European Ombudsman

Putting it Right?

How the EU institutions responded to the Ombudsman in 2012

9 December 2013

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Table of contents

This report begins with a foreword by the Ombudsman, Mrs Emily O'Reilly. This is followed by an introduction to the report itself, an explanation of the Ombudsman's powers and an analysis of the different kinds of instrument discussed in the report: friendly solutions, draft recommendations, further remarks and critical remarks. The report then contains an overview of the proposals for friendly solutions and draft recommendations accepted in 2012, as well as an overview of the follow-up given to critical and further remarks made in 2012. A section describing the overall compliance rate, and providing the rate per institution, is followed by a look at cases that are particularly significant for the Ombudsman's key objectives. Finally, conclusions are drawn as regards the main lessons of the report for the future.

The annex to the report contains summaries of the friendly solution proposals and draft recommendations accepted in 2012 and analyses the follow-up which the EU institutions, bodies, offices and agencies concerned have given to critical remarks and further remarks made in 2012. It starts with the 10 star cases that have been identified for the year in question.

Foreword 3

Report 5

1. Introduction 5

2. The Ombudsman's powers and procedures 5

3. Friendly Solutions 6

4. Draft recommendations 7

5. Further remarks and critical remarks 7

6. Friendly solution proposals and draft recommendations accepted in 2012 9

7. Follow-up given to critical remarks and further remarks made in 2012 10

8. Rate of overall compliance by institution 12

9. Cases that are particularly significant for the Ombudsman's key objectives 13

10. Conclusions 16

Foreword

On giving the oath of office as European Ombudsman on 30 September 2013, I explained that my aim is to help the institutions of the Union to be their own best selves, to live up to the ambitions they have set for themselves and that have been set for them through the Union Treaties and the Charter of Fundamental Rights.

Against this background, I am delighted to present a new publication: the European Ombudsman's report on rates of compliance and learning by the EU institutions. The question mark in the title "Putting it Right?" is there because the European Parliament and citizens cannot take it for granted that the EU institutions make good use of the opportunities provided by the Ombudsman's case-work to resolve problems and improve the quality of the EU public administration. This report provides, for the first time in a single document, a comprehensive overview of the extent to which they have done so. As such, it is a useful barometer of the impact of this aspect of the Ombudsman's work.

The overall compliance figure for 2012 is 80%: in other words, institutions provided 118 positive replies to the 148 proposals made by the Ombudsman in the context of cases closed in 2012. The corresponding figure for 2011 was not significantly different at 82%.

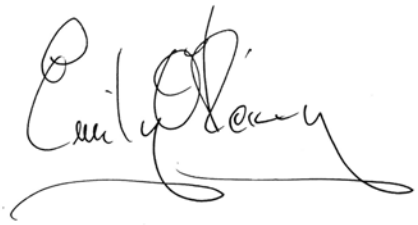
Certain institutions scored 100%. I would mention, in particular, the European Central Bank, the European Medicines Agency, and the European Centre for Disease Prevention and Control, all of which cooperated with the Ombudsman in a particularly constructive fashion during the year in question. The European Anti-Fraud Office, OLAF, also deserves special mention for the significant efforts it made to improve its procedures for the benefit of citizens. The compliance rate for the European Commission is 84%, largely thanks to the many positive follow-up replies it provided to critical and further remarks. The Commission's 88% score for positive follow-up replies is, by far, its highest since the Ombudsman commenced the follow-up exercise seven years ago.

In ten cases, the follow up was exemplary and I have highlighted these "*star cases*" below. More generally, the report contains very many encouraging examples of where the institutions answered the Ombudsman's call to focus on serving citizens' needs.

The fact that the institution's response to one out of every five proposals was *not* satisfactory means there is still considerable room for improvement. The low compliance rate for a handful of bodies gives particular cause for concern. I would like to remind institutions that, both in the public interest and in order to help complainants obtain their fundamental right to good administration, it is of key importance to respond to remarks and recommendations with the citizen foremost in mind. It is in this spirit that most institutions responded.

