



European Ombudsman

# Putting it Right?

## Report

How the EU institutions responded  
to the Ombudsman in 2015

December 2016

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## Foreword

As European Ombudsman, I am often asked "To what extent do the EU institutions listen to you?" This report seeks to give a statistical answer to that question by looking at the compliance of the institutions with the Ombudsman's decisions. There was an 83% compliance rate in 2015, the second highest to date. So, while down from the excellent 90% result we achieved in 2014, I am still pleased to note that in over four out of every five cases, the EU institutions act on what the Ombudsman asks of them.

Specifically, in the 130 instances in which the Ombudsman made proposals in cases closed in 2015, the institutions gave 108 positive replies. A further 135 cases were settled by the institutions. 12 out of the 18 institutions examined scored 100% while the Commission – which accounts for most cases before the Ombudsman – scored 82%.

I am particularly pleased with the institutions' responses in the strategic inquiries we conducted. 43 out of the 45 suggestions addressed to the institutions in the context of these strategic inquiries were accepted in areas ranging from the Transatlantic Trade and Investment Partnership ("TTIP") negotiations to the European Citizens' Initiative procedure, and from Frontex joint return operations to the EU's cohesion policy. More generally, 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 that have resulted. These include the decision of the Executive Agency for Small and Medium-Sized Enterprises to establish admissibility and evaluation review procedures in the award of grants, the Commission's development of new communication tools to increase public participation in its decision-making and improved whistleblowing procedures within the European External Action Service's civilian missions.

The decrease in compliance from 2014 to 2015 is, however, clearly regrettable. At a time of multiple crises within the EU, every refusal to comply with a finding by the Ombudsman can be seen as a missed opportunity to address a genuine citizen grievance or administrative shortcoming. I will continue to work with the EU institutions to deliver the highest possible standard of service that the public is entitled to expect of us.

Emily O'Reilly  
16 December 2016



# Report

## 1. Introduction

This report describes the extent to which the EU institutions<sup>1</sup> responded constructively to proposals made by the European Ombudsman in 2015. These proposals come in the form of solutions, recommendations, critical remarks and further remarks.

Sections 3, 4 and 5 below explain what Ombudsman solutions, recommendations, critical and further remarks entail. The Ombudsman's new 'Implementing Provisions', which entered into force on 1 September 2016, affect to a certain extent the use we make of these terms. Even though the inquiries covered in this report were conducted under the previous IPs, we explain the changes, where relevant, below.

## 2. The Ombudsman's powers and procedures

The Ombudsman helps individuals, companies and associations who have a problem with an EU institution<sup>2</sup>. At the same time, she serves the public interest by helping the institutions to improve the quality of the service they provide. As well as investigating complaints, the Ombudsman can also open inquiries on her own initiative.

The Ombudsman can require the institution concerned to provide information, inspect its files and take testimony from officials. These powers are contained in the Statute of the Ombudsman<sup>3</sup> ('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

If the Ombudsman considers that a complaint can be resolved, she seeks a solution with the institution concerned, based on Article 3(5) of the Statute<sup>4</sup>. One of the purposes of the changes introduced in 2016 to the Ombudsman's Implementing Provisions was to make it easier and quicker to find solutions that eliminate maladministration.

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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.*"



## 4. Recommendations

If the Ombudsman makes a finding of maladministration, she issues what Article 3(6) of the Statute terms a '**draft recommendation**'. Recommendations addressed to the institutions are, simultaneously, published on the Ombudsman's website. The Ombudsman's new IPs require recommendations to be used to deal with all findings of maladministration before an inquiry is closed.

## 5. Critical remarks and further remarks

In the past, an institution's rejection of a solution proposal or recommendation led to a number of possible outcomes, including closing the case with a 'critical remark'. A critical remark informed the institution of what it had done wrong in the specific case. The remark identified the rule or principle that was breached and (unless it was obvious) explained how the institution should have acted in the context of the case. The institution reported back within six months, if so requested by the Ombudsman. In 63% of cases where maladministration was found in 2015, the case was closed with a critical remark.

