



Putting it Right?

Report

How the EU institutions responded
to the Ombudsman in 2019

December 2020

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Foreword

I am pleased to present this year's 'Putting it Right?' report, which assesses how the EU institutions responded to proposals made in our inquiries that were closed in 2019. The EU institutions cooperated satisfactorily in 79% of instances in 2019, which represents an improvement on the previous year. This is a positive reflection on the EU institutions, which sought to improve their administrative practices.

The institutions reacted positively to 93 out of the 118 proposals we made to correct or improve their administrative practices. Out of 17 institutions to which we made proposals, 10 responded satisfactorily to all solutions, suggestions and recommendations that we proposed. While not all institutions reacted to all our proposals in a satisfactory way, these proposals nonetheless increased their awareness of concerns with their practices. That, in itself, should contribute to a heightened sensitivity to what the public expects and, ultimately, to better administration.

While the figure of 79% captures responses from the institutions to my proposals at a particular point in time, it does not fully capture the impact of our work over time. For that reason, this year's report also looks at the wider impact of Ombudsman inquiries and initiatives.

This impact includes, for instance, change linked to initiatives I took without opening an inquiry, or matters solved by institutions while an Ombudsman inquiry was ongoing. However, crucially, it also includes the outcomes of certain inquiries in which the impact was evident only after the inquiry was closed. Some of our proposals are far-reaching, involve significant efforts and may imply reforming procedures and practices that have been in place for decades. In other instances, ongoing external momentum after an inquiry has closed may lead, at a later stage, to changes even though the institution may have initially responded negatively to a proposal.

The EU administration performs in general to a high standard, and I would like to think that we have all seen the benefit of that during this difficult year, marked by the COVID crisis. I have sought to recognise some of these good administrative practices through the 'Award for Good Administration', which is held every two years, and look forward to doing so again in 2021.

Emily O'Reilly
December 2020



Report

1. Introduction

This report gives an account of how the EU institutions¹ responded to the Ombudsman in cases closed in 2019. The Ombudsman can make proposals in the form of solutions, recommendations and suggestions. The Ombudsman can also promote improvement through strategic initiatives, which are not formal inquiries, or prompt an institution to settle a matter even before a formal solution proposal or recommendation is made.

Section 2 explains what Ombudsman solutions, recommendations and suggestions are. It looks into the outcome of the Ombudsman's work, assessing the extent to which EU institutions accept Ombudsman proposals.

Section 3 analyses the qualitative impact of the Ombudsman's work that cannot be measured through statistics. This includes, for instance, change prompted by strategic initiatives or matters solved by institutions while an Ombudsman inquiry was ongoing. This section also looks into the outcome of inquiries in which the impact was evident only after the inquiry was closed.

Both sections include summaries of cases warranting a 'special mention' as leading examples.

2. Outcomes in Ombudsman cases

The Ombudsman helps individuals, companies and associations that have problems with an EU institution². At the same time, the Ombudsman serves the wider public interest by helping the institutions to improve the quality of the service they provide. As well as investigating complaints, the Ombudsman can also open inquiries on her own initiative.

The Ombudsman can require the institution to provide information, inspect its files and take testimony from its staff members. These powers are set out in the Statute of the Ombudsman³ ('the Statute'). When necessary or appropriate, the Ombudsman can call on the institution to revise its position, provide redress or make general changes for the future. If the institution's reply to a finding of maladministration is unsatisfactory, the Ombudsman can draw political attention to a case by making a 'special report' to the European Parliament.

¹ For brevity, this report uses the term "*institution*" to refer to all the EU institutions, bodies, offices, and agencies.

² Article 228 of the Treaty on the Functioning of the European Union empowers the Ombudsman to inquire into maladministration in the activities of the Union institutions, with the exception of the Court of Justice of the European Union acting in its judicial role.

³ European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.



a. Cooperation on cases closed in 2019

The acceptance rate is the percentage of positive replies to the total number of proposals (solutions, recommendations and suggestions) made by the Ombudsman.

There was an overall acceptance **rate of 79%** with the Ombudsman's proposals in cases closed in 2019. That is, the institutions reacted positively to 93 out of 118 proposals that the Ombudsman made to correct or improve their administrative practices.⁴

The rate varies from one institution to another. Out of 17 institutions, 10 had a 100% acceptance rate in 2019. The Commission, which accounts for most of the cases in which the Ombudsman made proposals, due to the size of its administration, had an acceptance rate of 75%.

