual agent

The inquiry concerned the recruitment of a contractual agent, which, following the complainant's insistence, was investigated by the Commission's Investigation and Disciplinary Office (IDOC). The Ombudsman found certain shortcomings in the selection procedure in question as well as in the subsequent internal investigation carried out by the Commission's services. She therefore closed the case with two critical remarks.

In its reply, the Commission informed the Ombudsman that it had further clarified the applicable rules and that it reminded the relevant services regularly of them. It also stated that IDOC's inquiry was conducted with a view to determine whether a breach of the Staff Regulations was committed by individuals in the context of that particular selection procedure, and not in order to ascertain possible administrative deficiencies.

By further clarifying the applicable rules and reminding the competent services of the said rules, the Commission took adequate measures to follow up on the first critical remark. As regards the second critical remark, the

[3] COM(2012) 154 final, 2 April 2012. The Communication was not published in the Official Journal, but is available on the EUR-Lex website in all the official languages (except Croatian).

Commission's acknowledgment that whilst IDOC failed to identify the administrative deficiencies found by the Ombudsman, its role was to investigate whether individuals have breached the Staff Regulations and not to assess the soundness of the recruitment procedures is a satisfactory explanation.

Case 1005/2011/MMN: Avoiding conflicts of interest in tendering procedures

The complaint concerned a tender procedure for technical assistance to Albania. The complainant, a tenderer, wrote to the Commission indicating that one of the experts of the successful tenderer appeared to have drafted the Terms of Reference for the tender. This created a conflict of interest.

After an inquiry, the Ombudsman found that allowing an expert of the successful tenderer to participate in the drafting of the Terms of Reference, gave rise to at least an apparent conflict of interest. The Ombudsman recommended that the Commission make an adequate *ex gratia* payment to the complainant. The Commission rejected this proposal and the Ombudsman closed the case with a critical remark.

In its reply, the Commission explained that it has taken both general measures and also specific measures regarding the EU Delegation in question, with a view to avoiding similar problems from arising in future. It issued a note to the management of DG Enlargement and to the EU Delegations emphasising that the drafting of Terms of Reference is a responsibility which lies exclusively with the Commission and that EU Delegations should not invite contributions from potential tenderers.

As regards the specific Delegation, its management has instructed the staff involved in tender procedures to be particularly attentive to issues relating to conflicts of interest. Moreover, the Delegation was subject to audit missions in February 2013 and March 2014. On both occasions, the lessons drawn from the present case were recalled.

The Ombudsman welcomes the Commission's follow-up which reduces to an acceptable level the risk of similar problems arising in the future.

Case 1223/2011/ANA: The Commission's procedures for the selection of Seconded National Experts

The complaint concerned the Commission's handling of the complainant's applications to become a Seconded National Expert (SNE) in the Directorate-General for Trade.

In her inquiry, the Ombudsman identified a systemic and a specific aspect to this case.

(a) As regards the systemic aspect, the Ombudsman found that the Commission had not yet adopted detailed rules to govern the selection process for SNEs.

(b) As regards the specific aspect, the Ombudsman examined the Commission's handling of the complainant's applications and found one instance of maladministration, namely, that the Commission failed to provide the complainant with the necessary clarifications as to the posts for which he was being interviewed.

The Ombudsman proposed to the Commission (a) that it adopt detailed rules for the selection of seconded national experts without delay and (b) that it apologise to the complainant for failing to provide the necessary clarifications before the interview.

The Commission stated that it was in the process of drafting such rules but refused to apologise to the complainant.

In the closing decision, the Ombudsman found that no further inquiries were necessary into the systemic aspect, trusting that the Commission will complete the drafting of the guidelines without undue delay. However, the Ombudsman regretted the Commission's unconstructive approach in respect of the specific aspect and issued a critical remark.

In its follow-up reply, the Commission maintained its refusal to acknowledge the error made but committed to finalise the drafting of the detailed rules and to inform the Ombudsman accordingly. In a further follow-up reply of 25 April 2015, the Commission communicated its new Vademecum for the selection of Seconded National Experts.

The Ombudsman welcomes the Commission's adoption of detailed rules for the selection of Seconded National Experts. At first sight, their scope and content appears to be in line with the Ombudsman's suggestions. At the same time, however, the Ombudsman regrets that the Commission refuses to acknowledge the error made on the specific aspect of the inquiry and to apologise to the complainant.

Case 1983/2011/AN: Commission commits itself to improving its monitoring system and ensuring compliance with the requirements relating to the origin of tendered goods

The case concerned the award of an EU tender in Algeria in 2011. The complainant, a private company, participated in a tender organised by the EU Delegation to Algeria. The complainant had suspicions that the winning tenderer did not comply with the tender requirement that the security equipment in question be manufactured in the EU or in an eligible country. It was believed that the goods originated from Malaysia.

The Ombudsman noted that the EU origin of the goods had not been proven before the contract was awarded. Moreover, the Delegation in Algeria took a long time before inquiring into their alleged ineligibility. While the Ombudsman accepted the Commission's position that the EU origin of the goods was eventually proven, she considered that the Commission had made a manifest error during the award

procedure. She also criticised its failure to take the necessary and timely steps to ensure that a robust system of checks is in place.

In its response, the Commission explained that it is working on a solution in order to improve its monitoring system and ensure compliance with the requirements relating to the origin of tendered goods. It promised to keep the Ombudsman informed of developments in this area.

The Ombudsman welcomes the Commission's commitment to put in place a proper monitoring system and verification mechanisms to ensure compliance with the rules regarding the origin of tendered goods.

Case 2171/2011/EIS: Failure to provide translation of a report on rare diseases

The complainant wished to obtain an Italian translation of the 2011 Report on the State of the Art of Rare Disease Activities in Europe. The report had been prepared by the European Union Committee of Experts on Rare Diseases (EUCERD). The Commission refused to have the report translated.

In its opinion to the Ombudsman, the Commission argued that it has no capacity to translate all its documents into all official EU languages, pointing out that the report in question had not been produced by the Commission itself. It further put forward that it was under no legal obligation to provide documents such as the report in question in all official EU languages.

The Ombudsman proposed a solution inviting the Commission, in line with good administrative practice, to provide the complainant with a translation of (i) the whole report; or (ii) those passages that concern the specific illness in which he was interested; or (iii) a summary of the report. In making the proposal, the Ombudsman assumed, on the basis of the arguments put forward by the complainant, that the particular disease the complainant was interested in was covered by the report. However, in its reply, the Commission pointed out that this was not the case. Against this background, the Ombudsman considered it reasonable that the Commission could not implement her suggestion (ii) referred to above. At the same time, she maintained her view that it would have been reasonable for the Commission to serve the citizen in a critical matter of health by providing a translation of at least a summary of the report. Given that the complainant subsequently made clear that a translation would no longer be useful due to the time that had elapsed since the publication of the report, the Ombudsman closed the case with a critical remark.

In response, the Commission expressed its willingness to explore pragmatic solutions on a case by case basis, and stated that it was looking into the possibility of future Reports containing an executive summary that could potentially be translated into all EU languages.

The Ombudsman welcomes the Commission's willingness to consider translating an executive summary of future Reports into all languages.

Case 203/2012/MMN: Commission promises efforts to broaden range of views on an advisory group

The case concerned one of the Commission's advisory groups: the European Group on Ethics in Science and New Technologies (EGE). In 2011, following a call for expression of interest, the Commission decided on the appointment of its 15 members. A civil society organisation complained to the Ombudsman that the composition was not pluralistic because too many of its members held religious beliefs while secular views were not represented.

After an inquiry, the Ombudsman was not convinced by the complainant's arguments. Candidates to become members could have a background in theology, ethics, philosophy, sciences and law. Thus, persons without religious beliefs were perfectly capable of applying.

In closing the case with a finding of no maladministration, the Ombudsman suggested that the next call for expressions of interest to join the EGE could clarify that religious or personal beliefs are not taken into account in the selection and that 'secular' candidates are invited to apply.

In response, the Commission agreed to clarify this point in the future call for expression of interest for the EGE (2016-2021).

The Ombudsman welcomes the Commission's positive response to the further remark.

Cases 636/2012/DK and 1076/2012/DK: Delay in handling request for public access

The Ombudsman's inquiry found that the Commission had taken more than twenty months to deal with one of the complainant's public access requests and seven months to deal with his second request. The Ombudsman considered that the delay could not be justified and made a critical remark accordingly.

In response, the Commission acknowledged that it had not adopted the relevant confirmatory decisions in the two cases concerned within the time limits prescribed by Regulation 1049/2001. It undertook to endeavour, in future, to assess and reply to access to documents requests within the shortest possible time periods.

The Ombudsman welcomes the Commission's commitment to do better in future.

Case 776/2012/KM: Duration of selection procedures

The complaint concerned a selection procedure for research assistants. Among other things the complainant was dissatisfied by the fact that the Commission took almost eighteen months to inform candidates whether they would be invited to the next step in the selection procedure. After an inquiry, the Ombudsman found that this aspect of the complaint was justified. It is good administrative practice to ensure that recruitment procedures are carried out as

swiftly as possible. In this case, the time taken was excessive and constituted maladministration.