A 'further remark' aimed 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 was not premised on a finding of maladministration and did not imply censure of the institution to which it was addressed.

The new Implementing Provisions replace the concept of critical remarks with the concept of "findings of maladministration" and replace the concept of further remarks with the concept of "suggestions for improvement".

## 6. Solution proposals and recommendations accepted in 2015

In 2015, the EU institutions accepted a total of 15 solution proposals, while 14 recommendations were accepted. Three recommendations were rejected by the Commission, although it provided a positive follow-up to the subsequent critical remarks in all three cases.

**Table 1 - Solutions and recommendations accepted by institution in 2015**

<b>Institution</b>	<b>Solutions Accepted</b>	<b>Recommendations accepted</b>
European Parliament		3
European Commission	5	7
European External Action Service (EEAS)	1	
European Economic and Social Committee (EESC)	1	
Committee of the Regions	1	



European Personnel Selection Office (EPSO)	1	
European Aviation Safety Agency (EASA)	2	1
European Chemicals Agency (ECHA)	2	1
European Food Safety Authority (EFSA)	1	
Education, Audiovisual, and Culture Executive Agency (EACEA)	1	
Executive Agency for Small and Medium-sized Enterprises (EASME)		2
<b>Total</b>	<b>15</b>	<b>14</b>

The annex to this report summarises the cases in which a solution proposal or a recommendation was accepted. 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 to critical remarks and further remarks made in 2015

In 2015, 22 critical remarks were made in 19 decisions, while 76 further remarks were made in 30 decisions.<sup>5</sup> A single decision may contain more than one remark, and both kinds of remark may be included in the same decision.

**Table 2 - Critical and further remarks made in 2015 by institution**

<b>Institution</b>	<b>Critical remarks</b>	<b>Further remarks</b>
European Commission	17	52
European Court of Auditors (ECA)	0	1
European External Action Service (EEAS)	0	1
European Economic and Social Committee (EESC)	1	0
European Investment Bank (EIB)	2	0
European Personnel Selection Office (EPSO)	0	2
European Anti-Fraud Office (OLAF)	0	2
European Aviation Safety Agency (EASA)	1	2
European Banking Authority (EBA)	0	1
European Food Safety Authority (EFSA)	1	1
European Institute for Gender Equality (EIGE)	0	3
Europol	0	1
Frontex	0	8
Executive Agency for Small and Medium-sized Enterprises (EASME)	0	2
<b>Total</b>	<b>22</b>	<b>76</b>

<sup>5</sup> For the purposes of this report, the guidelines for improvement, proposals and suggestions addressed to the institutions in the Ombudsman's decisions closing her own-initiative inquiries OI/9/2013/TN, OI/7/2014/NF, OI/8/2014/AN, OI/9/2014/MHZ and OI/10/2014/RA are dealt with as further remarks.



The institutions were invited to respond to the remarks within a period of six months. With one exception<sup>6</sup>, responses were received to all the remarks made in 2015, although with a delay in some cases.

Taking critical and further remarks together, the rate of satisfactory follow-up was 81%, down from 2014's record high of 94%. The follow-up to further remarks was satisfactory in 92% of cases, whilst the rate of satisfactory follow-up of critical remarks was 41%, a record low. The highest figures recorded to date have been 100% in 2008, as regards positive follow-up to further remarks, and 88% in 2014 as regards positive follow-up to critical remarks.

A review of the institutions' responses to critical remarks suggests that, even after an inquiry has ended, some continue to contest the Ombudsman's findings and to reiterate the arguments they have put forward during the inquiry. While it is in some way possible to understand that, having faced public criticism by the Ombudsman, an institution finds it hard to follow-up constructively, it is important that institutions are willing to learn lessons from Ombudsman inquiries and seek to reduce the risk of similar problems arising in future.