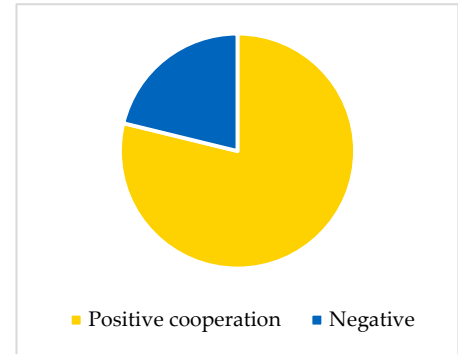


Table 1 - Overall acceptance of Ombudsman proposals by institution:

Institution	Solutions, recommendations and suggestions	Satisfactory replies
European Parliament	2	0
European Commission	71	53
European Anti-Fraud Office	5	4
European Asylum Support Office	5	5
European Aviation Safety Agency	1	1
European Border and Coast Guard Agency	5	5
European Centre for the Development of Vocational Training	1	1
European Chemicals Agency	3	3
European Data Protection Supervisor	1	1
European External Action Service	6	5
European Food Safety Authority	1	1
European Investment Bank	3	2
European Medicines Agency	4	4
European Personnel Selection Office	7	6

⁴ The statistics in this report do not include cases 1946/2018/KR and 757/2017/PB in which we are waiting on replies from the General Secretariat of the Council and the European External Action Service, respectively.



European Securities and Markets Authority	1	1
European Union Agency for Cybersecurity	1	1
Innovation and Networks Executive Agency	1	0
Total	118	93

b. Solutions

If the Ombudsman considers that a complaint can be solved quickly, she can make a solution proposal to the institution concerned, based on Article 3(5) of the Statute.⁵

EU institutions accepted 6 out of 10 solutions proposed by the Ombudsman in cases closed in 2019.⁶

Table 2 - Acceptance of solution proposals by institution:

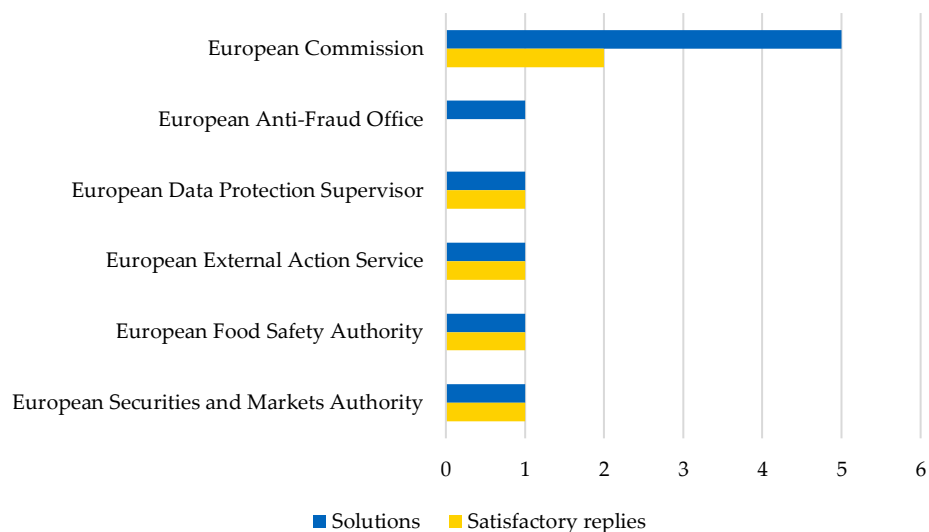
Institution	Solutions	Satisfactory replies
European Commission	5	2
European Anti-Fraud Office	1	0
European Data Protection Supervisor	1	1
European External Action Service	1	1
European Food Safety Authority	1	1
European Securities and Markets Authority	1	1
Total	10	6

⁵ Article 3(5) of the Statute provides that “As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint.”

⁶ In order to avoid double counting, the statistics do not include one solution proposal made in case 805/2018/MIG that was followed by a recommendation.



Chart 2 - Acceptance of solution proposals by institution:



Examples of positive cooperation:

Case 860/2018/THH on the European Food Safety Authority's refusal to grant public access to declarations of interest of middle management staff

An inquiry into the European Food Safety Authority's (EFSA) refusal to grant public access to the declarations of interest of middle management staff resulted in EFSA adopting a new transparency policy in this area. Under the revised policy, EFSA makes public the declarations of interest of all management staff. EFSA also followed the Ombudsman's request to make public the declarations of interest of its Chief Scientist, Senior Science Coordinator and Senior Policy Adviser. The Ombudsman was also pleased to note that EFSA has in place an appropriate system for processing access to document requests.

