



European Network of Ombudsmen

# Network in Focus 2017

Building inclusive societies to combat populism and facilitate integration

Brexit: maximising transparency and certainty for EU citizens

Ombudsman institutions' role in strengthening open government

Current and future challenges for ombudsmen

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# Editorial



Dear Colleagues,

My thanks to all of you who participated in another successful European Network of Ombudsmen conference last June in Brussels. I hope you agree that bringing ombudsmen, petitions committees and representatives of the EU institutions together again was a worthwhile experience.

Once again, the conference took place during a key moment in the history of the European Union. We were joined by senior EU figures including Vice-President of the European Commission, Frans Timmermans, and two Members of the European Parliament, Cecilia Wikström, Chair of the Petitions Committee; and Vladimír Maňka, Parliament's Questor responsible for the relationship with the Ombudsman. They spoke compellingly about the challenges facing the EU including 'populism', Brexit, the migration crisis, and they engaged in interesting exchanges with the colleagues.

The conference was held shortly before the one year anniversary of the British referendum on EU membership and the implications of the referendum for EU citizens were widely discussed. Some colleagues called on us to coordinate future Brexit work on the transparency of the negotiations and citizens' right to information and we will have further discussion about this.

Yet again the migration crisis was a big and important piece of the conference. Colleagues, particularly the Ombudsmen of Croatia and Greece – on the front line of the crisis – gave detailed accounts of their very active work with refugees and migrants in their countries.

We also received the results of an OECD preliminary survey on the degree to which ombudsmen interact with the Open Government Partnership. The OGP is essentially about making citizens part of the decision-making structures of their respective countries. For many of us, much of what we do is already in the OGP domain, yet some colleagues struggle with the question of whether their mandates would allow them to push forward on this issue. Yet despite the different viewpoints, I sensed that everyone thinks that there is value in exploring the possibilities of this global initiative for our work.

I hope colleagues left the conference with fresh ideas for their work and a fresh way of looking at the possibilities of their mandates. It was once again an honour for me to host it and to be able to listen to such informed, engaged and, at times, passionate contributions. I look forward to seeing how things evolve when we meet again in Brussels next year.

My best wishes,

Emily O'Reilly  
European Ombudsman



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# Introduction



We are pleased to bring to you the second issue of *Network in Focus*, the newsletter of the European Network of Ombudsmen!

Published shortly after the Network's annual conference, it carries the main points of the conference's sessions and working groups, and contributions from members of the Network on key developments.

The discussions of the 19-20 June conference focused on: building inclusive societies to combat populism and facilitate integration; maximising transparency and certainty for EU citizens in the Brexit context; the role of ombudsman institutions in strengthening open government, and on the current and future challenges for ombudsmen. These themes form the four chapters of the newsletter.

In addition, *Network in Focus* carries the conclusions of the working groups, where members of the Network exchanged best practices on: solving practical problems with regard to the migration crisis; implementing open government policies; maintaining good administrative standards in times of reduced resources; and promoting digital administrations.

You will also find contributions with a direct link to the conference's themes, and reports on key developments in the Network, including results of investigations. They inform us about ombudsmen's work to achieve greater awareness of human rights, and of the rights of future generations. In other contributions, ombudsmen share their experience of mediation as an alternative to supervision, and of helping ombudsman institutions resolve cases of threats and restrictions by governments.

We hope that you will enjoy reading this issue!

Building inclusive  
societies to combat  
populism and  
facilitate integration



## Highlights from the European Network of Ombudsmen 19-20 June 2017 conference

### European Ombudsman

2016 was the so-called year of the populist. It saw the referendum on the UK's exit from the EU, the election of Donald Trump as US President, and the rise of populist parties around the world. However, the election results in France and the Netherlands in 2017 led to hopes that this trend is about to be reversed, at least in the European Union.

Although ombudsmen are not politicians, they can promote trust and combat the populist narrative. Against this backdrop, the European Ombudsman, Emily O'Reilly, opened the session with the question: could 2017 be the year of the pushback against populism?