In response to the critical remark, the Commission explained that a new style of competition has been introduced. As a result, the average length of time from the day a competition is published to the publication of the reserve list has been halved, from 18 months to 9 months.

The Ombudsman welcomes the significant reduction in the average duration of selection procedures.

Case 886/2012/JF: Lifelong Learning Programme

The complainant, an NGO based in Bratislava, complained to the Ombudsman that the maximum eligible daily rates for costs of staff participating in the Commission's Lifelong Learning Programme ('LLP') were such that, in practice, they prevented Slovak NGOs from participating in the programme.

The Commission explained the method for calculating the rates in question and informed the Ombudsman that it was looking at ways of implementing a stabilisation mechanism that would allow sharp decreases in the maximum eligible rates for staff costs for all LLP participating countries to be avoided. The Ombudsman subsequently closed the case and asked the Commission to explain whether it had introduced the planned stabilisation mechanism or, if it had not yet done so, to say when it intended to do so.

The Commission replied that it had updated the LLP daily staff costs and introduced the stabilisation mechanism. This mechanism, which was approved by the Member States, allowed for negative variations in the daily staff costs to be limited to 20%.

The Ombudsman welcomes the introduction of the stabilisation mechanism, which should help avoid similar problems from arising in the future.

Case 1091/2012/AN: Commission commits itself to improving its monitoring system and ensuring compliance with the requirements relating to the origin of tendered goods

In a case similar to 1983/2011/AN described above, this case concerned an EU tender organised in 2011 in which, according to the complainant, the winning bidder's products failed to comply with the eligibility rules of origin. The Ombudsman inquired into the issue and found that, at the time the relevant EU Delegation endorsed the award of the tender, it had not verified the origin of the goods, despite warnings from the complainant. The Commission also failed to address the complainant's concerns about the probative value of the proof required under the applicable rules and to demonstrate that it had properly verified the origin of the winning bidder's goods.

The Ombudsman found that the Delegation had committed a manifest error of assessment in the award procedure and failed to make any attempt to verify

whether the equipment proposed complied with the applicable rules of origin. She closed the complaint with two critical remarks.

In its response, the Commission explained that its services are in the process of preparing a solution in order to improve its monitoring system and ensure compliance with the requirements relating to the origin of tendered goods. It promised to keep the Ombudsman informed about developments in this area.

The Ombudsman welcomes the Commission's commitment to put in place a proper monitoring system and verification mechanisms to ensure compliance with the relevant rules as regards the origin of tendered goods.

Case 1180/2012/VL: Protection of confidential information and the need to draft an investigation report

The complainant, a Commission official, circulated unverified findings about a colleague. The Commission issued a warning to the complainant. It also informed the colleague of the relevant information and of the name of the complainant. The complainant turned to the Ombudsman to contest the Commission's handling of the matter.

The Ombudsman found that it is good administrative practice for an institution to inform members of its staff of any information that could potentially affect their reputation, so as to enable them to present their views. In the present case, however, the Commission not only forwarded the relevant information but also identified the complainant as the source, even though there was no need to do so at that stage and even though the complainant had asked for confidentiality. By acting as it did, the Commission went beyond what was necessary and proportionate. The Ombudsman made a critical remark accordingly. With regard to the remainder of the complaint, no maladministration was found.

One of the issues raised by the complaint was the absence of an investigation report. Despite finding no maladministration in relation to the complainant's specific arguments, the Ombudsman pointed out that Articles 2(2) and 3 of Annex IX to the Staff Regulations clearly stipulate that the Appointing Authority "shall... communicate to [the person concerned] the conclusions of the investigation report" and that it adopts a decision "on the basis of the investigation report". There is nothing in those Articles or in any other provision of Annex IX to the Staff Regulations to suggest that an investigation report could be dispensed with. The Ombudsman therefore made a further remark advising the Commission, in future, to draft an investigation report following every administrative inquiry conducted under the Staff Regulations.

In response to the critical remark, the Commission acknowledged the need to balance the conflicting rights and interests mentioned in the critical remark. It also undertook that, when seeking the right balance in the future, it would take into account the Ombudsman's finding that it had not acted properly in the present case.

The Ombudsman welcomes the Commission's positive response to her critical remark and its recognition of the need to balance the conflicting rights and interests involved.

In response to the further remark, the Commission pointed out that, in its view, an investigation report was not necessary in the case at hand, either to guarantee the rights of persons involved or to inform the Appointing Authority about the underlying facts.

The Ombudsman regrets the Commission's failure to acknowledge the need to draft an investigation report following each administrative inquiry.

Case 1392/2012/DK: Alleged failure to deal with a request for access to documents within the prescribed time-limits

The complainant complained to the Ombudsman that the Commission failed to deal with his request for access to documents within the prescribed time-limits.

The Ombudsman inquired into the matter and found that the Commission indeed failed to respect the provisions of Regulation 1049/2001 regarding the time-limits for handling requests for access to documents, given that it took the Commission more than four months to deal with the complainant's request. She made a critical remark in this regard.

In its reply, the Commission acknowledged the delay that had occurred. It undertook to continue making efforts to reduce the time it takes to deal with requests for access to documents.

As with cases 636/2012/DK and 1076/2012/DK above, which concerned the same issue, the Commission's reply is satisfactory.

Case 1746/2012/ANA: Compensation for exceptional exchange rate fluctuation concerning the Commission's Science and Technology Programme in China

This case concerned the Commission's decision not to make a payment to the Fellows of the Commission's Science and Technology Fellowship Programme in China for the loss they sustained as a consequence of fluctuations in the exchange rate between the Euro and the Chinese Yuan.

After an inquiry, the Ombudsman found that the Commission had correctly interpreted the contingency reserve provision of the Fellowship Contract.

In light of this finding, the Ombudsman made a further remark in which she invited the Commission to consider modifying the contingency provision in fellowship contracts so as to enable it to provide relief wherever it is fair to do so, and not only in exceptional circumstances.

In response to the further remark, the Commission noted that the programme in question had ended and no similar programmes were ongoing at that moment

in the field of external actions. However, if relevant programmes are set up in the future, the Commission will strive to ensure – within the boundaries imposed by the principle of sound financial management - fair and appropriate conditions for recipients of funds.

The Ombudsman welcomes the Commission's undertaking to ensure fair and appropriate conditions for recipients of funds.

Case 2099/2012/JN: Waiver of a financial guarantee requirement

As outlined in the section above entitled 'Solutions accepted', after participating in an EU-financed project, the complainant was made the subject of a recovery order. It complained to the Ombudsman. After an inquiry, the Ombudsman proposed a solution, which was accepted by both parties. However, the Commission maintained the requirement that the complainant provide a financial guarantee, which the complainant said it could not do. The Ombudsman invited the parties to engage in direct contacts with a view to reaching an agreement on this issue and to inform her of the result.

The Commission informed the Ombudsman that it contacted the complainant several times and provided it with an opportunity to prove that the legal conditions for a waiver of the guarantee are met: i.e., that it is in a distressed situation. However, the complainant failed to do so.

The Commission has followed up the matter in a reasonable way. In fact, it is for the complainant to prove that it is in a "distressed situation" and it appears that it has received an adequate opportunity to do so. Also, it is not obvious why the complainant could not provide a third party financial guarantee as suggested by the Commission.

Case 257/2013/OV: Refusal to grant public access to documents relating to the departure of former Commissioner John Dalli from the Commission

Corporate Europe Observatory (CEO) requested access to documents relating to the departure in October 2012 of Commissioner Dalli from the Commission, among which two letters from Commissioner Dalli to President Barroso and notes of meetings between them. The Commission refused access on the grounds that the release of the documents would undermine an on-going investigation carried out by national authorities. Having inspected the documents, the Ombudsman found that they did not contain any significant information which was not already in the public domain. She thus recommended to the Commission that it disclose the documents. The Commission rejected this recommendation arguing that the documents had been submitted as evidence in case T-562/12 before the EU General Court and that their disclosure would harm those court proceedings. The Ombudsman accepted this new position and concluded that, since the complainant's request could not be granted while the court proceedings were on-going, no further inquiries were justified. In a further remark, she however proposed that the documents be disclosed once the court proceedings have been concluded. The Ombudsman also made a critical remark that the Commission had failed to consider a letter sent to the

Commission and the Commission's reply as being covered by the complainant's access request.

Although the Commission, in its reply, did not take a position as to whether it should have considered the two letters in question as being covered by the initial request for access, it stated that it had already granted access to one of the two letters in the framework of other access to documents requests. As regards the other letter, the Commission explained that it had transferred the complainant's latest request for access to it to OLAF. As regards the Ombudsman's further remark concerning the other documents, the Commission stated that, once the court proceedings are completed and if asked to grant access, it would examine the new application in the light of the new circumstances and the applicable legislation.[4]

While the Commission's explanations with regard to how it dealt with the requests for access to the two identified letters do not necessarily address the substance of the Ombudsman's critical remark, its subsequent action can be considered adequate.

As regards the further remark, the Commission's explanation that it will examine a future request for access in light of the circumstances pertaining at the time is acceptable in the present case.