What this report also reveals is that institutions tend to be less cooperative about some subjects than they are about others. The institutions usually seem ready to reply constructively in cases concerning access to documents, tenders and grants, and contracts. On the other hand, this report contains a number of examples of infringement cases in which the Commission remained disappointingly intransigent. The number of critical remarks the Ombudsman was called upon to make in such cases also merits further reflection.

In taking the oath of office, I also stressed my commitment to enhancing the impact of the Ombudsman's work. As I embark on my first mandate, I will use the findings in this report to help determine where to focus attention and resources. Whether it be specific institutions and bodies, or thematic areas, I will seek out the key areas for improvement so that the Ombudsman can be a powerful lever in making the EU administration more effective, transparent, and accountable, for the benefit of citizens.



Emily O'Reilly

9 December 2013

Report

1. Introduction

The Compliance and Learning Report aims to provide a comprehensive account of the extent to which the EU institutions, bodies, offices and agencies[1] respond constructively to proposals made by the European Ombudsman in a given year. It combines two studies that were previously produced separately: (i) the study of the follow-up given by the EU institutions to critical and further remarks made in the preceding year and (ii) the report on responses to proposals for friendly solutions and draft recommendations, which we produced for the first time last year.

The report reflects the formal and informal ways through which the Ombudsman seeks to persuade the EU administration to better its performance and provides an overview of the many public service improvements generated as a result of the Ombudsman's case-work.

It covers cases closed by the Ombudsman in a given year with a critical remark, further remark, or a finding that the institution concerned has accepted a friendly solution or a draft recommendation. In general, cases closed as "*settled by the institution*" are not included. Although they represent a positive result flowing from the Ombudsman's intervention, they do not normally involve a specific proposal made by the Ombudsman. The present report does, however, include two "settled" cases in which the Ombudsman did make specific proposals (see section F of Annex I below).

2. The Ombudsman's powers and procedures

The European Ombudsman is empowered to investigate possible maladministration in the activities of the EU institutions[2]. She may do so either on the basis of complaints, or on her own initiative.

The Ombudsman helps individuals, companies and associations who have a problem with an institution. At the same time, she serves the public interest by helping the institutions to improve the general quality of the service they provide.

These two aspects of the Ombudsman's work are closely connected. The right to complain to the Ombudsman[3] provides a route to redress when an institution has harmed or neglected the complainant's personal rights or interests. It is also a mechanism of public participation, allowing people to complain about maladministration that affects other persons, or the general public interest.

The Ombudsman can require the institution concerned to provide information, inspect its files and take testimony from officials. These powers are contained in

[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, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role*".
[3] The right to complain to the Ombudsman is included in the Charter of Fundamental Rights of the European Union (Article 43).

the Statute of the Ombudsman[4] ('the Statute'). When she thinks it appropriate to do so, the Ombudsman calls on the institution to revise its position in a specific case, provide redress or make general changes for the future. If the institution refuses to cooperate, she can draw political attention to a case by making a special report to the European Parliament.

The Ombudsman's inquiry procedures are flexible, involving two basic modes of operation. First, there is a dispute-resolution mode, which focuses on problem-solving, conflict-reduction, possibilities for compromise, and win-win outcomes. Second, there is an adjudicative mode, in which the Ombudsman makes a finding either that there is maladministration, or that there is no maladministration. The logic of the second mode is analogous to that of Court procedures, in which one party usually sees itself as the winner and the other as the loser. The appropriate balance between the two modes depends on the specific circumstances and some cases may involve switching between them more than once.

3. Friendly Solutions

The main way the Ombudsman can try to achieve redress for the complainant is by proposing a '**friendly solution**'[5]. Such a proposal aims at a win-win outcome that satisfies both the institution and the complainant.

Friendly solution proposals often include a provisional finding of maladministration. In some cases, however, the Ombudsman considers it more constructive to avoid stating, even provisionally, that there could be maladministration. Rather, she identifies a problem or shortcoming in the institution's behaviour that could be solved to the complainant's satisfaction if the institution adopted the proposed friendly solution.