On the panel with her were: Sanjay Pradhan, Chief Executive Officer, Open Government Partnership; Jacques Toubon, Defender of Rights of France; Gero Storjohann, Deputy Chair of the German Federal Petitions Committee; and Bart Somers, Mayor of Mechelen in Belgium, and 2016 World Mayor.



The European Network of Ombudsmen 2017 conference in its first plenary session.

While citing the recent positive electoral outcomes in some EU Member States, the European Ombudsman also expressed concern that populist political parties have succeeded in influencing policy-making at the centre. Among the examples she gave were: the UK's decision to hold a referendum on EU membership, the stalling of assistance to migrants and refugees, and the EU's reluctance to ensure that Member States fulfil their commitments in terms of assistance to migrants and refugees.

Ms O'Reilly drew parallels between the sinking of the Titanic in 1912 and the fire in London's Grenfell Tower in June 2017, which led to the deaths of over 80 people. She said both tragedies raised wider questions about class, inequality and migration, and linked them to present-day ombudsmen's work on giving citizens access to rights and knowledge.

The European Ombudsman noted that how the EU manages these important challenges will be critical to its own wider legitimacy, and that it is the job of ombudsmen to help

citizens to exercise control over their lives, and not simply be subject to the political whims of others.

Mr Pradhan highlighted the three underlying drivers of populism as being erosion of identity, where citizens feel left behind; citizens feeling under siege because of the disconnect of the ruling elites; and populist leaders presenting themselves as the solution. Among his examples of how to tackle populism, the Chief Executive Officer of Open Government Partnership cited Canadian Prime Minister Justin Trudeau's efforts to give citizens a voice; the former US President Barack Obama's support for open government partnership; and Chile, where citizens have the possibility to track lobbying activities.

**“ It is the job of ombudsmen to help citizens to exercise control over their lives, and not simply be subject to the political whims of others. ”**

Populists rely on two tactics to attract followers: they peddle 'post-truths' and they play with people's feelings. In Mr Toubon's view, citizens are drawn to populists when they feel that they are treated unfairly, they do not belong, or they are alienated. Populists then prey on these feelings. The role of the ombudsman in this context is to give citizens a feeling of greater justice.

Session 1: Building inclusive societies to combat populism and facilitate integration  
Panellists (left to right): Sanjay Pradhan, Chief Executive Officer, Open Government Partnership; Bart Somers, Mayor of Mechelen in Belgium and 2016 World Mayor; Jacques Toubon, Defender of Rights of France; Gero Storjohann, Deputy Chair of the German Federal Petitions Committee; Emily O'Reilly, European Ombudsman; and Shada Islam, Moderator.



The Defender of Rights of France also illustrated the positive side of populism. He referred to the recently elected French President, Emmanuel Macron, whose political party (La République en Marche) he sees as a bottom-up rather than top-bottom movement. However, Mr Toubon added that Mr Macron's style needs to become more inclusive in order to be more effective.

For Mr Storjohann, the reason populists have not had much success in Germany to date is because they have been tackled. Citizens should participate in the political arena so that populists can continue to be challenged. He observed that one of the causes of populism is that citizens have fewer and fewer opportunities to participate in decision-making.

  **Défenseurs des droits**

Réseau européen des médiateurs : J. Toubon intervient sur le thème du populisme dans l'Union européenne <http://bit.ly/2tF2Nlq> #ENO2017

European Network of Ombudsmen 2017 conference: Jacques Toubon speaks on populism in the European Union.



First Vice-President of the European Commission, Frans Timmermans, closing the second session: **Brexit – maximising transparency and certainty for EU citizens.**

The local level is perhaps the most effective sphere for fighting populism in the 21st century. Local political decision-makers can make a difference: in a multicultural environment, there is a need for rules, which are part of good social policy. Speaking from his experience as long-time mayor of the Belgian city of Mechelen, Mr Somers underlined the importance of political decision-makers standing up to populists, and explaining fundamental values and different identities to citizens.