Case 332/2013/AN: Proper handling of infringement complaints

The case concerned the Commission's four- year delay in taking a formal decision on an infringement case and its failure to keep the complainant informed of the steps taken in that case. During the Ombudsman's inquiry, the Commission clarified the reasons for the delay, resumed contacts with the complainant, and reached a final decision on the case. The Ombudsman considered that no further inquiries were justified, but reminded the Commission, in a further remark, that smooth and regular communication with complainants is an important procedural guarantee for complainants and legitimises the Commission's role as Guardian of the Treaties and the institution that European citizens are most likely to engage with concerning the application of EU law.

In its follow-up, the Commission acknowledged the excessive delay and other flaws that occurred in its handling of the case, for which it had apologised to the complainant. It emphasised that the case was exceptional and re-stated its commitment to deal with complaints in accordance with its code of good administration and the 2012 Communication.

The Ombudsman welcomes the Commission's apology to the complainant and re-statement of its commitment to the proper handling of infringement complaints.

[4] It should be noted that the General Court delivered its judgment on 5 May 2015 and Mr Dalli subsequently lodged an appeal (Case C-394/15 P).

Cases 366/2013/EIS and 509/2013/EIS: Information about means of redress

A private university based in Switzerland complained about the rejection of its application sent in response to the Erasmus University Charters 2013 Call for Proposals. The complainants claimed that the Commission and/or the Education, Audiovisual and Culture Executive Agency (EACEA) failed (i) to inform the university in good time of the decision and (ii) to indicate the means of redress available. The Ombudsman's inquiry found no maladministration as regards (i). As regards (ii), the Ombudsman found that the university had indeed not been properly informed about the means of redress. At the Ombudsman's suggestion, the Commission apologised to the complainant for this omission, both on its own behalf and on behalf of the EACEA. The case was thus resolved.

The Ombudsman's decision closing the case noted that the EACEA and the Commission could consider introducing certain improvements with regard to the information provided to applicants whose application has been rejected. In particular, in order to avoid ambiguities and to make it easier for the parties affected to appeal against a negative decision, the EACEA and the Commission could consider enclosing with the rejection letter the relevant Commission decision. In reply to this further remark, the Commission undertook to ensure that, in future, the letters to all unsuccessful applicants will indicate (i) the authority taking the decision, (ii) the relevant appeal procedure, and (iii) a link to the webpage of the Erasmus Charter for Higher Education where the final results are published.

The Ombudsman welcomes the steps taken by the Commission and EACEA to improve the information given to unsuccessful applicants.

Case 675/2013/JF: An EU institution bringing a matter to court during the Ombudsman's inquiry into the same matter

The Commission decided to recover a sum of money paid to a Belgian NGO in the context of a project carried out in Burkina Faso. The NGO contested the Commission's decision through a complaint to the Ombudsman.

During the inquiry, the Commission informed the Ombudsman that it had initiated proceedings against the NGO in a Belgian court. The Ombudsman was, therefore, obliged to terminate her inquiry into the matter. When doing so, she pointed out that the Commission should not normally initiate proceedings in a court of law in respect of the same subject matter as that under review by the Ombudsman, unless there are sound reasons for not awaiting the outcome of the Ombudsman's inquiry. She suggested that the Commission issue guidelines to that effect.

The Commission replied that, in the present case, it could not wait for the Ombudsman to terminate her inquiry because of the statute of limitations which was applicable to its contractual relationship with the NGO. Unless it acted quickly, the Commission risked not being able to protect the financial

interests of the Union. The Commission nevertheless explained that it carefully assesses the need to defend its rights in a court of law on a case-by-case basis and that it respects citizens' fundamental right of having recourse to the European Ombudsman.

The Ombudsman finds the Commission's position reasonable. She takes the view that, in cases where the Commission decides to take the matter inquired into by the Ombudsman to court, it should explain the reasons to the Ombudsman immediately.

Case 1688/2013/JN: EU Election Observation Missions

The case concerned the repeated rejection of the complainant's applications for the position of an observer in the context of EU Election Observation Missions (EOMs). After an inquiry, the Ombudsman found that the Commission had breached the complainant's right to be informed of the reasons for the rejection of her applications.

The Ombudsman also made further remarks in order to: improve the process leading to the selection of observers for EOMs; make the process more transparent; and strengthen the safeguards against arbitrary decisions. In response, the Commission informed the Ombudsman that it would introduce a check list with selection criteria so that there will be a written record of the assessment made by the Selection Committee. The Commission will explore the possibility of national Focal Points informing rejected candidates, upon their request, of the reasons for the rejection on the basis of the check lists. In addition, the Commission will establish a rule according to which an assessment as 'not recommended' for future missions means that the observer concerned cannot be selected for future EOMs during the next five years. After the five year period, the observers may again apply for EU EOMs and be assessed in the same manner as other candidates. This rule will be published and the national focal points will be informed of it.

The measures taken by the Commission should adequately reduce the risk of similar maladministration occurring in the future.

Case 1743/2013/TN: Commission agrees to improve its handling of requests for public access to documents provided by a third party

The Commission had not responded, within the stipulated time-limit, to a request for public access to documents, some of which came from a third party. During the course of the inquiry, the Commission gave access to the requested documents.

The Ombudsman made a number of further remarks, suggesting improvements to the Commission's procedures. She suggested that, when an EU institution has to consult a third party in order to assess whether public access can be granted to a document, the institution should give the third party a deadline for its response. If the third party does not respond within the set deadline, the institution should proceed to deciding on the access request, bearing in mind

that, in principle, all documents should be accessible to the public. A decision to refuse access to third-party documents cannot be based merely on the third party's undefined reservations regarding disclosure. If the third-party asks the institution who has requested access to the document in question, the third party's request for information should not be allowed to delay the institution's handling of the request for access to the document.

In its follow-up to the Ombudsman's further remarks, the Commission accepted the above suggestions.

The Ombudsman welcomes the Commission's willingness to improve its procedures.

Case 1869/2013/AN: Facilitating public access to legislative documents

The complainant made 18 applications to the Commission for access to documents under the provisions of Regulation 1049/2001. The applications covered almost 300 documents related to the procedure followed in amending Regulation 540/2011 covering plant protection products. The Commission considered that the processing of the applications created a significant administrative burden, and would prevent it from performing its other tasks. Thus, it proposed to disclose the documents over a period of time. The complainant considered this to be unreasonable.

Having examined the issue, the Ombudsman found that, in the absence of an agreement on phased disclosure, the complainant was entitled to consider that the Commission had refused access. While the Commission failed to deal with the requests within the relevant time limits, the circumstances of the case justified the time taken by the Commission. The Ombudsman, therefore, concluded that there had been no maladministration. In her further remark, she noted that some of the documents sought appeared to have been drawn up in the course of a legislative process and, as such, should have been made directly accessible. She requested the Commission to consider better ways to ensure appropriate and consistent compliance with its obligations to give public access to documents.

In its response, the Commission explained that its Public Register of documents[5] includes the most important, pre-legislative documents, in particular documents with a reference such as "COM", "SEC", "C","OJ", "PV". The Commission also stated that it is currently examining the possibility to extend the scope of its Register, taking into account Parliament's initiative for a pilot project **Public access.eu**, which aims at establishing an online platform for the proactive publication of EU institutions' unclassified documents.

In the Ombudsman's view, from the standpoint of European citizens it seems difficult to understand why there is not a single online portal to find information about the EU legislative process and obtain access to legislative documents. She is therefore pleased to note that, in May 2015 as part of its

[5] Available at: http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=home

Better Regulation package, the Commission announced that it intends to establish a web portal where each (legislative) initiative can be tracked.[6]

Case 2275/2013/ANA: Providing greater detail as to the applicable exception(s) under Regulation 1049/2001 in applications for public access to documents

The case concerned the Commission's refusal to give access to documents relating to the EU's natural gas policy and, specifically, documents regarding the control of investments by third countries in the network infrastructure of EU Member States. The Ombudsman's inquiry revealed no maladministration by the Commission as regards the alleged failure to give satisfactory reasons for its refusal to grant access to the requested documents.

One aspect of the complaint was that, when the Commission relied on more than one exception to refuse access to certain documents, it did not specify which exception applied to which section of those documents. The Ombudsman found that no further inquiries were justified into this aspect of the case.

However, the Ombudsman made a further remark that the Commission, where it rejects a request for access to documents by relying on more than one of the exceptions set out in Regulation 104912001, should provide the applicant with sufficient information to allow him or her to understand which exception is invoked as regards specific sections of the document concerned.

In its follow-up reply, the Commission stated that it partially accepts the Ombudsman's further remark and will continue to follow it in cases where this would not be disproportionate and would not prevent the Commission from respecting the procedural deadlines under Regulation 1049/2001.

The Ombudsman considers that compliance with the requirements of proportionality and respect for the procedural time-limits laid down in Regulation 1049/2001 are inalienable elements of good administrative behaviour of the EU institutions in the field of public access to documents. Given that these are the only conditions put forward by the Commission, the Ombudsman welcomes the Commission's statement that it will continue to provide greater detail as to the exception it relies upon when refusing public access to a document, in line with considerations of proportionality and of respect for the time-limits laid down in Regulation 1049/2001.