**Table 3 - Satisfactory replies to remarks made in 2015 by institution**

<b>Institution</b>	<b>Critical and further remarks</b>	<b>Satisfactory replies</b>	<b>% of satisfactory replies</b>
European Commission	69	57	83%
European Court of Auditors (ECA)	1	1	100%
European External Action Service (EEAS)	1	1	100%
European Economic and Social Committee (EESC)	1	0	0%
European Investment Bank (EIB)	2	1	50%
European Personnel Selection Office (EPSO)	2	2	100%
European Anti-Fraud Office (OLAF)	2	1	50%
European Aviation Safety Agency (EASA)	3	1	33%
European Banking Authority (EBA)	1	1	100%
European Food Safety Authority (EFSA)	2	0	0%
European Institute for Gender Equality (EIGE)	3	3	100%
Europol	1	1	100%
Frontex	8	8	100%
Executive Agency for Small and Medium-sized Enterprises (EASME)	2	2	100%
<b>Total</b>	<b>98</b>	<b>79</b>	<b>81%</b>

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. Four of the follow-ups warrant special mention as "*star cases*".

<sup>6</sup> When this report was drafted, the Commission had not yet sent its additional follow-up reply to the Ombudsman's further remark in case 1832/2014/TN. The case is therefore not included in this report.



## 8. Rate of overall compliance by institution

The overall figure in terms of compliance with the Ombudsman's proposals in 2015 is 83%. 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 2015. Out of the 130 instances, the institutions provided 108 positive replies<sup>7</sup>. The institutions settled a further 135 inquiries opened by the Ombudsman.

As is clear from Table 4 below, the compliance rate varies significantly from one institution to another — from 100% in many cases to 33% in the worst instance. While these statistics are often based on very few cases, any result lower than 100% means the institution failed to comply with a proposal made by the Ombudsman.

**Table 4 - Rate of overall compliance by institution in 2015**

<b>Institution</b>	<b>Remarks and recommendations</b>	<b>Satisfactory replies</b>	<b>% of satisfactory replies</b>
European Parliament	3	3	100%
European Commission	84	69	82%
European Court of Auditors (ECA)	1	1	100%
European External Action Service (EEAS)	2	2	100%
European Economic and Social Committee (EESC)	2	1	50%
Committee of the Regions	1	1	100%
European Investment Bank (EIB)	2	1	50%
European Personnel Selection Office (EPSO)	3	3	100%
European Anti-Fraud Office (OLAF)	2	1	50%
European Aviation Safety Agency (EASA)	6	4	67%
European Banking Authority (EBA)	1	1	100%
European Chemicals Agency (ECHA)	3	3	100%
European Food Safety Authority (EFSA)	3	1	33%
European Institute for Gender Equality (EIGE)	3	3	100%
Europol	1	1	100%
Frontex	8	8	100%
Education, Audiovisual, and Culture Executive Agency (EACEA)	1	1	100%
Executive Agency for Small and Medium-sized Enterprises (EASME)	4	4	100%
<b>Total</b>	<b>130</b>	<b>108</b>	<b>83%</b>

<sup>7</sup> In three cases, the institutions rejected a solution proposal but accepted a subsequent recommendation or critical remark. In order to avoid double counting, the figure of 130 includes only the recommendations/remarks in those cases and not the solution proposals. In seven 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.





## 9. Conclusion

In the conclusion to last year's report, we announced a number of changes to the use of the term "solutions" and "further remarks". These changes were largely superseded by the Ombudsman's more thorough review of the Implementing Provisions that entered into force on 1 September 2016. The introduction of the new Implementing Provisions means that next year's report will include cases under both the old and the new procedures.

We hope next year to be able to report an even better response to the question "To what extent do the EU institutions listen to the Ombudsman?" We trust that the EU administration will continue to engage constructively to ensure that the figure is as high as possible.



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