The audience raised the question of how ombudsmen can intervene when it comes to hate speech, such as in Poland. One way of countering the populist wave, a discussant suggested, is by bringing public attention to those who are actively combatting it, such as the Mayor of Mechelen. Other discussants suggested that ombudsmen, civil society and other actors work more together to combat populism.

Concluding the day's deliberations, First Vice-President of the European Commission, Frans Timmermans, explored the reasons behind populism and praised ombudsman institutions for the impact of their work on public administrations. Mr Timmermans pointed out that people who are afraid look for validation, and that populist politicians take advantage of this vulnerability. He commented that populists attack values as well as institutions, and that what happens in one Member State affects others. He regretted the lack of ideological passion among the idealists of current generations, adding that this is a lesson for the EU institutions.

Mr Timmermans paid tribute to the effect of the European Ombudsman's work on the EU institutions, particularly because the Ombudsman "puts the finger where it hurts". He admitted that this makes the institutions reconsider their way of conducting business by, for instance, taking steps to reconnect with citizens through greater transparency.



**Honor Mahony**

High level of transparency in EU comm is due to [@EUombudsman](#) constantly knocking on our door, says [@TimmermansEU](#) #ENO2017

High level transparency in the European Commission is due to the European Ombudsman constantly knocking on our door, says Frans Timmermans, at the European Network of Ombudsmen 2017 conference.



## The Mechelen model: an inclusive society

Bart Somers, Mayor of Mechelen in Belgium:  
2016 World Mayor



Bart Somers,  
Mayor of Mechelen in  
Belgium.

Lately, the “Mechelen model” has drawn a lot of attention. That is why I feel it is important to stress that my city Mechelen is not a paradise. It is a city of 86 000 inhabitants, located between Antwerp and Brussels. We have grown in our super diversity, with more than 130 different nationalities living together. Thirty percent of the citizens have a migrant background, 20% of inhabitants are Muslim, and one out of two newborns has a migrant background.

Fifteen years ago, Mechelen clearly had a bad reputation. The middle class left, criminality rates were very high, the streets were dirty and one out of three shops closed. Today, we are one of the reference cities in Belgium. Young middle class families have come back, street crime has dropped by 84%, and the level of poverty has gone down.

### What are the main ingredients that made this possible?

Take safety concerns seriously and invest in fighting crime. When people feel respected and safe in the public domain, they will be more open to change in society and will have fewer difficulties with diversity. In a multicultural city, the basic rules of behaviour towards our fellow citizens have to be more monitored. This approach is not a right wing policy but a social one for me. People in poorer neighbourhoods are the first victims when crime rates rise.

Create a new narrative that embraces diversity and see it as the new normal. When a city’s identity is based on nostalgia of a fading monocultural past, everybody will be frustrated. The newcomers will be because they are excluded, the original inhabitants because they are confronted with a feeling of loss. We have to rebuild a common identity where everybody has their place. This is sometimes generated by symbolic gestures but also by a policy that treats everyone as a full citizen.

**“ It is these role models that help social mobility, motivate new generations and take away negative prejudice. ”**

Avoid group thinking. A city cannot be reduced to the sum total of “(ethnic or cultural) communities”. Its existence in the first place is based on individuals: unique people with not one but different identities. You can find group thinking on the left and right sides of the political spectrum. Classic left group thinking has the tendency to see victims and deprived people in all migrants, while the classic right often sees in migrants only criminals or people who abuse the social system. They are both blind to a growing middle class with a migrant background. The success stories do not fit in their rhetoric. It is these role models that help social mobility, motivate new generations and take away negative prejudice.

Counter segregation. Cities are too often archipelagos of monocultural islands. The risk of such a city is that it locks people up in what often is a caricature of one identity. Moreover, the others remain strangers instead of becoming co-citizens. Mixed schools,



**Thomas Jørgensen**

We have been too silent speaking about values - leaving the concept to populists says [@BartSomers](#) [#eno2017](#)

We have been too silent about values, thus leaving the concept to populists, says Bart Somers, at the European Network of Ombudsmen 2017 conference.

sports clubs, and neighbourhoods strengthen possibilities of building a common identity. Local policies can make a difference here.