Case 273/2014/KM: Information on the conditions for reimbursement of medical expenses

The complaint concerned the reimbursement by the EU Joint Sickness Insurance Scheme (JSIS) of a hospital stay which the complainant argued was related to an illness recognised as "serious" by the JSIS and thus eligible for 100% reimbursement. He considered that he could expect to be reimbursed at the full rate because that is what he asked for when he asked for a prior authorisation

[6] See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation for better results - An EU agenda; COM(2015) 215 final.

and the prior authorisation he received did not state anything on the matter. After an inquiry, the Ombudsman did not accept the complainant's argument since 100% reimbursement was exceptional and agreement to it could not reasonably be inferred from silence on the issue. However, in the interest of good communication, she invited the Commission to consider including, in documents granting a prior authorisation, the precise reimbursement rate applicable and any reimbursement limits applicable to the treatment in question.

In response, the Commission pointed out that this information could not be included in the prior authorisation itself because that document served merely to certify that the medical expense about to be incurred was reimbursable. The rate of reimbursement and any ceiling depended on many factors, not all of which could be assessed at that stage. However, the Commission had decided to include in its prior authorisation decisions a link to the "Practical Guide" on the reimbursement of medical expenses, which provides an easy-to-follow overview of the applicable rules. A paper copy of this guide had recently been sent to pensioners.

The Ombudsman accepts the Commission's explanation of why the rate of reimbursement cannot be determined at the time of the prior authorization. She welcomes the constructive action of the Commission to make it easier for the beneficiaries of the JSIS to know, before commencing treatment, how much they will have to contribute to the costs.

See Case 299/2014/TN above under 'Star cases'

Case 1500/2014/FOR: Alleged procedural irregularities in a cartel investigation

The complaint concerned an alleged delay by the Commission in providing the complainant, a German IT company, which the Commission suspected to be a member of the Smart Card Chips cartel, with access to key evidence that the Commission intended to use against that company.

The Ombudsman found that the Commission had, without any good reason, delayed in providing access to that evidence, despite the fact that it was fully aware of the importance and relevance of that evidence. By incurring that delay, the Commission risked compromising its investigation. The Ombudsman therefore criticised the Commission for the delay in giving the complainant access to that evidence.

In its follow-up reply to the Ombudsman's critical remark, the Commission did not put forward any convincing arguments to show why it did not prepare a letter of facts after receiving the information in question in January 2014.

It should be noted that after receiving further information in April 2014, the Commission issued a letter of facts in July 2014. This indicates that the Commission can indeed prepare a letter of facts within three months. It is therefore unclear why the Commission could not prepare such a letter within

the three months following receipt of the information in January 2014. It is noted in this context that the Commission has not explained whether it knew, further to the receipt of the information in January 2014, that it would receive additional information in the near future that would necessitate waiting for that information - in line with its practice to group documents - before issuing a letter of facts.

The Commission's response is not convincing. However, in view of the on-going court case[7], no further action is required at this stage.

Case 1577/2014/PL: Ensuring insurance coverage for family members of students under the Erasmus Mundus programme

The complainant was doing a PhD in the United States with an Erasmus Mundus scholarship. The Erasmus Mundus programme offers an insurance policy to its scholarship students, directly paid by the Commission. Students' partners and children are not covered by the insurance scheme, but they can benefit from special conditions if they register with the same insurance company.

In this case, the complainant tried to insure his newly born son, but the insurance company refused to insure the child because he was less than 5 years old. This condition was not, however, mentioned in the policy conditions.

The Ombudsman inquired into the issue and found that there was no maladministration by the Commission. Indeed, the Commission explained that it does not select the insurance company used by the Erasmus Mundus programme. On the contrary, project coordinators are asked to sign contracts directly with insurance companies of their choice, respecting the minimum insurance requirements in the grant agreement. The Commission also explained that the need to cover family members is not mentioned in the minimum requirements. Therefore, under the current rules, it cannot require the extension of the insurance coverage.

The Ombudsman concluded that the Commission had taken adequate steps to settle the matter and decided to close the case. However, she included a further remark in her closing decision, indicating that the Commission should see to it that Erasmus Mundus students have the possibility to turn to the insurance company for insuring family members, regardless of their age.

In response, the Commission informed the Ombudsman that, taking into account her recommendation, the recently issued grant agreements and project handbooks for all Erasmus Mundus actions included an invitation to coordinators to ensure that family members can get the same insurance coverage as the scholarship holder, at their own expense and regardless of their age.

The Ombudsman welcomes the Commission's positive follow-up to her further remark.

[7] Case T-758/14.

4. European External Action Service (EEAS)

Case 714/2012/JF: Annual salary review of EU Delegations' staff

The complainant, a staff representative of the EU Delegation in Guyana, complained about the annual salary review of local staff working in that Delegation. Following an inquiry, the Ombudsman did not find any maladministration.

The Ombudsman noted, however, that the local staff had also made a request for dependent child allowances and that the EEAS was assessing that request. She invited the EEAS to inform the Delegation's local staff whether it had taken and implemented a decision to grant them those allowances, and, if not, when it expected to take and/or implement a decision on those allowances.

In response, the EEAS explained that, in light of the information provided by the Guyana Delegation and the rules applicable to the EU Delegations worldwide, it could not grant local staff the requested allowances. However, if the local staff were to provide new information compatible with the rules applicable to dependent child allowances (which it enclosed with its reply) the EEAS could reconsider its decision.

The Ombudsman welcomes the EEAS's clear reply to her further remark.

Case 2410/2012/MHZ: Avoiding delays and making sure that EEAS's services monitor the behaviour of their contractors and insist that the latters' obligations vis-à-vis their subcontractors are fulfilled

The complainant was a subcontractor of a local company, which had a contract with the EU Delegation in Tunisia. In 2004, the complainant delivered goods to the Delegation but was not paid for those goods. The Delegation tried to resolve the matter with the local company at that time, but to no avail. The complainant continued to deliver goods to the Delegation in the years that followed, whilst still claiming payment for goods delivered in 2004.

The Ombudsman opened an inquiry and asked the EEAS urgently to resolve this long-running problem. The EEAS's answer to the Ombudsman was delayed, and the EEAS failed to take any action to help the complainant. The Ombudsman criticised the EEAS for its delay and the Delegation for failing to exert influence over the local company, so that it pay the complainant. In the Ombudsman's view, the absence of a direct contractual relationship between an institution and a subcontractor does not exempt the institution, acting in its capacity as a public authority, from its obligation to respect the subcontractor's fundamental right to good administration. This obligation encompasses the need to monitor the behaviour of contractors and, naturally, to verify if, and to insist that, the contractor fulfils its obligations towards subcontractors.

In response, the EEAS apologised for the delays in transmitting its opinions to the Ombudsman and committed itself to ensuring that future cases will be dealt with swiftly and expeditiously as well as in compliance with the deadlines set,

regardless of the complexity of the case or the time lapse. However, the EEAS submitted its follow-up reply eight months after the deadline set by the Ombudsman had expired.

Although it has accepted that EU Delegations need to monitor the behaviour of contractors and insist that the latters' obligations vis-à-vis their subcontractors are fulfilled, the EEAS disagreed with the Ombudsman's finding of maladministration in this case.

The EEAS's statement, that the Delegation should not be held accountable for possible maladministration because it had sought to exercise its influence over the contractor to settle the arrears, is regrettable. In her decision in this case, the Ombudsman argued that this influence had not been exercised adequately because the Delegation had halted its efforts even though the complainant had not received the payment from the contractor. The Ombudsman, however, endorses the EEAS's commitment to a more citizen-oriented approach in ensuring that, despite the lack of direct contractual obligations, its services monitor the behaviour of their contractors and insist that the latters' obligations vis-à-vis their subcontractors are fulfilled.

The EEAS's commitment to comply with the deadlines set by the Ombudsman, regardless of the complexity of the case, is welcome. However, the credibility of this commitment was affected by the fact that it was submitted eight months after the expiry of the deadline set by the Ombudsman. In order to clarify the situation, further contact was made, with the result that the EEAS confirmed that the High Representative would take responsibility for responses to the Ombudsman in the future. This is a welcome development.

5. European Investment Bank (EIB)

Case OI/3/2013: The EIB agreed to revise its Transparency Policy and ensure that environmental documents and information are accessible to the public

In May 2013, a Ukrainian NGO complained that the EIB failed to comply with the obligation under the Aarhus Convention to disseminate environmental information proactively. The complaint related to a project in Ukraine financed by the EIB.

As provided for in the Memorandum of Understanding between the EIB and the Ombudsman, the latter used the own initiative power to inquire into the complaint.

During the Ombudsman's inquiry, the EIB set up a Public Register of documents and explained in its replies to the Ombudsman what environmental information, as regards the Ukrainian and other projects, will be accessible through the Register. The complainant was satisfied with this outcome and the Ombudsman closed her inquiry with a finding that the EIB had taken the necessary measures to settle the matter. She suggested in a further remark that the EIB could consider adopting and publishing a publication scheme setting

out the type of environmental information it intends to record in the Public Register.

The EIB responded positively to this suggestion. It revised and published its Transparency Policy. It also agreed to revise its 'Guide on Access to Environmental Information' as well as to update its website together with the 'FAQ' section and the Public Register. The said measures have been designed to enable members of the public to easily identify and access environmental data held by the EIB.

The Ombudsman welcomes the EIB's positive and constructive action to help implement the Union's commitment to proactive dissemination of information, in compliance with the Aarhus Convention.