Where redress should be provided, it is best if the institution concerned takes the initiative, when it receives the complaint, to acknowledge the problem and offer suitable redress. By taking such action, the institution demonstrates its commitment to improving relations with citizens. It also shows that it is aware of what it did wrong and can thus avoid similar maladministration in the future[6].

In some cases, a friendly solution can be achieved if the institution concerned offers compensation to the complainant. Any such offer is made without admission of legal liability and without creating a precedent. Apology as a form of redress also deserves special mention. In order to be effective, an apology must be sincere. An apology that is perceived as insincere only makes matters worse. The complainant is more likely to accept that an apology is sincere if it is offered by the institution on its own initiative, rather than in response to a proposal from the Ombudsman.

[4] European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.
[5] Such proposals are based on Article 3(5) of the Statute, which 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] The case highlighted in part F of Annex 1 constitutes a good example in this regard.

4. Draft recommendations

If the institution rejects a friendly solution proposal without good reason, the next step is usually what Article 3(6) of the Statute terms a '**draft recommendation**'[7]. It is better for all concerned if the institution accepts a friendly solution than if it first rejects a friendly solution proposal and then accepts a draft recommendation.

In some cases, the Ombudsman proceeds directly to a draft recommendation without first proposing a friendly solution. This is the case, for example, where the maladministration primarily affects the public interest. Furthermore, in cases where the Ombudsman considers that the institution is unlikely to accept a friendly solution, or that a friendly solution would not be appropriate (for example, where the complainant does not seek redress or where redress is no longer possible), she may proceed directly to a draft recommendation.

Unlike friendly solution proposals, draft recommendations addressed to the institutions are published on the Ombudsman's website. The Ombudsman may also choose to draw public attention to the case and to her efforts to obtain a solution, by issuing a press release at this stage on the maladministration identified. With a view to avoiding such publicity, institutions should seriously consider the added benefit, for their own work and for the image of the Union more generally, of accepting a friendly solution proposal rather than waiting for the Ombudsman to make a draft recommendation.

When the institution's detailed opinion is received, it is forwarded to the complainant for possible observations. If the Ombudsman considers that the detailed opinion constitutes a satisfactory response, she closes the case with a decision accordingly. When appropriate, the case is considered as closed with partial acceptance of the draft recommendation. This conclusion is only used when the institution has genuinely responded to central points in the draft recommendation in a constructive and cooperative manner.

5. Further remarks and critical remarks

A **further remark** aims to serve the public interest by helping the institution concerned to raise the quality of its administration in the future. Unlike a draft recommendation or a critical remark, a further remark is not premised on a finding of maladministration. It should not, therefore, be understood as implying censure of the institution to which it is addressed.

A **critical remark** also has an educative dimension: it informs the institution of what it has done wrong, so that it can avoid similar maladministration in the future. To maximise its educative potential, a critical remark identifies the rule or principle that was breached and (unless it is obvious) explains what the institution should have done in the particular circumstances of the case. Thus constructed, a critical remark also explains and justifies the Ombudsman's finding of maladministration and thereby seeks to strengthen the confidence of citizens and institutions in the fairness and thoroughness of her work. Moreover, by showing that the Ombudsman is willing publicly to censure the institutions, when necessary, critical remarks enhance public trust in the Ombudsman's impartiality.

[7] If the *complainant* rejects a proposed friendly solution without good reason, the Ombudsman normally considers that no further inquiries are justified.

A critical remark does not, however, constitute redress for the complainant. Not all complainants claim redress and not all claims for redress are justified. When redress should have been provided, however, closing the case with a critical remark signals a triple *failure*. The complainant has failed to obtain satisfaction; the institution concerned has failed to put the maladministration right; and the Ombudsman has failed to persuade the institution concerned to alter its position.

Critical remarks in cases where a friendly solution or draft recommendation is not appropriate

Many critical remarks thus represent missed opportunities. The best outcome would have been for the institution concerned to settle the matter itself by acknowledging the maladministration and offering suitable redress (which in some cases could consist of a simple apology). If it had done so, no critical remark would have been necessary.