Accept that in times of globalisation and migration, we all have to make an effort to make a super diverse city a success. Step away from one-directional approaches. Have the courage to say that we all have to integrate in the new reality.

A society has to be built on common values, fundamental principles such as equality between men and women, the rule of law, and freedom of expression. But today, these principles and universal human rights – which should function as a bridge for emancipation and freedom – are too often transformed by some into a weapon of exclusion or stigmatisation.

Understand that a diverse city can be attractive to all if it can keep one promise to all: “if you work hard, use your talents and do your best, then you can achieve a better future for yourself and your family”. This promise is the core of a meritocratic society: “not your background but your future is important”. It can create cohesion, a profound feeling of citizenship and positive pride of belonging to a society. Racism and discrimination are a threat to that promise, because they are irrational things that spoil talent and block people at the bottom of the social ladder. In other words, racism destroys the core of an open society and the attractiveness of our civilisation. Those who speak the most about “western values” often minimise these and in that way betray the values they proclaim to defend.

Create programmes that help newcomers to learn the local language, find a job or get an education, and give them a better insight into the functioning of their new environment. Also, buddy projects and a fast track to sports, or cultural clubs, can facilitate the creation of a network that helps newcomers to be successful.



## **Upholding the principle of non-discrimination**

### **Ombudsman of Piedmonte, Italy**

#### **Legislative background**

Prohibition of discrimination is enshrined in Article 3 of the Italian Constitution, which also provides for the removal of obstacles that restrict the equality of citizens.

In view of this, Piedmont Regional Law of 23 March 2016, No 5 was introduced, giving the Ombudsman the power to intervene in order to protect citizens' rights and to identify (even independently) any legal provisions or regulations that run contrary to the principles enshrined in the said law, and also any discriminatory behaviour or practices.

#### **Weakness and discrimination: the purpose of the equal treatment principle**

Those who do not have, or cannot exercise, the right to equal treatment, namely those who do not have any real possibility to enjoy their rights on an equal footing with others, are in a position of weakness.

There is therefore a close connection between an individual's social, economic and cultural weakness and discrimination, because of the lack of a level playing field.

The Ombudsman's office considered how it could identify vulnerable individuals, situations of inequality, and subsequent social exclusion, on the basis of the assumption that public administration activity should aim for 'harmonious' protection that adapts itself to circumstances that may recur, reach a crisis point and definitively change.

#### **Freedom to wear the veil: a matter for debate**

The right to wear the veil, and more generally to display religious symbols, is one of the issues where it is necessary to compare and evaluate seemingly conflicting requests from different social groups: on the one hand, those who wish to practise their faith, and on the other hand, those who strive towards the preservation and, in some cases, the uniformity of values in a particular society.

The Ombudsman of Piedmont launched a debate on this issue by organising a convention at the Turin International Book Fair, during which experts representing the University and the Court of Turin compared the different legal areas, namely legislation, administrative law, legal theory and case law.

The debate examined what it means to "guarantee public interest in sound administration" – Article 97 of the Constitution primarily identifies this as the principle of legality, impartiality and efficiency – with regard to displays of religious symbols, including wearing the veil, in places other than on private property.

As has been observed, there are increasing requests seeking guarantees for communities whose members wish to be treated 'differently' because their ways and the customs that they practise are an expression of a religious right.

It is thus all the more apparent that we cannot allow ourselves to come to hasty conclusions or solutions that are too close to the formalism of legal precedents, whether these be positive or negative, in order to answer the question "should we all be equal?".



Our debate must therefore try to consider the religious aspect as well as the cultural and linguistic aspects, and to see the display of religious symbols and the wearing of veils as part of a bigger picture, in order to understand the fundamental link to personal identity and consequently to identify potential discriminatory behaviour or practices.