Case 178/2014/AN: European Investment Bank takes steps to review its procurement procedures, as well as the rules governing its complaints mechanism

The Ombudsman criticised the EIB for endorsing the exclusion of an Italian company from a public tender for a construction project in Bosnia and Herzegovina. Despite submitting the lowest bid, the local project promoter excluded the company on the grounds that its bid did not match the tender specifications. The company challenged this decision before the EIB's complaints mechanism, which agreed with the company's arguments, and recommended that the EIB withdraw its support for the project. However, the Bank's management disregarded its complaints mechanism's findings.

The Ombudsman found that the EIB had based its decision on a legal error - an incorrect interpretation of the tender documents. She criticised the Bank for this maladministration, warning that the case could call the EU's commitment to strengthening the rule of law in Bosnia and Herzegovina into question. The Ombudsman also announced that she would consider opening an own-initiative inquiry into systemic issues underlying the EIB's handling of the matter.

In his reply, the EIB President stated that he was committed to ensuring good administration as an essential feature of his leadership at the EIB. He reiterated the importance for the EIB of having strong, effective and transparent procurement mechanisms in the context of EIB financed projects, as well as an independent and effective complaints mechanism. As proof of this commitment, the President enclosed a list of ongoing actions in relation to the EIB's procurement policies and procedures, among which are the following:

(i) an internal audit, to be finalised in June 2015, to analyse and review the EIB procurement process outside the EU. Representatives of the EIB's Internal Audit Division had met with members of the Ombudsman's staff in February 2015 with a view to better understanding the Ombudsman's findings;

(ii) strengthening the EIB Project Directorate procurement activities. By way of example, the Project Directorate had appointed an external consultant to review

its procurement monitoring process for projects outside the EU. In line with his report, the EIB is considering creating a Procurement Review Committee to review high risk procurement processes;

(iii) an external quality review of the EIB complaints mechanism to, among other things, provide suggestions to be incorporated into the formal policy review of the mechanism planned for 2015.

The EIB also explained that it is seeking to address the non-effectiveness of national remedy mechanisms, a further issue dealt with in this inquiry, via interinstitutional coordination, as well as through the contractual framework.

The Ombudsman welcomes the EIB's constructive reaction to her critical remark, which should avoid her having to launch a separate own-initiative inquiry into the systemic issues underlying the EIB's handling of the matter. She trusts that the EIB will inform her in due course of the results of the various actions it has undertaken, including by making available the internal audit report that was to be finalised in June 2015. The Ombudsman considers it useful to underline that, in her view, the EIB's internal complaints mechanism plays an essential role in this area and looks forward to contributing to the review of the mechanism.

6. European Data Protection Supervisor (EDPS)

Case 755/2014/BEH: The EDPS' handling of a request for public access to the file on a complaint made by the person requesting public access

The complainant considered that the EDPS had given insufficient reasons for not granting public access to the documents related to the complaint made to the EDPS by the complainant. In the context of the Ombudsman's inquiry, the EDPS stated that no public access is granted regarding on-going cases. It emphasised, however, that it could grant *private* access in line with Regulation 45/2001. The Ombudsman considered that the EDPS' position was not implausible and she thus closed the case. However, she also noted that it does not clearly emerge from the EDPS' rules of procedure that it does not grant public access regarding on-going cases. She therefore made a further remark to the EDPS, asking it to consider clarifying, in its rules of procedure, its rules on public access in respect of on-going cases.

In its reply to the Ombudsman, the EDPS stated that it was in the process of further developing its policy on public access to closed complaint files through a revision of the case manual on access to documents. Once this process is finalised, the EDPS will carefully assess the need to amend its rules of procedure and it will inform the Ombudsman about the outcome.

The Ombudsman considers the EDPS to have responded in a satisfactory manner to her further remark. However, she again underlines that the current wording of the rules of procedure can also be understood as implying that public access can be granted even while cases are on-going. Consequently,

she reiterates that it is therefore advisable to revise the rules of procedure accordingly.

7. European Personnel Selection Office (EPSO)

Case 2201/2011/TN: EPSO undertakes to provide appropriate descriptive feedback in competency passports

The complaint concerned EPSO's refusal to give access to an evaluation sheet concerning a test in an open competition. The Ombudsman found EPSO's refusal to constitute maladministration and closed the case with a critical remark.

In its follow-up, EPSO gave an undertaking to provide "appropriate descriptive feedback" in the competency passports and apologised for its failure to do so in the case at hand. EPSO stated that it has taken measures to ensure that such feedback is now being provided in all competency passports.

The Ombudsman welcomes EPSO's positive response, which should help reduce the number of complaints from candidates.

Case 29/2012/DK: Neutralisation of competition questions

The complaint concerned the alleged unequal treatment of candidates in staff selection procedures by the so-called "neutralisation" practice. After an inquiry, the Ombudsman found that EPSO was entitled to choose to neutralise questions as a means to deal with defective questions. However, she took the view that neutralisation is not the only option available to resolve the problem of defective questions since it would also be legal, and in accordance with principles of good administration, for a selection board to ask the likely limited number of candidates affected by defective questions to take the computer-based tests afresh. She also considered that a selection board could include additional questions in the original tests solely for the purpose of replacing any possible defective questions by such extra ones. She drew attention to these possibilities in further remarks.

In response, EPSO explained that, within the framework of its regular operational review process, it has been discussing the improvement of its selection procedures, including alternative ways of dealing with ambiguous or defective questions in computer-based testing and that the Ombudsman's further remarks are among some of the procedures that have already been considered by EPSO.

As regards candidates taking the tests afresh, EPSO reached the conclusion that this would have a negative impact on candidates who would spend twice as much time travelling to testing locations and sitting computer-based tests and which may also incur additional costs. Furthermore, this would also have a negative impact on the institutions' resources, as the implementation of this

measure would represent an increase in costs, even if a limited number of candidates were to be involved.

As regards replacement questions, EPSO concluded that this would both demand more time from candidates and require additional staff, technical support and logistics. In fact, if replacement questions were to be introduced at the beginning of the computer-based tests, then the overall duration of such tests would also have to be increased. The duration of computer-based tests in some open competitions may reach 180 minutes and introducing replacement questions with the relative proportion of timing for such tests could increase the presence of candidates at the test centre to up to 240 minutes, which could be considered an undue burden for candidates and would likely cause further costs for the institutions. Furthermore, the compilation of computer-based tests for competitions is carried out in such a way as to establish a group of questions of varying levels of difficulty which together correspond to a specific difficulty matrix. According to case-law, such a difficulty matrix is established by the Selection Board. Given that it would not be possible to know in advance which questions might later be neutralised, the introduction of replacement questions may also affect such a difficulty matrix. At the same time for situational judgement tests, questions are spread across five competencies so multiple extra questions would have to be provided for each of these areas.

In any case, it should be noted that the questions used for taking the test afresh or used as replacement questions would be taken from the same database and, consequently, the probability of error as regards these questions would be identical to that of the original test. Therefore, in EPSO's view, implementing either of these measures would not bring any real advantage to candidates and/or the institutions.

Moreover, neutralisation has been constantly accepted by case law, as it guarantees equal treatment among candidates and respects the principles of proportionality and good administration, whilst ensuring that no candidate is negatively affected. EPSO therefore believes that neutralisation continues to balance equitably the interests of both the candidates and the institutions as regards the fairness of selection procedures.

In conclusion, EPSO stated that it attaches great importance and effort to maintaining the quality of its selection procedures and that it will continue to look for new ways of improving its selection procedures and of eliminating any impact of ambiguous or defective questions in staff selection procedures.

The Ombudsman welcomes EPSO's constructive and convincing response to the further remarks.

Case 1330/2012/ER: Indication of professional experience in open competitions

According to the complainant, in open competition EPSO/AD/206/11, EPSO took into account information supplied by candidates about their professional experience even though the application form contained an unequivocal

instruction requesting candidates not to provide information about their professional experience.

During the inquiry, EPSO (i) acknowledged that the wording was unclear; (ii) apologised to the complainant; and (iii) undertook to change the wording for future competitions, so as to make clear that indicating professional experience is voluntary. In closing the case, the Ombudsman invited EPSO to consider removing the section concerning candidates' professional experience from its on-line application form in this kind of competition.

In response, EPSO explained that the information concerning work experience is useful to the Institutions after the end of the competition, at the stage of recruiting successful candidates.

The Ombudsman considers EPSO's explanation to be reasonable and invites EPSO to make clear to candidates that this is the purpose of inviting them to indicate professional experience when applying for open competitions in which no experience is required.

Case 1571/2012/DK: Neutralisation of competition questions in EPSO selection procedures

This case also concerned the neutralisation of competition questions in EPSO selection procedures and involved a further remark to which EPSO followed-up positively.

Cases 1633/2012/OV and 1674/2012/OV: Information to candidates about their performance in practical tests

In dealing with two complaints, the Ombudsman noted that, on the basis of recent case-law of the Civil Service Tribunal, the competency passport is now the only document which enables candidates to understand why they have failed in a particular test. In a further remark, the Ombudsman called on EPSO to be particularly careful to ensure that the competency passport contains all the necessary information, including details of the candidates' performance in practical tests.