Case 357/2019/FP on the European Securities and Markets Authority's refusal to grant public access to documents relating to contacts with stakeholders

An academic complained to the Ombudsman after the European Securities and Markets Authority (ESMA) withheld access to certain documents concerning meetings it had with industry representatives on a particular issue. The Ombudsman looked into the matter and found that ESMA held internal notes about these meetings, which it should have considered disclosing. Following the Ombudsman's inquiry, ESMA disclosed parts of eight documents. The Ombudsman also asked that, in the future, ESMA indicate whether its online library of information for the public contains detailed records of its meetings with lobbyists.



c. Recommendations

The Ombudsman may make formal recommendations whenever she finds maladministration. If the recommendation is accepted, the Ombudsman closes the case, welcoming this cooperation. If the recommendation is rejected by the institution, the Ombudsman may close the case by confirming her finding of maladministration. The Ombudsman may submit a Special Report to the European Parliament on any inquiry closed with a finding of maladministration, which the Ombudsman considers to be of wider significant public interest.

As in previous years, in 2019 the acceptance rate for formal recommendations is clearly lower than the rate for Ombudsman solution proposals and suggestions. This is possibly because recommendations are based on a finding of maladministration. By the time an inquiry reaches that point, positions may have become entrenched, making it more difficult to reach a positive outcome.

Table 3 - Acceptance of recommendations by institution:

Institution	Recommendations	Satisfactory replies
European Parliament	2	0
European Commission	13	3
European Investment Bank	3	2
European Personnel Selection Office	3	2
European Border and Coast Guard Agency	2	2
European Union Agency for Cybersecurity	1	1
Innovation and Networks Executive Agency	1	0
Total	25	10

Examples of positive cooperation:

Case 758/2017/MDC on the European Border and Coast Guard Agency's (Frontex) language policy

The case concerned a request to obtain a document in Italian from the European Border and Coast Guard Agency (Frontex). The Ombudsman looked into Frontex's language policy in its external communications and recommended that Frontex make general information available on its website in all official EU languages. She also recommended that Frontex publish its language policy on its website in all official EU languages. Frontex accepted her recommendations.



Case 723/2018/AMF on how the European Union Agency for Network and Information Security handled a procurement procedure for organising an event

A Spanish company complained to the Ombudsman after the European Union Agency for Network and Information Security (ENISA) failed to reply to the questions it submitted while preparing its tender for a contract, even though ENISA had replied to questions from another tenderer. The Ombudsman found that this was maladministration and recommended that ENISA compensate the complainant for the time and resources invested in preparing its tender. ENISA accepted the Ombudsman's proposal and offered the company an 'ex-gratia' payment of EUR 2 500. The complainant was satisfied with the outcome and the Ombudsman closed the case.

d. Suggestions

Suggestions for improvement seek to ensure systemic improvement in the EU administration. They are made either in the decision closing the case or at an earlier stage in the inquiry.

A total of 83 suggestions were made in cases that were closed in 2019.⁷ The follow-up to suggestions was **satisfactory in 93% of the cases**, which is higher than last year's rate of 82%.

Table 4 - Acceptance of suggestions by institution:

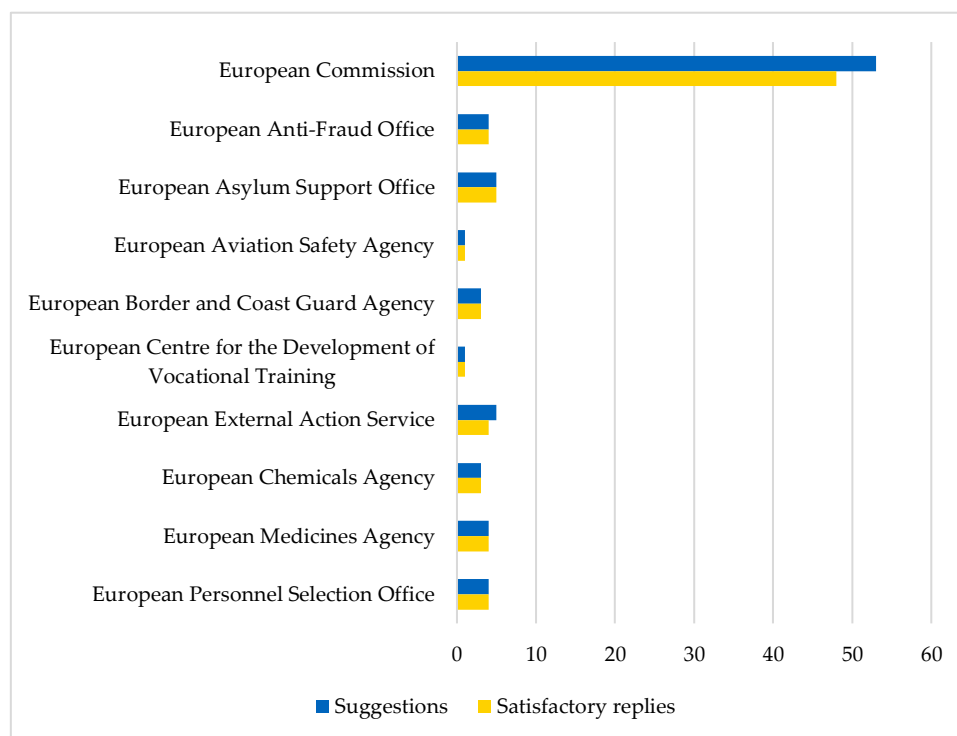
Institution	Suggestions	Satisfactory replies
European Commission	53 ⁸	48
European Anti-Fraud Office	4	4
European Asylum Support Office	5	5
European Aviation Safety Agency	1	1
European Border and Coast Guard Agency	3	3
European Centre for the Development of Vocational Training	1	1
European External Action Service	5	4
European Chemicals Agency	3	3
European Medicines Agency	4	4
European Personnel Selection Office	4	4
Total	83	77