**“ It is necessary to seek to reconcile good administration with the Constitutional Court’s stipulation that secularity be considered as important as cultural and religious expression. ”**

If we are considering the exercise of the right to identity, we cannot limit the discussion by thinking in terms of rules and bans; we should instead favour a ‘selective’ approach that aims to understand when a potential conflict might arise, if in a given situation an individual may or may not be released from the obligations imposed, for reasons linked to his or her religious, cultural and/or linguistic identity.

We should therefore avoid reaching simplistic conclusions such as “one rule for all” which, in a desire to make everyone equal, might instead create inequalities.

On the other hand, safety and public order are inextricably linked with the need to protect other interests enshrined in the Constitution, including protection of life and limb. Therefore, an assessment is all the more necessary.

It is therefore necessary to seek to reconcile good administration with the Constitutional Court’s stipulation that secularity be considered as important as cultural and religious expression, in accordance with Articles 2 and 3 of the Constitution. These articles embody the duty of solidarity and the principle of substantial equality, along with the removal of (including de facto) obstacles to the exercise of this right.



## The Lithuanian Parliamentary Ombudsmen strive for greater awareness of human rights

### Lithuanian Parliamentary Ombudsmen

Due respect for human rights can be increased only with the active participation of society, including younger generations. Young people's involvement in the decision-making process is one of the ways that the UN World Programme of Action for Youth proposes for achieving that goal. For better engagement of younger generations in the decision-making process, awareness of the importance of young people to actively take part in community activities should be raised.

The *Seimas* (Parliamentary) Ombudsmen's office has paid considerable attention to awareness-raising activities in recent years. It started with a couple of projects to facilitate discussion among students from different regions of Europe about the significance of human rights in democratic societies and the importance of the human rights approach in handling complaints.

**“ Civil rights movements should put pressure on governments to seek higher standards in the area of human rights. ”**

Europe needs better decisions concerning human rights challenges, so meaningful participation of younger generations can lead to better decisions and outcomes. During the discussion, young people from different parts of Europe were presented with UN and European human rights mechanisms and they shared their views on acute human rights problems.

In the roundtable discussion organised by the office – in cooperation with the Ministry of Foreign Affairs of Lithuania – students from Greece, Italy, Spain, Turkey, Lithuania, France, Portugal, and Romania shared their thoughts on the human rights principles enshrined in the European Convention on Human Rights. Moreover, they talked about respect for diversity, equality and human rights.

During the meeting, the significance of human rights was pointed out through analysis of practical examples and situations and the development of human rights discussed through the definition of human rights protection mechanisms in the world.

While introducing the essence of the grassroots movements and the need to encourage the engagement of civil society in democratic processes, a representative of the Lithuanian grassroots movement “White Gloves”, Mr Povilas Gembickis, reminded the students about the importance of civic participation through standing up for human rights. Furthermore, the key documents and international treaties relevant to human rights were introduced and students invited to think of the core human rights principles enshrined in international treaties.

Recalling the movement for equality, which originated in the USA, the Deputy Director of the Human Rights Monitoring Institute, Ms Natalija Bitiukova, noted that even democratic countries face challenges in preserving human rights. Therefore, in her opinion, civil rights movements should put pressure on governments to seek higher standards in the area of human rights.

Finally, with the aim of developing young lawyers' perception of the application of human rights law in the penal system, the office invited students of law from Vilnius University to take part in a newly devised educational programme known as “Volunteering in the field of human rights”. The aim of the programme is to educate future lawyers by raising their awareness of human rights and broadening their knowledge about UN and other human rights mechanisms, thus preparing them to deal with human rights challenges.



The ombudsman institution's role in empowering young people.

In the opinion of the Head of the office, Mr Augustinas Normantas, it was important that the students were active and curious and interested in how the Lithuanian penal system operates. They participated in discussions on human rights, analysed international human rights standards and compared correctional systems in other countries.

As the office is an accredited National Human Rights Institution, its most important goals are to stand up for human rights, in cooperation with society and other stakeholders to address the most burning human rights issues as well as raise the awareness of society and younger generations about fundamental rights.