In response, EPSO stated that it fully shared the Ombudsman's view and that it has taken measures to ensure that competency passports contain appropriate descriptive feedback on both the general and job-specific competencies, including details of the candidates' performance in the practical job-specific tests.

The Ombudsman welcomes EPSO's positive follow-up and will monitor its implementation when dealing with any future complaints.

Case 1760/2012/OV: Duty to give a reasoned reply to an Article 90 (2) complaint

An unsuccessful candidate in a competition exercised the right to make a complaint to EPSO on the basis of Article 90(2) of the Staff Regulations. After waiting nearly two years for an answer, he complained to the Ombudsman.

The Staff Regulations provide (i) that the Institution concerned shall notify the complainant of its reasoned decision on an Article 90(2) complaint within four months and (ii) that failure to reply within the four month deadline shall be deemed to constitute a negative reply, against which the complainant may appeal to the Court.

Following the Ombudsman's intervention, EPSO sent a reasoned answer and the Ombudsman closed the case.

In doing so, the Ombudsman made a further remark underlining, in summary, that point (ii) above does not entitle the administration to disregard point (i): i.e., the duty to give a reasoned reply.

In response, EPSO stated that it fully agreed with the further remark and that it is aware that principles of good administration require it to send an explicit reasoned reply to each Article 90(2) complaint within four months.

The Ombudsman welcomes EPSO's acknowledgement of its obligation to send a reasoned reply to Article 90(2) complaints.

Case 1999/2012/JF: Transparency in competitions to select translators

Following a complaint from a candidate who participated in a selection competition for translators, the Ombudsman recommended that EPSO disclose the original texts of the translation tests. EPSO refused, arguing that the texts could be reused for other tests. The Ombudsman was not convinced by EPSO's explanations. She took the view that disclosure of texts after a competition has taken place and the use of new texts for subsequent competitions would increase the overall transparency of EU competitions and respect for the selection boards' important work.

In response, EPSO changed its policy. It now publishes the source texts in translation tests on its website, once candidates have been informed of their results. The details of the new policy are set out in the new General Rules Governing Open Competitions, from February 2015.

The Ombudsman welcomes EPSO's revised policy, which enhances the transparency of competitions for the selection of translators.

Case 2321/2013/DK: Incomplete information in an EPSO leaflet advertising an open competition

The complaint concerned allegedly misleading information published by EPSO in a leaflet and on its own website concerning the deadline for submitting applications for an open competition. During her inquiry, the Ombudsman found that EPSO's leaflet and the information made available on the relevant page of its website were incomplete as they did not specifically indicate the exact hour of the deadline. However, EPSO did publish complete information in the Official Journal about the deadline for applications in the open competition concerned. She therefore found no maladministration by EPSO. Nonetheless, the Ombudsman made a further remark that EPSO should ensure that all its publications and advertisements contain precise information and are in line with the wording of the notices published in the Official Journal of the European Union.

In its follow-up reply, EPSO not only agreed with the Ombudsman's further remark but also stated that it had already taken measures to ensure that its publications contain correct and complete information concerning the conditions of open competitions.

EPSO's reply to the Ombudsman's further remark is satisfactory.

Case 1955/2014/VL: EPSO's Talent Screener

After inquiring into a complaint concerning a competition for contractual agents the Ombudsman made two further remarks asking EPSO to ensure, to the extent it had not already done so: (i) that candidates are provided with sufficient information concerning the assessment of their applications before the deadline for submitting a request for review begins to run and (ii) that degrees deemed equivalent under national legislation are duly taken into consideration.

In response, EPSO (i) explained the steps it undertook to provide the necessary information to candidates and (ii) committed itself to raising awareness among selection boards of the consequences of an overly rigorous approach to assessing the equivalence of national diplomas.

EPSO appears to have drawn the appropriate conclusions from the Ombudsman's further remarks.

8. European Anti-Fraud Office (OLAF)

OI/8/2010/CK: Alleged irregularities in an OLAF external investigation

The own-initiative inquiry concerned an external investigation carried out by OLAF into alleged fraud by the complainants, an NGO based in a third country (Country X) and its Executive Director. The Ombudsman's inquiry focused on three main issues.

The first issue concerned allegations of unauthorised disclosure of information to the press, the informants and the authorities of Country X. The Ombudsman found no maladministration in this respect. She nevertheless made a further remark and advised OLAF where it has been informed of alleged leaks to the press on its part, it should (i) take adequate measures to investigate the incident and (ii) inform any person concerned of its findings as swiftly as possible.

The second issue concerned OLAF's refusal to give public access to its Final Case Report. The Ombudsman issued a recommendation inviting OLAF to grant access to the Final Case Report or to provide convincing reasons to justify its refusal to do so. OLAF's reply, in which it reiterated its refusal to grant access, was not satisfactory. The Ombudsman regretted the position adopted by OLAF and made a corresponding critical remark.

The third issue focused on alleged breaches of the complainants' right of defence. The Ombudsman found that OLAF failed (i) to provide sufficient information in a timely manner to the complainants in relation to the scope of the investigation and (ii) to invite them to present their views before the case was closed. In light of the entry into force on 1 October 2013 of new rules regarding the procedures carried out by OLAF, the Ombudsman considered that there was no need for her to take further action and made a corresponding critical remark.

In its reply, OLAF informed the Ombudsman about (i) its recent decision to grant the complainants partial access to the requested document; (ii) its new rules regarding the implementation of the "right to comment" vis-à-vis all persons concerned by OLAF investigations; and (iii) its procedure for dealing with unauthorised disclosure of information to the press.

The Ombudsman welcomes OLAF's constructive reaction to her remarks. Especially in relation to the issue of access to the final case report, the Ombudsman commends OLAF for having reassessed the application in the light of current circumstances and demonstrated its willingness to engage in a constructive dialogue.

Case 1505/2012/MMN: Refusal of access to OLAF's Final Case report pending an investigation at national level

The case concerned OLAF's refusal to grant the complainant, a MEP against whom an investigation was being conducted by the competent national authorities, access to its Final Case Report. At the time of the complaint, OLAF had sent its Final Case Report to the national authorities for investigation into allegations of corruption. The complainant claimed that 1) OLAF should grant him access to the Final Case Report and 2) OLAF had infringed the law by sending the Final Case Report to the authorities of the Member State concerned. The Ombudsman inquired into those claims and found that, although OLAF did not explain why it did not grant access to the Report, the complainant had already in the meantime obtained a copy of it during the inquiry. Second, the Ombudsman found that no maladministration had been committed by OLAF in forwarding its report to the competent national authorities.

However, the Ombudsman made a further remark in which she pointed out that it would be good administrative practice if OLAF were to provide precise explanations for its view that access to a Final Case Report would undermine ongoing proceedings at national level. Additionally, the Ombudsman suggested that it would be good administrative practice for OLAF to seek the views of the Member State concerned before deciding on an access request to a Final Case Report.

OLAF replied that in future it will take into account the Ombudsman's remarks when handling similar requests for access to a Final Case Report by persons concerned. It noted, however, that even after having consulted the national competent authorities, it would not always be possible to disclose the reasons why the release of documents would specifically and effectively undermine on-going national proceedings since, in some cases, providing such information to the applicant could by itself have an adverse impact on those proceedings.

The Ombudsman welcomes OLAF's helpful response to the further remark.

9. European Centre for Disease Prevention and Control (ECDC)

Case 238/2012/JF: Public access to ECDC documents

During an inquiry into a complaint, the European Centre for Disease Prevention and Control (the 'ECDC') informed the Ombudsman that it intended to review its internal rules on the handling of requests for public access to its documents. When closing the case, the Ombudsman asked the ECDC to inform her about the resulting measures.

The ECDC replied that it was conducting consultations and that it expected to finalise the revision of its internal procedures no later than the first quarter of 2015. Although it does not have a public register, the ECDC publishes its documents on its "*Transparency*", "*Key documents*", "*Management Board*", "*Advisory Forum*" and "*Publications*" webpages. Once ready, the new ECDC portal would take account of the requirements set out in the legislation on public access to EU documents regarding public registers.

The ECDC also acknowledged that it had not yet begun publishing annual reports on the management of requests for public access to its documents. However, it would rectify this by publishing the first report covering the year 2014 in its forthcoming Annual Report for 2015.

Finally, the ECDC explained that 93% of its staff participate in a training programme on *professional ethics*, which includes case studies on the application of the legislation on public access to EU documents and on protection of personal data.

The Ombudsman welcomes the efforts of the ECDC to improve its administrative practices regarding public access to its documents.

Case 2241/2012/JF: Drawing up of appraisal reports for the ECDC´s staff

As explained in the section above entitled "Recommendations accepted', following a complaint by a former member of the ECDC's staff, the Ombudsman made a recommendation to that agency that it draw up the annual appraisal report in respect of that former member of staff. After the agency did so, the Ombudsman closed the case with a further remark to the ECDC that it inform the European Commission, which was reviewing the rules on annual appraisals applied by EU agencies, about her analysis of the ECDC's rules so that the Commission could take that analysis into consideration during the review process. In particular, the Ombudsman found the rule, according to which members of staff leaving the agency receive an annual appraisal report only if they ask for it, to be incompatible with the Staff Regulations.