The complainant, however, is not always right and the institution concerned is entitled to defend its position. About half of the cases that are not settled by the institution at an early stage eventually give rise to a finding of no maladministration. In these cases, the institution succeeds in explaining to the Ombudsman's satisfaction (and, in some cases, also to the complainant's satisfaction) why it was right to act as it did and why it will not change its position.

As already explained, where the Ombudsman considers that the complainant should receive redress, the normal procedure is to propose a friendly solution. If nothing can be done to put the maladministration right, however, a critical remark provides a fair and efficient way of closing the case.

A critical remark in such circumstances is fair to the complainant because it confirms that the complaint was justified, although no redress is possible. It is also fair to the institution concerned which was informed of the allegations, claims, evidence, and arguments submitted by the complainant and had the opportunity to state its point of view before the critical remark was made.

A critical remark is efficient because it avoids prolonging an inquiry that cannot lead to any redress for the complainant. As regards the public interest in avoiding similar maladministration in the future, the remark itself provides the necessary educative dimension. The institution to which the critical remark is addressed should draw the appropriate lessons.

Critical remarks following rejection of a friendly solution or a draft recommendation

The institution's rejection of a friendly solution proposal or draft recommendation may lead to a number of possible outcomes.

First, the Ombudsman may sometimes take the view, after considering the institution's response, that her earlier findings should be revised. Such cases would normally be closed with a finding of no maladministration, or that no further inquiries are justified.

Second, if the institution's detailed opinion on a draft recommendation is not satisfactory, the Ombudsman may present a special report to the European Parliament. Special reports are presented only in relation to important matters where Parliament is able to take action in order to assist the Ombudsman[8].

Finally, the Ombudsman may decide to close the case with a critical remark, either at the stage when the institution rejects a friendly solution, or if the institution's detailed opinion on a draft recommendation is not satisfactory. In some cases, the case may be closed with a critical remark because the Ombudsman takes the view that the institution has convincingly shown that, although there is maladministration, the remedy proposed in the friendly solution or draft recommendation is unsuitable and no other solution or redress is possible. In such cases, the critical remark is essentially similar in nature to that which would have been made if the case had been closed without a friendly solution or draft recommendation.

Unfortunately, there are also cases in which the institution refuses the Ombudsman's proposals for reasons that are not convincing. Indeed, there are even a few cases in which the institution refuses to accept the Ombudsman's finding of maladministration.

Such cases risk undermining the authority of the Ombudsman and weakening the trust of citizens in the European Union and its institutions. International experience shows that the ombudsman institution functions most effectively where the rule of law is well established and where there are well-functioning democratic institutions. In such contexts, the public authorities usually follow an ombudsman's recommendations, despite the fact that they are not legally binding, and even if they disagree with them. The EU institutions should reflect therefore on the message sent to citizens about the quality of the democratic fabric of the EU in cases where the fair and rational recommendations and observations of an Ombudsman elected by the European Parliament are not acted upon.

6. Friendly solution proposals and draft recommendations accepted in 2012

In 2012, the EU institutions accepted a total of nine proposals for friendly solutions, while nine draft recommendations were accepted wholly or partially[9]. Table 1 shows the distribution of friendly solutions and draft recommendations accepted by institution.

[8] See the Ombudsman's *Annual Report 1998*, pages 27-28.
[9] One draft recommendation, in case **1260/2010/RT**, was partially accepted. It should further be noted that, in some cases closed in 2012 as "*friendly solution accepted*" or "*draft recommendation accepted*", the Ombudsman made a further remark. For this reason, some cases are mentioned more than once in this report.

Table 1 - Distribution of friendly solutions and draft recommendations accepted by institution

Institution	Number of friendly solutions	Number of draft recommendations	Other
European Commission	8	8	2
European Medicines Agency	1	1	
Total	**9**	**9**	**2**

Annex I includes a detailed analysis of each of the cases in which a friendly solution proposal or a draft recommendation was accepted. Three of these cases warrant special mention as "*star cases*", which should serve as a model for other institutions of how best to react to the Ombudsman's proposals. The "*star cases*" are listed first. Other cases are organised by institution and complaint reference.