⁷ The five suggestions made to Council in case 1946/2018/KR and the three suggestions made to the EEAS in case 757/2017/PB were not counted because the institutions have not yet replied to them.

⁸ In inquiry OI/3/2017/NF on the Commission's management of 'revolving doors' situations concerning EU staff, the Ombudsman made 25 suggestions, out of which 21 were accepted by the Commission.



Chart 4 - Acceptance of suggestions by institution:



Examples of positive cooperation:

Case 1139/2018/MDC on the conduct of experts in interviews with asylum seekers organised by the European Asylum Support Office

The Ombudsman dealt with a case concerning how the European Asylum Support Office (EASO) conducted an interview with an asylum seeker. The complainant, NGO Advocates Abroad, raised serious concerns about the interview with an asylum seeker, who was subsequently deported. EASO acknowledged that the interviewer had pursued an inappropriate line of questioning and that there had been problems with the interpretation. Following the Ombudsman's suggestion, EASO confirmed that it was setting up a complaints mechanism. It also said that it would immediately and systematically inform national authorities if it discovers that significant errors have been made during interviews with asylum seekers.

Case 417/2018/JF on how the European Commission dealt with allegations of human rights violations in a home for persons with disabilities co-funded by the EU

The Ombudsman dealt with a complaint on how the European Commission dealt with allegations of human rights violations in a home for persons with disabilities in Hungary, which was co-funded by the EU. She expressed concern that the Commission's interpretation of a key provision of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), on independent living, was at odds with that of the UN body that is responsible for monitoring the UNCRPD. In reply to the Ombudsman's suggestions, the Commission agreed to pay particular attention to ensuring that the UNCRPD is adequately taken into account during the preparation and implementation of EU funding programmes.



3. Positive influence

This report records acceptance of the Ombudsman's proposals at a particular point in time. However, measuring the impact of the Ombudsman's work requires going beyond the quantitative acceptance rate.

The Ombudsman's investigations can raise difficult questions and draw attention to systemic, wide-ranging issues. Addressing these can take time with the result that some positive changes cannot be reflected in the yearly figures.

Impact can also be achieved by heightening debate around a topic. The work of the Ombudsman, together with Parliament, civil society and many others, can have an important "deterrent effect" in preventing maladministration. Institutions are aware that administrative action falling short of the high standards the public expects might give rise to an Ombudsman inquiry or to wider scrutiny. In this sense, the statistics do not fully reflect the impact of the Ombudsman's work.

Finally, the acceptance rate does not show where or how often Ombudsman inquiries prompt immediate changes from institutions, even before the Ombudsman makes a formal proposal. Such inquiries are considered to have been "settled" by the institutions.

a. Impact over time

Some of the changes the Ombudsman asks the institutions to make are far-reaching, involve significant efforts and may imply reforming procedures and practices that have been in place for decades. Such changes take time and may occur too late to be captured in the Ombudsman's annual calculations.

In other instances, the pressure exerted by a particular investigation focuses greater public attention on an issue and this in turn can lead, at a later stage, to the reversal of a negative response to a proposal.

