



European Ombudsman

Putting it Right?

Report

How the EU institutions responded
to the Ombudsman in 2014

December 2015

EN



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Foreword

It is with great pleasure that I present this 'Putting it Right' report, in which we record **our highest rates of compliance to date**. The 2014 rate is 90%, compared to a previous best of 82%, and 14 out of the 19 institutions examined score 100%. This shows the increasing acceptance by the EU administration of the Ombudsman's guidance and recommendations, and the co-operative working relationship between us.

In the 124 instances in which the Ombudsman made solution proposals, recommendations, critical or further remarks in cases closed in 2014, the institutions gave 111 positive replies. A further 118 cases were settled by the institutions.

Compliance does not always or immediately equate to impact, that is the concrete way in which EU citizens, business or civil society are helped. It can be hard to measure but **we are constantly seeking to improve how we record what we do and what we achieve**. A number of planned practical measures are outlined in the 'Conclusion' section below. I am confident that this will enhance our ability fully to report to Parliament and to the public.

Apart from making recommendations on how to improve administrative practices, ombudsmen also have an educative role. This is dealt with in the section on critical and further remarks, where we examine the lessons the institutions have learned after the Ombudsman has closed the case. In the past, we have systematically requested a follow-up response to critical and further remarks. However, in a limited number of cases, it is impossible to draw a meaningful lesson from the case because of its once-off nature. So, in future, we will specify if we require a follow-up reply and we will continue to restrict our use of further remarks to cases where we can make concrete suggestions for systemic improvement or can invite the institution to come up with concrete measures itself and report back to us.

All of these efforts to improve how we work are made against the backdrop of increasingly limited resources and increasing and legitimate, expectations from the public. Ultimately, they aim to achieve the goal that I have set for myself as European Ombudsman: **to deliver real world effectiveness by securing systemic, sustainable, and measurable improvements in the EU administration**.

Emily O'Reilly
11 December 2015



Report

1. Introduction

This Report describes the extent to which the EU institutions¹ responded constructively to proposals made by the European Ombudsman in 2014.

These proposals come in the form of **solutions, recommendations, critical and further remarks**². The annex to this report contains many examples of cases where the Ombudsman has persuaded the EU administration to better its performance and provides an overview of the range of public service improvements generated as a result.

2. The Ombudsman's powers and procedures

The Ombudsman helps individuals, companies and associations who have a problem with an EU institution³. At the same time, she serves the public interest by helping the institutions to improve the quality of the service they provide. As well as investigating complaints, the Ombudsman can also open inquiries on her own initiative.

The Ombudsman can require the institution concerned to provide information, inspect its files and take testimony from officials. These powers are contained in the Statute of the Ombudsman⁴ ('the Statute'). When she thinks it appropriate to do so in a specific case, the Ombudsman calls on the institution to revise its position, provide redress or make general changes for the future. If the institution refuses to cooperate, she can draw political attention to a case by making a Special Report to the European Parliament.

3. Solutions

When appropriate, the Ombudsman tries to achieve redress for complainants by proposing a **solution**, based on Article 3(5) of the Statute⁵. While solution proposals may include a provisional finding of maladministration, the Ombudsman often considers it more constructive to avoid stating, even

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

² The report 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 solution or a recommendation. While in the past the Ombudsman referred to "friendly solution" and "draft recommendation", she now uses the more straightforward terms "solution" and "recommendation".

³ Article 228 of the Treaty on the Functioning of the European Union empowers the Ombudsman to inquire into maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

⁴ European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.

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



provisionally, that there could be maladministration. Rather, she identifies a problem or shortcoming in the institution's behaviour that could be solved if the institution adopted the proposed 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. This could take the form of compensation or a sincere apology to the person concerned.

4. Recommendations

If the institution rejects a solution proposal without good reason, the next step is usually what Article 3(6) of the Statute terms a '**draft recommendation**'. It is better for all concerned if the institution accepts a solution than if it first rejects a solution proposal and then accepts a recommendation. However, there will also be some instances in which the Ombudsman judges that it is appropriate to proceed to making a recommendation without having first proposed a solution. This can be because the Ombudsman judges that the issue in question is of sufficient importance as to warrant the more formal approach of a recommendation; or it may be because she judges that a proposal may not be accepted by the institution.

Recommendations addressed to the institutions are, simultaneously, 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 solution proposal rather than waiting for the Ombudsman to make a recommendation.