7. Follow-up given to critical remarks and further remarks made in 2012

In 2012, 61 critical remarks were made in 49 decisions, while 49 further remarks were made in 34 decisions. A single decision may contain more than one remark, and both kinds of remark may be included in the same decision. Table 2 shows the distribution of remarks by institution.

Table 2 - Distribution of critical and further remarks by institution

Institution	Number of critical remarks in 2012	Number of further remarks in 2012
European Parliament	4	3
European Commission	42	25
European Anti-Fraud Office (OLAF)	4	0
European External Action Service (EEAS)	1	1
European Personnel Selection Office (EPSO)	7	7
European Economic and Social Committee (EESC)	1	0
European Central Bank (ECB)	0	2
European Aviation Safety Agency (EASA)	1	0
European Centre for Disease Prevention and Control (ECDC)	0	5
European Network and Information Security Agency (ENISA)	0	1
Frontex	1	0
Europol	0	1
Executive Agency for Culture, Education and Audiovisual (EACEA)	0	1
Research Executive Agency	0	3
Total	**61**	**49**

The institutions concerned were invited to respond to the remarks within a period of six months. Responses were received to almost all the remarks made in 2012 although with a delay in some cases. The follow-up replies to case **914/2009/ER** from the Commission and own-initiative inquiry **OI/3/2012/CK**

concerning the European Network and Information Security Agency (ENISA) did not arrive in time to be taken into account in the present report[10].

Taking critical and further remarks together, the rate of satisfactory follow-up was 83%. The follow-up to further remarks was satisfactory in 90% of cases, whilst the rate of satisfactory follow-up of critical remarks was 78%. These results are not significantly different from the results achieved last year, when the rate of satisfactory follow-up to critical and further remarks was 84%. (It should be noted that this figure represented a significant improvement on the result that was registered for 2010, namely 78%). The follow-up to further remarks was satisfactory in 89% of cases in the 2011 report, whilst the rate of satisfactory follow-up of critical remarks was 80%. Finally, with regard to these statistics, it is noteworthy that the Commission provided a satisfactory follow-up in 88% of cases — by far the highest figure recorded since we commenced the follow-up exercise seven years ago.

Table 3 - Number and percentage of satisfactory replies to remarks by institution

Institution	Number of critical and further remarks	Number of satisfactory replies	% of satisfactory replies
European Parliament	7	5	71%
European Commission	65	57	88%
European Anti-Fraud Office (OLAF)	4	3	75%
European External Action Service (EEAS)	2	2	100%
European Personnel Selection Office (EPSO)	14	8	57%
European Economic and Social Committee (EESC)	1	1	100%
European Central Bank (ECB)	2	2	100%
European Aviation Safety Agency (EASA)	1	0	0%
European Centre for Disease Prevention and Control (ECDC)	5	5	100%
Frontex	1	1	100%
Europol	1	1	100%
Executive Agency for Culture, Education and Audiovisual (EACEA)	1	1	100%
Research Executive Agency	3	3	100%
Total	**107**	**89**	**83%**

Annex I includes a detailed analysis of each of the cases in which one or more critical remarks and/or further remarks were made. Seven of the follow-ups warrant special mention as "*star cases*", which should serve as a model for other institutions of how best to react to critical remarks and further remarks. The "*star cases*" are listed first. Other cases are organised by institution and complaint reference.

[10] In calculating the percentage of satisfactory follow-up replies, the two critical remarks on which the Commission has not yet responded (both were made in case 914/2009/ER) and the further remark to which ENISA has not yet replied (OI/3/2012/CK) are not taken into account.

8. Rate of overall compliance by institution

The overall figure in terms of compliance with the Ombudsman's proposals in 2012 is 80%. Again, this is not significantly different from the result achieved last year, when the compliance rate was 82%. This 80% figure has been calculated on the basis of cases closed in 2012, in which a friendly solution proposal or a draft recommendation was made, as well as cases in which a critical remark or further remark was made[11]. The rate of compliance is based on the number of positive replies to these remarks and recommendations. All in all, out of the 148 instances in which the Ombudsman made friendly solution proposals, draft recommendations, critical or further remarks in the context of cases closed in 2012, the institutions provided 118 positive replies[12].