Examples:

Joint cases 488/2018/KR and 514/2018/KR on the European Commission's appointment of a new Secretary-General

In the Ombudsman's inquiry into the process leading to the appointment of the Commission's highest civil servant, she asked the Commission to put in place a specific procedure for appointing its Secretary-General. While the Commission initially refused to accept the Ombudsman's recommendation, it subsequently did as the Ombudsman recommended, towards the end of 2019, by initiating a specific appointment procedure for the post of Secretary-General, including a vacancy notice and a well-defined timeline.



Case OI/3/2017/NF on how the European Commission manages ‘revolving doors’ situations of its staff members

In 2018, the Ombudsman closed an inquiry into how the European Commission handled the post-mandate employment of a former Commission President, and the role of its ‘Ethics Committee’ in this matter. The Commission rejected two recommendations and four out of five suggestions made by the Ombudsman. However, in 2019, in the context of a subsequent inquiry into how the Commission manages ‘revolving doors’, the Ombudsman made 25 suggestions to ensure a more systematic and effective approach to dealing with former staff members moving to the private sector or people moving from the private sector to the Commission. The Commission pledged to put in place almost all of the Ombudsman’s proposals regarding how it implements its rules on revolving doors. These included asking the person moving to the private sector to provide more information about the organisation they are going to, and more detail about the nature of their new job.

b. Strategic initiatives

The Ombudsman may choose to pursue strategically important topics without launching an inquiry, by opening a so-called ‘strategic initiative’⁹. The purpose of these initiatives is to share suggestions with the institutions on important topics, to draw attention to matters of public interest or to find out more about a particular issue before deciding whether it is necessary to open an inquiry.

In 2019, the Ombudsman opened two¹⁰ strategic initiatives and closed eleven.

Example:

Strategic Initiative with the European Commission on the negotiations on the UK’s withdrawal from the EU (SI/1/2017/KR)

Before the Brexit negotiations started, the Ombudsman wrote to the Commission and the Council calling for the proactive publication of key negotiating documents. In 2019, the Ombudsman closed the two-year long initiative monitoring the Brexit negotiations by praising the generally high level of transparency. She urged the European Commission and Council to maintain these standards in any future negotiations on the relationship between the EU and the UK. Positive steps by the Commission’s ‘Brexit Taskforce’ included the publication of over 100 negotiating documents, making the Chief Negotiator’s calendar publicly available, and meeting only registered lobbyists. The Council also published the negotiating directives and guiding principles on transparency.

⁹ For more information on the Ombudsman’s strategic initiatives, you may consult the following link: <https://www.ombudsman.europa.eu/en/strategic-issues/strategic-initiatives>.

¹⁰ This includes strategic initiative SI/4/2018/TE opened in December 2019, after the 2018 Putting it Right Report was published.



c. Cases settled

The Ombudsman can close an inquiry at an early stage without proposing a solution if the institution spontaneously solves the problem or addresses the possible maladministration after being informed about the issue.

In 2019, the Ombudsman considered that the institutions had taken the necessary steps to settle the matter in this way in **178 cases**.

Example:

Case 279/2018/JN on the European Commission's decision to recover funds from a company that participated in an EU-funded project in Namibia

The complaint concerned a Germany company that participated in an EU-funded project on improving the capacity of Namibia's national authorities to manage EU funds and programmes. The company turned to the Ombudsman after the European Commission recovered around EUR 100 000 from it, following an audit.

While the Ombudsman's inquiry was ongoing, the Commission approached both the complainant and the Namibian authorities to find a solution. Since the Namibian authorities accepted partial financial responsibility, the Commission repaid the complainant nearly all the amount it had previously recovered.

4. Conclusions

In a clear majority of the inquiries covered by this year's review, the institutions replied satisfactorily to the Ombudsman's proposals. However, while the institutions' acceptance of solution proposals and suggestions is high, this is not the case for recommendations. This may be due to the fact that, by the time inquiries reach the point where the Ombudsman makes a formal recommendation, the institutions are less open towards changing their position. This is especially true for complaints relating to Regulation 1049/2001 on public access to documents, where the institution has already taken a formal decision in response to the 'confirmatory application' appeal.

However, as described above, the acceptance rate does not capture all the efforts made by institutions to improve their administration and to address issues raised in Ombudsman inquiries. The Ombudsman attempts to recognise some of these good administrative practices through the 'Award for Good Administration', which is held every two years.

The Ombudsman will continue to work with the institutions to bring about change, both immediately in response to individual complaints and, more generally, over time.



European Ombudsman

1 avenue du Président Robert Schuman
CS 30403
F - 67001 Strasbourg Cedex

T. + 33 (0)3 88 17 23 13
F. + 33 (0)3 88 17 90 62
www.ombudsman.europa.eu
eo@ombudsman.europa.eu

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