## Working group on the migration crisis: members of the European Network of Ombudsmen discuss the issues raised by migration

European Ombudsman



Working group in discussions.

Apart from attending four sessions during their 2017 conference, members of the European Network of Ombudsmen also took part in working groups. This report carries the main conclusions of the working group on best practices with regard to helping refugees and migrants. Chaired by the Greek Ombudsman, Andreas Pottakis, and Head of Unit at the office of the European Ombudsman, Marta Hirsch-Ziembińska, the discussion gave valuable insight into the different issues that ombudsmen face across Europe in the area of migration.

Mr Pottakis pointed to the absence of cooperation at both EU and national levels, compounded by the resignation of four Greek ministers responsible for migration. In addition, he noted that his office is not usually informed in time about the departure of returnees, so it is not always possible to carry out pre-departure checks and fulfil the office's monitoring role. Also, as Greece is in a state of emergency, normal legal practices do not apply.

Greece has not been able to do much to settle refugees because of political constraints. This means the risks of ghettoisation and marginalisation among migrants is a real and frightening prospect.

The working group's discussions showed that most ombudsmen have seen a significant increase in complaints received from asylum seekers and refugees since 2015, coinciding with the start of the refugee crisis linked to the Syria conflict. A number of ombudsmen highlighted their proactive outreach work towards refugees, which includes regular visits to camps and working with civil society.

The issues facing refugees tend to be the same across Member States. A prime concern is how asylum applications are handled by the authorities. Problems range from poor quality interviews, to a failure to properly document and register asylum seekers' files, to delays in processing asylum applications. In some Member States, a quasi-judicial committee decides on asylum applications, which can lead to a lengthy decision-making process.



Eija Salonen

Greek Ombudsman: on [#WorldRefugeeDay2017](#), the issue of migrants could not be more topical [#ENO2017](#) [@Synigoros](#)

The Greek Ombudsman says: "on World Refugee Day 2017, the issue of migrants could not be more topical", at the European Network of Ombudsmen 2017 conference.

Many ombudsmen indicated that they are involved in monitoring compliance of human rights in the context of forced returns of asylum seekers. The Belgian Federal Ombudsman, for example, has started to cooperate with the ombudsman offices in some of the countries that migrants are being returned to.

The fate of unaccompanied migrant children was one of the most complicated issues raised by many of the ombudsmen. Children travelling on their own face an array of problems including in trying to access basic services and legal representation. Access to legal representation is also often more difficult.

Verifying the age of minors needed to determine their status as asylum seekers is also very complicated. The Swedish Ombudsman pointed out that this process was arbitrary and open to inconsistencies.

Discussions also touched on family reunification, whereby applications have to be completed within three months. This can be a major problem for families in countries where there is a humanitarian emergency. It can be very difficult to get all necessary documentation together. On top of this, the nearest embassy is often far away and travelling is difficult or even dangerous. In this respect, Ms Hirsch-Ziemińska suggested recourse to the query procedure for the European Commission's interpretation of the relevant EU law for ombudsmen dealing with complaints on reunification matters. Through this procedure, members of the Network put queries to the European Ombudsman, who in turn seeks and obtains expert replies from the EU institutions.

The National Ombudsman of the Netherlands highlighted the many practical issues refugees face, such as having to learn the language or access the workforce, prior to their status being recognised. They are often left in limbo as a result.

Several ombudsmen spoke about the failure of many EU Member States to accommodate the share of refugees they had agreed to under the EU's reallocation system. The Belgian Federal Ombudsman suggested that the Greek Ombudsman submit a complaint to her about Belgium's failure to fulfil its reallocation quota. Other ombudsmen indicated that this could be a useful initiative.

**“ Many ombudsmen indicated that they are involved in monitoring compliance of human rights in the context of forced returns of asylum seekers. ”**



## The migration crisis and future challenges in Greece

Greek Ombudsman



Andreas Pottakis,  
Greek Ombudsman,  
with Emily O'Reilly,  
European Ombudsman.