As is clear from Table 4 below, the compliance rate varies significantly from one institution to another — from 100% in some cases to 56% in others. While it is important to bear in mind that these statistics are, in certain instances, based on very few cases, the fact remains that any result lower than 100% represents a failure to comply with a proposal made by the Ombudsman.

As outlined in the 'Introduction', cases closed as "*settled by the institution*" are, in principle, not included in this report. Nevertheless, in order to provide a complete picture of positive outcomes resulting from the Ombudsman's intervention, an additional figure has been calculated below to take account of cases settled after the Ombudsman contacted the institution in question, by telephone, to invite it to address the complainant's concerns. The inclusion of these telephone procedures results in an overall compliance rate of 85%.

[11] It is possible that a number of further cases closed in 2012 contained friendly solution proposals and draft recommendations that were not accepted, but which did not lead to a critical remark.
[12] It should be noted that in five cases, the institutions rejected both a friendly solution proposal and the subsequent draft recommendation. In order to avoid double counting, these cases are only counted once (in other words, the figure of 148 includes only the draft recommendations and not the friendly solutions in these cases).

Table 4 - Rate of overall compliance by institution

Institution	Number of remarks and recommendations	Number of satisfactory replies	% of satisfactory replies
European Parliament	9	5	56%
European Commission	97	81	84%
European Anti-Fraud Office (OLAF)	4	3	75%
European External Action Service (EEAS)	2	2	100%
European Personnel Selection Office (EPSO)	16	9	56%
European Economic and Social Committee (EESC)	2	2	100%
European Central Bank (ECB)	2	2	100%
European Aviation Safety Agency (EASA)	2	0	0%
European Medicines Agency (EASA)	2	2	100%
European Centre for Disease Prevention and Control (ECDC)	6	6	100%
Frontex	1	1	100%
Europol	1	1	100%
Executive Agency for Culture, Education and Audiovisual (EACEA)	1	1	100%
Research Executive Agency	3	3	100%
Total	**148**	**118**	**80%**
Cases settled via a telephone procedure	54	54	100%
Total	**202**	**172**	**85%**

9. Cases that are particularly significant for the Ombudsman's key objectives

The Ombudsman strives to help the Union institutions deliver on the promises they have made to citizens in the Charter of Fundamental Rights of the EU and in the Treaties. The following examples demonstrate the impact the Ombudsman's work in the key areas of the right to good administration, transparency, and citizen participation in the Union's activities.

The Right to Good Administration

Many cases in this report concern the citizen's fundamental right to good administration, laid down in Article 41 of the Charter.

Own-initiative inquiry **OI/3/2008/FOR** into the Commission's Early Warning System (EWS) deserves a special mention in this regard. Not only did the Commission accept the Ombudsman's draft recommendation, which sought to ensure respect for the right to be heard and the right of access to the file, it also followed up constructively a further remark which dealt with the period before the EWS is reformed.

In response to the Ombudsman's further remark in case **1045/2011/RT**, the Commission confirmed that its pre-information letters in recovery proceedings aim to ensure respect for debtors' rights, including the right to be heard.

Case **2386/2010/MHZ** also concerned the complainant's right to be heard and to be informed why the Commission requested his dismissal as team leader in an EU-funded project. The Commission's follow-up constitutes a major step forward, since it appears to accept that, although it has no *contractual* relationship with subcontractors, it has an *administrative* relationship with them as a public authority. The administrative note adopted by the Commission, in response to the Ombudsman's critical remark in this case, helps address the vulnerable situation of subcontractors.

Similarly, in case **319/2011/TN**, even though the Commission had no contractual or other legal means to enforce compliance of the coordinator's obligations vis-à-vis the complainant, it took a series of steps, in response to the Ombudsman's further remark, to encourage the coordinator to pay the complainant's legitimate costs in full.

The Ombudsman's further remark in case **2635/2010/TN** suggested that the Commission would take Article 41 of the Charter into account in its review of the Code of Conduct and the evaluation procedure for EU Election Observers. The Commission's response shows that it is making serious efforts to improve the rules and procedures in this area, along the lines suggested by the Ombudsman.