5. Critical remarks and further remarks

The institution's rejection of a solution proposal or recommendation may lead to a number of possible outcomes, including closing the case with a critical remark. In 69% of cases where maladministration was found in 2014, the case was closed with a critical remark.

A **critical remark** informs the institution of what it has done wrong in the specific case. The 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. The institution itself is expected to follow up by asking "*why did we get it wrong in that case? Can we reduce the risk of making the same mistake again?*" It should then report back within six months, if so requested by the Ombudsman.

A critical remark does not constitute redress for the complainant. In many cases, a better outcome would have been for the institution concerned to settle



the matter itself by acknowledging the maladministration and offering suitable redress.⁶

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 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.

6. Solution proposals and recommendations accepted in 2014

In 2014, the EU institutions accepted a total of 15 solution proposals, while 13 recommendations were accepted wholly or partially⁷. Three solution proposals were rejected (by the Commission), as were five recommendations (two by the Commission, two by EPSO and one by OLAF).⁸

Table 1 - Distribution of solutions and recommendations accepted

Institution	Solutions accepted	Recommendations accepted
European Parliament		2
European Commission	7	3
European External Action Service (EEAS)		1
European Investment Bank (EIB)	1	
European Data Protection Supervisor (EDPS)	1	
European Personnel Selection Office (EPSO)	3	2
European Aviation Safety Agency (EASA)		2
European Centre for Disease Control (ECDC)		1
European Network and Information Security Agency (ENISA)		1
European Anti-Fraud Office (OLAF)		1
Education, Audiovisual and Culture Executive Agency (EACEA)	1	
Executive Agency for Small and Medium-sized Enterprises (EASME)	1	
Research Executive Agency (REA)	1	
Total	15	13

⁶ The complainant, however, is not always right and the institution concerned is entitled to defend its position.

⁷ A case is closed with partial acceptance of the recommendation when the institution has genuinely responded to central points in the recommendation in a constructive manner.

⁸ See also footnote 10 below.



The annex to this Report summarises the cases in which a solution proposal or a recommendation was accepted⁹. One of these cases warrants special mention as a "*star case*", which should serve as a model for other institutions of how best to react to the Ombudsman's proposals.

7. Follow-up given to critical remarks and further remarks made in 2014

In 2014, 34 critical remarks were made in 26 decisions, while 54 further remarks were made in 39 decisions. A single decision may contain more than one remark, and both kinds of remark may be included in the same decision.

Table 2 - Distribution of critical and further remarks in 2014

Institution	Critical remarks	Further remarks
European Parliament	2	3
Council of the EU	1	
European Commission	18	24
European External Action Service (EEAS)	2	1
European Investment Bank (EIB)	1	1
European Data Protection Supervisor (EDPS)		1
European Personnel Selection Office (EPSO)	2	10
European Centre for Disease Control (ECDC)		2
European Food Safety Authority (EFSA)	1	
European Insurance and Occupational Pensions Authority (EIOPA)	3	5
European Medicines Agency (EMA)	1	3
Fundamental Rights Agency (FRA)	1	
Eurojust		2
European Anti-Fraud Office (OLAF)	2	2
Total	34	54

The institutions concerned were invited to respond to the remarks within a period of six months. Responses were received to all the remarks made in 2014 although with a delay in some cases.

Taking critical and further remarks together, the rate of satisfactory follow-up was 94%, **by far the highest figure recorded since the Ombudsman began this exercise** (it was 81% in 2013, while the highest figure recorded up to now was 84% in 2011). The follow-up to further remarks was satisfactory in no fewer than 98% of cases, whilst the rate of satisfactory follow-up of critical remarks was 88%. The highest figures recorded to date have been 100% in 2008, as regards positive follow-up to further remarks, and 80% in 2011 as regards positive follow-up to critical remarks.

⁹ The Ombudsman also made a further remark in some of these cases, which are therefore mentioned more than once in the annex to this report.