In its reply, the ECDC informed the Ombudsman that it had informed the Commission of the Ombudsman's views and that the Commission had completed its review. While the Ombudsman was not satisfied by the outcome of the Commission's review, which did not address her concerns, no further action appears necessary at this stage. The Ombudsman may, however, consider it necessary to revert to the issue regarding the possible incompatibility of the new rules on appraisals with Article 43 of the Staff Regulations when dealing with possible future complaints.

As requested by the Ombudsman, the ECDC informed the Commission about the Ombudsman's analysis of its rules.

10. European Food Safety Authority (EFSA)

Case 2522/2011/CK: Alleged conflict of interest concerning an EFSA Working Group

The complaint concerned the way that EFSA handled an alleged conflict of interest concerning one of its Working Groups. The complainant brought to EFSA's attention information that could cast serious doubt upon the independence of some members of the Working Group. The Ombudsman took the view that EFSA should have thoroughly investigated these issues and then informed the complainant of its findings in a timely manner. The Ombudsman closed the inquiry with the critical remark that, by failing adequately to respond to the complainant's allegations that (i) some members of the Working Group were in a conflict of interest because of their links with industry and (ii) a balanced stakeholder representation in external meetings was not ensured, EFSA did not dispel the citizens' impression that there was a potential conflict of interest.

In its reply, EFSA informed the Ombudsman that it had asked its Internal Audit Capability to perform a review of its screening of the interests of the members of the Working Group in question. Although the review revealed some procedural shortcomings, it did not identify any undue influence on the work of the Working Group. EFSA pointed out that it had informed the complainant of the review and of recent initiatives for strengthening EFSA's governance.

Regarding the representation of stakeholders in external meetings, EFSA acknowledged that the complainant's doubts could not be dispelled retrospectively. EFSA also referred to its on-going efforts to adopt an open and participative approach towards external parties and stakeholders, as illustrated by some of the major topics it has dealt with recently and which led to an intense debate about its scientific risk assessment work. Finally, EFSA referred to its on-going efforts to engage with society at large on matters within its food safety remit, namely its Public Consultation on the discussion paper 'Transformation to an Open EFSA'.

The Ombudsman welcomes EFSA's constructive reaction to the critical remark and its clear recognition of the need for public trust in its work.

11. European Insurance and Occupational Pensions Authority (EIOPA)

Cases 1874/2011/LP and 1877/2011/LP: Setting up of a Stakeholder Group

The case concerned the decision made in 2011 by the European Insurance and Occupational Pensions Authority ('the EIOPA') regarding the composition of the Insurance and Reinsurance Stakeholder Group ('IRSG') and the Occupational Pensions Stakeholder Group ('OPSG'). That decision was made pursuant to Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (the 'Regulation). The complainant in case 1874/2011/LP, EuroFinuse, a European federation of financial services users, and the complainant in case 1877/2011/LP, BEUC, a European consumer organisation, argued that EIOPA failed to ensure (i) a geographical balance and (ii) gender balance within and among the stakeholder categories of the IRSG and the OPSG, (iii) an adequate balance between the representatives of the industry, on the one hand, and those of users and consumers, on the other hand, when selecting members of the IRSG and the OPSG, and (iv) EIOPA adopted an incorrect definition of the different stakeholder categories provided for in the Regulation.

The Ombudsman criticised EIOPA for having applied the requirement laid down in Article 37(4) of the Regulation to ensure to the extent possible *"an appropriate geographical and gender balance and representation of stakeholders across the Union"* only as regards the composition of the IRSG as a whole, and not also within each category of membership. She also considered that by appointing representatives of employers to the OPSG, EIOPA did not comply with the exhaustive list of categories provided for by Article 37(3) of the Regulation, and thus committed maladministration. Finally, by including in the "users" category of the Stakeholder Groups applications from representatives of entities which were clearly not retail users of the services provided by the financial sector, but rather providers of remunerated services to the latter, EIOPA also committed maladministration.

The Ombudsman also remarked that it would be advisable for EIOPA to (i) take appropriate measures to increase the awareness of candidates from "new" Member States interested in applying for the "industry" category" of the OPSG,

(ii) avoid the risk that one or more Member States may be over-represented, (iii) publish future calls for expression of interest in becoming a member of the Stakeholder Groups, not only on its own website, but also in the specialised financial press, and use, in general, any other communication channel that could increase the awareness and interest of women candidates, (iv) require future applicants to indicate only one of the five categories for which they would like to be considered and (v) publish, once the members of the Stakeholder Groups have been appointed, meaningful information that could show how, in the light of the various applications received, EIOPA complied with the requirement to ensure a balanced representation of all the various categories of stakeholders concerned, and how, in doing so, it also ensured *"to the extent possible (...) an appropriate geographical and gender balance and representation of stakeholders across the Union"*.

In its response, EIOPA stated that it has accepted all the remarks made by the Ombudsman and indicated that it already endeavoured to implement them in the context of the 2013 renewal process. It also expressed its willingness to implement further the Ombudsman's suggestions when renewing the membership of the IRSG and OPSG.

The Ombudsman welcomes EIOPA's positive response.

12. European Medicines Agency (EMA)

Case 1020/2012/MMN: Avoiding conflicts of interest in dealing with personnel issues

The complaint concerned a performance evaluation report ('PER') on a staff member who had lodged a harassment complaint with the European Medicines Agency ('EMA').

The Ombudsman's inquiry revealed that the complainant had made a complaint of psychological harassment against her line manager. The line manager was also responsible for the preparation of the PER. The assessor for the purposes of the PER was also involved in the harassment investigation. Finally, the investigator, who ultimately proposed the rejection of the harassment complaint, also participated in the preparation of the PER.

The Ombudsman considered that it is good administrative practice to ensure that performance evaluation reports are prepared by members of staff who are not affected by any actual, potential or apparent conflict of interest. In the present case, EMA failed to prevent an apparent conflict of interest. The Ombudsman made a critical remark accordingly.

In response, EMA acknowledged that, if similar circumstances were to arise in the future, it would be good practice to consider appointing an independent party to take over the role of reporting officer and assessor, despite the practical difficulties his might cause for the purpose of preparing the PER.

The Ombudsman welcomes EMA's constructive follow-up.

See Case 364/2013/PMC above under ‘Star cases’

Case 1276/2013/OV: Correction of errors in medical data that Member States submit to EMA

The complainant, a pharmacist, complained that EMA's review of the safety and effectiveness of a certain category of suppositories was based on erroneous information submitted by the Member States. The Ombudsman found that EMA's answer to the complaint was satisfactory, since its review had recommended increased safety measures and the alleged errors, if they existed at all, could not have had an impact on the review. In a further remark, the Ombudsman invited EMA to reflect on what (proactive) action it should take if it receives credible information that scientific data submitted to it by one or more Member States and subsequently included in EMA documents is incorrect.

In its reply, EMA pointed out that the national authorities are responsible for the quality, accuracy and update of the medical data sent to EMA. It explained that, were it to discover a genuine mistake, which could raise public health concerns, it would use an existing procedure whereby it can request the Commission to issue a corrigendum.

The Ombudsman welcomes the information provided by EMA about the corrigendum procedure.

Case 1556/2013/MHZ: EMA agrees to include on its website more information about technical support in its application process

A Polish national wished to apply for a vacant post at EMA. She experienced technical problems with the application form on EMA's website and as a result could not submit her application on time. Having exchanged correspondence with the Agency on that issue, she complained to the Ombudsman.

The Ombudsman’s inquiry found no maladministration. However, in a further remark, the Ombudsman suggested that EMA could provide additional information on its website on the available software and technical support, for future candidates.

The EMA responded positively to the Ombudsman's suggestion and agreed to include very detailed information and explanations on the use of its application form, available software, technical support as well as assistance with troubleshooting.

The Ombudsman welcomes EMA's constructive response to the further remark.

13. Fundamental Rights Agency (FRA)

Case 178/2013/LP: Failure to launch Investigation

The case concerned the handling by the Fundamental Rights Agency ('FRA') of a complaint about psychological harassment allegedly suffered by a former member of its staff, and the FRA's alleged refusal to take any appropriate action in that regard. The Ombudsman made a solution proposal, suggesting that FRA should consider launching an investigation into the complainant's allegations of psychological harassment. The institution refused to investigate the complainant's allegations on the grounds that it had to carry out a balancing exercise between the interests of the complainant who is no longer a member of its staff, and the interest of the service, and the fact that any new decision could expose the FRA to litigation before the EU courts and possibly to an action for damages.

Upon finding that the arguments made by the FRA were unconvincing, the Ombudsman made a critical remark concluding that the FRA's refusal to carry out a proper and thorough investigation into the complainant's allegations of psychological harassment, constituted maladministration. In its follow up response, the institution disagreed with the Ombudsman's critical remarks claiming that the Ombudsman failed to respond to the FRA's arguments.

The FRA finally stated that it considered for a second time whether it should carry out an investigation based on the complainant's allegations, but concluded that there were still not sufficient grounds for doing so.

The claim that the Ombudsman did not respond fully to the arguments presented by the FRA cannot be upheld. In fact the Ombudsman took particular care in addressing the allegations made by the complainant, FRA's balancing test for not initiating an investigation into the complainant's claims, and the risk that the FRA may have to pay financial compensation in case the allegations were proven well-founded. Thus, the Ombudsman responded adequately to all the arguments raised by the FRA.