In case **3136/2008/EIS**, the Ombudsman pointed out that the right to good administration requires that a person who has been the subject of an investigation be informed, within a reasonable time, of the results of that investigation. In its follow-up reply, OLAF explained the action it had taken to reduce the risk of similar maladministration occurring in the future.

The principles of fairness and proportionality were relevant to case **3373/2008/JF,** in which the Ombudsman called on the Commission to waive its recovery claim in an EU sponsored project. The Commission acknowledged the existence of serious shortcomings in its management of the relevant grant and cancelled its debit notes, amounting to almost EUR 93 000.

Finally, two cases deal with the right to freedom of movement. The Commission accepted a friendly solution proposal in case **1451/2011/BEH**, in which the complainant alleged that the Commission Guidelines concerning the Union citizenship Directive were not in conformity with the case law of the EU courts. It also provided an exemplary follow-up reply to the Ombudsman's further remark in case **1291/2012/OV**, concerning the difficulty for non-EU family members to accompany an EU citizen to another Member State in the period before they are issued with a residence card.

Transparency and the right to know

Many cases in this report concern the fundamental right of public access to documents, laid down in Article 42 of the Charter, Article 15(3) TFEU and Regulation 1049/2001[13].

[13] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

In case **2293/2008/TN**, the Ombudsman found that the Commission had breached the Charter by wrongly refusing public access to documents concerning the UK opt-out from the Charter itself. The Commission subsequently disclosed the documents to the complainant in full. In two further cases, the European Medicines Agency agreed to provide public access to documents, despite initially refusing to do so — in case **2493/2008/FOR**, the Agency accepted the Ombudsman's draft recommendation to provide access to documents containing details of all suspected serious adverse reactions relating to an anti-acne drug, while in case **2914/2009/DK** it accepted the Ombudsman's friendly solution proposal to give public access to two internal audit reports.

In its follow-up to the Ombudsman's further remark in case **2016/2011/AN**, the European Central Bank (ECB) outlined the measures it had taken to promote transparency and public access to documents, while duly taking into account the sensitivity of certain documents it holds in its capacity as a central bank. In a further reply, the ECB explained the concrete steps taken to enhance transparency and engage with the public on transparency issues. It acknowledged the importance for it to live up to, and demonstrate, its accountability obligations, which are the natural counterpart to its statutory independence.

In case **1161/2010/BEH**, the Commission accepted the Ombudsman's draft recommendation and fully disclosed the documents requested by the complainant concerning imports of armaments and dual-use goods. This case also raised a number of procedural issues and the Commission itself acknowledged that the delay it incurred was unjustifiable. As delays in dealing with access to documents requests are a common source of complaint, the Ombudsman pays particular attention to the follow-up responses in this area. The Ombudsman therefore regretted the Commission's poor follow-up in cases **2299/2010/ER, 388/2011/ER**, and **1472/2011/MMN**. On the other hand, in case **339/2011/AN**, the Commission explained that, in response to the Ombudsman's critical remark, it had implemented internal measures to improve the handling of initial applications and speed up the handling of confirmatory applications. The Ombudsman intends to examine, through an own-initiative inquiry, the time taken by the Commission to handle requests for public access to documents.

The Commission further strove to improve its procedures in dealing with access to documents requests in its follow-up to cases **2938/2009/EIS** and **682/2010/TN**. In the former, the Commission acknowledged unintentional errors and shortcomings in its handling of the complainant's confirmatory application. To prevent such errors occurring again, senior legal officer was appointed to advise on the correct procedures. Following the second case, the Commission now systematically informs applicants who seek access to documents containing personal data that they have to demonstrate the necessity of the data transfer, in accordance with the EU's data protection rules.

The right to participate in the Union’s activities

In its follow-up to the critical remark in case **640/2011/AN** concerning the languages used for public consultations, the Commission referred, for the first time, to concrete steps it had taken in order to tackle the issue of citizens' involvement in its public consultations. This is important in terms of living up to the promises contained in the Lisbon Treaty, which strengthens the right of citizens and associations to participate in the democratic life of the Union.