Table 3 - Number and percentage of satisfactory replies to remarks

Institution	Critical and further remarks	Satisfactory replies	% of satisfactory replies
European Parliament	5	5	100%
Council of the EU	1	1	100%
European Commission	42	39	93%
European External Action Service (EEAS)	3	2	67%
European Investment Bank (EIB)	2	2	100%
European Data Protection Supervisory (EDPS)	1	1	100%
European Personnel Selection Office (EPSO)	12	12	100%
European Centre for Disease Control (ECDC)	2	2	100%
European Food Safety Authority (EFSA)	1	1	100%
European Insurance and Occupational Pensions Authority (EIOPA)	8	8	100%
European Medicines Agency (EMA)	4	4	100%
Fundamental Rights Agency (FRA)	1	0	0%
Eurojust	2	2	100%
European Anti-Fraud Office (OLAF)	4	4	100%
Total	88	83	94%

The annex to this Report includes a detailed analysis of each of the cases in which one or more critical remarks and/or further remarks were made. Two of the follow-ups warrant special mention as "*star cases*".

8. Rate of overall compliance by institution

The overall figure in terms of **compliance with the Ombudsman's proposals in 2014 is 90%, by far the highest figure achieved to date** (which was previously 82% in 2011, the first year we started to record this figure). The rate of compliance is based on the number of positive replies to the solution proposals, recommendations, critical and further remarks made in cases closed in 2014. All in all, out of 124 instances in which the Ombudsman made solution proposals, recommendations, critical or further remarks in the context of cases closed in 2014¹⁰, the institutions provided 111 positive replies.

As is clear from Table 4 below, the compliance rate varies significantly from one institution to another – from 100% in many cases to 0% in the worst instance. While these statistics are, in certain instances, based on very few cases, the fact

¹⁰ It is possible that a number of further cases closed in 2014 contained solution proposals and recommendations that were not accepted, but which did not lead to a critical remark. It should further be noted that in three cases, the institutions rejected a solution proposal but accepted the subsequent recommendation. In order to avoid double counting, the figure of 124 includes only the recommendations in those cases and not the solution proposals. In two further cases, the institution rejected either a solution proposal or a recommendation and subsequently failed to follow up satisfactorily to the critical remark. Again, to avoid double counting, only the negative follow-up to the critical remark is included in the above statistics.



remains that any result lower than 100% represents a failure to comply with a proposal made by the Ombudsman.

Table 4 - Rate of overall compliance by institution

Institution	Remarks and recommendations	Satisfactory replies	% of satisfactory replies
European Parliament	7	7	100%
Council of the EU	1	1	100%
European Commission	57	49	86%
European External Action Service (EEAS)	4	3	75%
European Investment Bank (EIB)	3	3	100%
European Data Protection Supervisory (EDPS)	2	2	100%
European Personnel Selection Office (EPSO)	19	17	89%
European Anti-Fraud Office (OLAF)	6	5	83%
European Aviation Safety Agency (EASA)	2	2	100%
European Centre for Disease Control (ECDC)	3	3	100%
European Food Safety Authority (EFSA)	1	1	100%
European Insurance and Occupational Pensions Authority (EIOPA)	8	8	100%
European Medicines Agency (EMA)	4	4	100%
European Network and Information Security Agency (ENISA)	1	1	100%
Fundamental Rights Agency (FRA)	1	0	0%
Eurojust	2	2	100%
Education, Audiovisual and Culture Executive Agency (EACEA)	1	1	100%
Executive Agency for Small and Medium-sized Enterprises (EASME)	1	1	100%
Research Executive Agency (REA)	1	1	100%
Total	124	111	90%

9. Conclusion

As announced in last year's report, the Ombudsman has been trying to find new ways of working with the institutions to secure satisfactory outcomes earlier in the process to the benefit of citizens. Ironically, many successful outcomes obtained in these cases are not captured in the present study because they do not result from formal Ombudsman proposals and recommendations. Suffice to say that beyond the cases contained in this report, a further 118 cases were settled by the institutions in 2014.¹¹

¹¹ The annex to this report also contains a number of further cases in which the institutions reported a positive follow-up after the inquiry had been closed. As these did not come in response to formal critical and further remarks, they are not reflected in the statistics.



To provide a full picture of the Ombudsman's impact going forward, we will, in 2016, expand the use of the term "solutions" based on Article 3(5) of the Ombudsman's Statute which up to now has been used in a relatively strict sense. As far as possible, any suggestions made in inquiries, even at an early stage of the inquiry, should be classified as 'solutions'. As such, **we can expect the number of solutions recorded for 2016 to be much higher than has traditionally been the case**, with the number of cases settled commensurately reduced. We also intend to rename "further remarks" as "suggestions for improvement", a term the public is more likely to understand. We will, for now, maintain our use of the term critical remark.

These changes are made in a spirit of providing a better account to Parliament and to the public of the Ombudsman's impact.



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