The Ombudsman concludes that FRA has not taken the appropriate steps to improve its administrative practices. Despite her critical remark that the FRA has engaged in maladministration by refusing to open an investigation into the alleged psychological harassment against the complainant, the institution regretfully rejected the Ombudsman's proposal to carry out such an investigation.

14. Eurojust

Case 2057/2011/TN: Eurojust improves information to applicants when refusing public access to documents

The Ombudsman concluded that Eurojust's rules on public access to documents give the National Members (who are the representatives of the Member States

working with Eurojust) a veto right in respect of the disclosure of case-related documents. However, the obligation on Eurojust to state reasons for not giving public access to documents requires that the National Members provide a sufficient explanation of the reasons why an exception to access applies.

In the present case, Eurojust failed to inform the complainant of the reasons for the National Members' refusal to give access, a fact that was remedied during the course of the Ombudsman's inquiry.

The Ombudsman made a further remark to Eurojust stating that is required to communicate the reasons put forward by National Members for refusing public access.

In its follow-up, Eurojust responded very constructively, explaining that, on the basis of the Ombudsman's findings, it had modified its internal template for National Members to reply to the question whether any exception to access would apply to a case-related document. The Ombudsman suggested further improvements to the template, which Eurojust took on board.

The Ombudsman welcomes the steps Eurojust has taken to improve the information provided to applicants when it cannot grant public access to case-related documents because of the refusal of a National Member.

Case 681/2012/DK: Dismissal of a staff member

The complainant, a member of the temporary staff at Eurojust, was dismissed following an extended probationary period because her work was considered to be unsatisfactory. She complained to the Ombudsman that her dismissal was not legal and was tainted by procedural errors.

After an inquiry, the Ombudsman found no maladministration. In her decision, the Ombudsman noted that Eurojust was not legally required to consult the Joint Reports Committee about the dismissal of a temporary agent. She nevertheless observed that it would constitute good administrative practice for Eurojust to convoke the Joint Reports Committee if requested to do so by its Staff Committee. In response, Eurojust committed itself to carefully considering any such request by the Staff Committee on a case-by-case basis.

The Ombudsman considers Eurojust's reply to be satisfactory.

15. Other cases

European Commission and EU agencies

OI/4/2013/CK: Disclosure of the names of Selection Board members

On 12 August 2013, the Ombudsman opened an own initiative inquiry to clarify the policies of the EU Agencies as regards disclosure of the names of selection board members and the compliance of such policies with data protection

requirements. After having thoroughly examined their replies, the Ombudsman issued Good Practice Guidelines. The objective of these Guidelines is to assist the EU Agencies to ensure the correct balance between transparency and the legitimate requirements of confidentiality in the work of selection boards, while also respecting EU data protection principles. She invited the EU agencies to endorse these Guidelines and to inform her within six months of measures they have taken to comply with them. The Ombudsman also informed the Commission of the Guidelines.

Between August and November 2014, most of the Agencies informed the Ombudsman of the measures they have taken in response to the Guidelines. These consisted mainly in agreeing either to make public the names of selection board members on a dedicated webpage of their websites (EEA, ETF, EFSA, ESMA, EMCDDA and EIOPA) or to inform all candidates of the composition of the selection board in good time (EASA, FRA, OSHA, EMA, GSA, EACEA, INEA, ERCEA, EAHC, BEREC, FRONTEX, EASME, Europol).

In November 2014, the Commission informed the Ombudsman that it is in the process of finalising a draft model decision for adoption by all EU agencies on the recruitment and use of temporary agents under Article 2(f) of the Conditions of Employment of Other Servants ("CEOS"). This decision includes the obligation to disclose the names of selection committee members, in line with the Ombudsman's Guidelines.

The Ombudsman welcomes the Commission's action to ensure that all the EU agencies adopt a decision that gives effect to the key recommendation contained in the Ombudsman's Guidelines. She also welcomes the willingness demonstrated by the majority of the Agencies to give effect to her Guidelines.

Case 1923/2013/BEH: Follow-up to complaint about supervision of control body certifying organic products

The complaint concerned the Commission's alleged failure to carry out its supervisory role over bodies certifying organic products, particularly one such body operating in Ethiopia.

During the course of the Ombudsman's inquiry, the Commission informed her that it was carrying out an audit of the certifying body identified by the complainant. The Commission stated that it would inform the Ombudsman of any measures taken on the basis of the audit report. On the basis of this information, the case was closed as settled and the Commission was asked to inform the Ombudsman and the complainant of the outcome of the audit as soon as possible.

The Commission provided the Ombudsman and the complainant with a link to the relevant, anonymised, audit report, which contains a number of recommendations for improvements. The monitoring body in question will have to inform the Commission of the details of the actions taken and planned in respect of its recommendations.

The Ombudsman thanks the Commission for the information. At first sight, there appears to be no need for the Ombudsman to take further action.

European Central Bank (ECB)

Case 1703/2012/CK: Public access to a letter sent by the ECB to the Irish Finance Minister

In 2010, at a time of financial crisis, the ECB sent a letter to the Irish Finance Minister. The complainant, an Irish journalist, applied for public access to the letter in November 2011. The ECB refused access and the journalist turned to the Ombudsman in 2012. After an inquiry, which included an inspection of the letter, the Ombudsman took the view that the ECB had been entitled to refuse access at the date of the application. For this reason, the Ombudsman found no maladministration by the ECB. However, in 2013 she invited the ECB to consider disclosing the letter in the light of subsequent changes in the monetary and economic conditions of the Eurozone.

In response to the Ombudsman's proposal, the ECB's Governing Council took the view that the protection of the public interest as regards monetary policy in the European Union and financial stability in Ireland continued to justify confidentiality. The Ombudsman was unconvinced by this explanation. In her decision closing the case in April 2014, she regretted that the ECB had wasted an opportunity to apply the principle that transparency should be the rule and secrecy the exception. She took note, however, of the ECB's commitment to re-evaluate disclosure of the letter at a more advanced stage of post-programme surveillance following Ireland's exit from its economic adjustment programme.

In November 2014, the ECB informed the Ombudsman that, in the light of the most recent developments in the Irish economy and funding markets, it decided to release the letter together with three other letters that were part of the correspondence between the ECB and the Irish authorities.

The disclosure of the letter is an important contribution to informing public debate. The failure to release it earlier had provoked intense speculation about its contents, which in turn impacted on public and political debate not just about the financial crisis but also about the role of the ECB and other EU institutions in the determination of Ireland's economic welfare. It is hardly desirable that such an important debate should be shaped around the imagined contents of a letter. Citizens have a right to be told the truth no matter how unpalatable.

European Food Safety Authority (EFSA)

Case 775/2010/ANA: Handling of potential conflict of interest arising from a staff member's move to the private sector

The case concerned EFSA's handling of a "revolving doors" situation in which a former member of staff moved to the private sector. Following an inquiry, the Ombudsman made three recommendations, two of which EFSA accepted. EFSA

did not, however, agree to acknowledge its failure to observe the relevant procedural rules and to carry out an assessment of the conflict of interest in the case concerned.

In closing the inquiry in 2013, the Ombudsman criticised EFSA's failure to accept this recommendation.

The closing decision also contained four further remarks providing EFSA with guidance for the future on the handling of conflicts of interest.

As mentioned in *Putting it Right - 2013*, EFSA gave a satisfactory follow-up to the further remarks by substantially improving its rules and procedures on questions of conflicts of interest and revolving doors.

The Ombudsman also pointed out, however, that EFSA had failed to respond to the critical remark.

In its letter to the Ombudsman following the publication of *Putting it Right - 2013*, EFSA informed the Ombudsman of a letter it had sent to the complainant apologising for its failure to exercise the appropriate level of scrutiny in the case at hand. EFSA also repeated its commitment to avoid the occurrence of such errors in the future.

The Ombudsman welcomes EFSA's apology to the complainant and its reiterated commitment to avoid the occurrence of such errors in the future.

The European Centre for the Development of Vocational Training

Case 2228/2013/TN: Improved accessibility to Europass CV for visually impaired persons

The complaint concerned the lack of accessibility of the Europass CV for persons with visual impairments. The idea behind the Europass CV is to create a template allowing European citizens to present their skills and qualifications effectively and clearly throughout Europe. Cedefop is in charge of the Europass web portal. In response to the complaint, Cedefop put in place an action plan to improve the accessibility of the Europass CV for persons with visual impairments. The Ombudsman welcomed Cedefop's reaction to the complaint and closed the case. She asked Cedefop to inform her of the progress made in improving accessibility.

Cedefop subsequently informed the Ombudsman that the Europass portal (except for the online editor) had been made compatible with Level AA standard of the Web Content Accessibility Guidelines (WCAG 2.0) and that a specific downloadable offline CV template had been developed in cooperation with the school for blind people in Thessaloniki. Cedefop undertook to explore further possibilities for improving the accessibility of the Europass web portal and online CV editor to enhance access for blind and visually-impaired citizens.

The Ombudsman welcomes Cedefop's response to the concern brought to its attention, as well as the actions taken

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