Similarly, in own-initiative inquiry **OI/2/2012/VL**, the Ombudsman welcomed the Commission's decision to publish its Code of Good Administrative Behaviour in all EU official languages and its assurance that the Commission is not aware of *"any other communications or similar publications concerning citizens' rights that have not yet been translated into all the official languages of the Union."* However, in case **3419/2008/KM**, the Ombudsman noted that the European Aviation Safety Agency (EASA) had still not committed itself to translate at least summaries of its consultation documents into all the official languages. Moreover, while the measures described in EASA's follow-up reply are clearly useful, they do not seem to have been fully implemented, notably as regards the availability of material on EASA's website.

For citizens who want to participate in, or to scrutinise, the application of EU law, the infringement procedure (through which the Commission fulfils its duties as guardian of the Treaties) is a natural focus of interest. With regard to the substance of infringement complaints, case **2765/2009/VL** is worth mentioning. Not only did the Commission accept the Ombudsman's friendly solution proposal, it also followed up the further remark in that case in an exemplary manner. The case concerned the Czech Republic's alleged failure to apply the EU's misleading advertising Directive.

Many cases in this area concern procedure and the Commission's application of its own Communication on the handling of relations with the complainant in respect of the application of Union law ('the Communication')[14]. The Commission's follow-up replies in cases **230/2011/EIS** and **1945/2009/ER**, which concerned delays, provided no indication that the Commission had learned any lessons from the cases.

On the other hand, the Commission's helpful follow-up reply in case **2225/2011/AN** explained in detail recent developments in its handling of infringement complaints. In response to the Ombudsman's critical remarks in that case, the Commission Secretariat General reminded all services of the importance of rapid acceptance of competence for complaints and drew attention once again to the applicable deadlines. Similarly, in its follow-up to case **3098/2009/ANA**, which also involved delays, the Commission indicated that it had drawn lessons from this case for the future. It informed the Ombudsman of systemic improvements, which, if adhered to, are capable of raising the quality of its handling of complaints in the future. In its follow-up to case **104/2010/EIS**, the Commission regretted that it did not inform the complainant about its intention to close the case without opening an infringement procedure. It stated that it had taken measures to ensure that such mistakes are not repeated, notably by providing training and clearer guidance.

10. Conclusions

This report highlights the extent to which the EU institutions are willing to engage with the Ombudsman both to address problems of individual complainants and to make systemic improvements to the workings of the EU administration. In this sense, the report provides a snapshot of the Ombudsman's impact on the EU public administration, arising from concrete cases dealt with in a given year.

[14] 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; COM(2012) 154 final. This 2012 Communication replaced Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM(2002) 141 final, OJ 2002 C 244 p. 5.

The annex to the report documents many cases in which the institutions have improved their procedures for the benefit of citizens, in areas such as contracts and tenders (cases **1325/2008/VL**,**105/2011/TN**, **829/2011/VIK**, **1864/2011/TN**); grants (case **2903/2009/KM** and **2339/2010/RA**); better oversight of EU delegations in third countries (**OI/1/2011/AN**); and enhanced protection of the rights of individuals in cases investigated by OLAF (case **3136/2008/EIS**). These systemic improvements in the public interest are largely due to the institutions themselves grasping the opportunity to learn lessons from the Ombudsman's inquiries. They should significantly reduce the risk of similar problematic cases arising in the future.

Where systemic issues have not been satisfactorily resolved during an inquiry or through the follow-up to a critical or further remark, the Ombudsman may decide to open an own-initiative inquiry. In this way, systemic problems brought to light through the complaints procedure can be thoroughly investigated and, where possible, resolved for the future. The Ombudsman's announcement in this report of an own-initiative inquiry in the area of access to documents, referred to in case **1472/2011/MMN**, is a case in point.

In addition to possible own-initiative inquiries, the Ombudsman intends also to consider the feasibility of formulating guidelines on specific aspects of good administration, for the benefit of both citizens and the EU institutions.

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