For some years now, Europe is being confronted with two major crises: one fiscal-economic and the other humanitarian, related to the management of mixed flows of third country populations. Both crises originated from outside Europe's borders and have tested the resilience of the European Union.

Greece had and still has the unfortunate privilege to be a testing ground for crisis management policies. Even today, there is no plan with a clear, stated and coherent narrative, with milestones and deliverables, targets and timeframes for implementation. Instead, the Greek administration still operates in a state of emergency. This results in ad hoc arrangements and allows procedures, especially as regards the selection of contractors for services and goods, to derogate from the applicable institutional framework. Alas, in a state of emergency where such a practice is condoned, the rule of law cannot be rigorously respected nor can human rights be adequately protected.



Souda Refugee Camp  
on Chios Island – Greece,  
2017.



The emerging priority of the political leaders of the EU Member States, as reflected in the EU-Turkey Statement, is the formulation of a framework for the management of mixed flows. The framework creates an inhospitable environment for those already residing in Europe and a deterrent one for those who intend to move there. The underlying justification for this strict framework appears to be the fear of a pull-effect. The concern here is that the more third country nationals are relocated within Europe and the more their living conditions improve, the more flows of new arrivals will be washed to the shores of the European side of the Mediterranean Sea by the well-functioning networks of smugglers. It should be evident, however, that, if this is the case, more emphasis should be placed on tracking down and disrupting the operation of such networks, instead of making their victims suffer for seeking hope.

“ The view does not seem to take into account, even today, self-evident factors such as the root causes of the movement of populations and the primitive instinct of self-preservation. ”

More reflection is required on the short, medium and long-term effects of retaining the destitute third country nationals within fenced accommodation facilities, of the risks of ghettoisation, of segregation, of the familiarisation of society with specific designated spaces, of the threat of radicalisation of those stranded in one of the first reception Member States, awaiting the conclusion of long and arduous administrative procedures.

Administrative detention should not be considered as a useful instrument, as a “solution” for mending administrative shortcomings, most notably unacceptable delays and imperfections. Emphasis should be placed on confronting such malfunctions – not on covering them up – with due regard to the legal and fundamental rights of each and every person, and on schemes for integrating third country nationals.

The view that by maintaining rather uncomfortable living conditions of populations on the move would make them voluntarily opt to return (to where?), while others would be discouraged from entering Europe, is rather myopic, and does not seem to take into account, even today, self-evident factors such as the root causes of the movement of populations and the primitive instinct of self-preservation.



Souda Refugee Camp on Chios Island – Greece, 2017.



The Greek Ombudsman produced a comprehensive report on the management of the migration flows and the protection afforded to refugees in early June 2017. Having had to operate with scarce resources, with roughly a third of the budget it had a decade ago, with no additional human resources, and at the same time with even more and wider competences and mandates, e.g., as the National External Monitoring Mechanism (Joint EU-Turkey Statement) and as the National Preventive Mechanism (UN), the independent authority has made a series of recommendations on establishing – at last – appropriate administrative structures, enhancing co-operation between all players involved, whether governmental or otherwise, and improving the administrative standards for the management of the mixed populations, asylum processes, living conditions, with particular emphasis on the vulnerable groups, as well as suggestions for effective integration policies.

The policies adopted and implemented could form and influence, to a significant extent, the measure and degree of legal protection and humanitarian response for populations fleeing from areas of natural disasters, humanitarian risks and conflict across the world. The policies could also nurture the political and social dialogue for a new framework, with due respect to the safety of populations on the move and to human dignity.



## The inhuman living conditions of migrants in Calais

### Defender of Rights of France

A delegation from the office of the Defender of Rights visited Calais on 12 June 2017. The officials held in-depth conversations with many migrants expelled from the 'Jungle' and the organisations supporting them.

The Defender of Rights is calling for an end to the unprecedented infringement of the most basic rights of the migrants, particularly minors.



Jacques Toubon,  
Defender of Rights  
of France.

### Extremely serious and unprecedented attacks on fundamental rights

The desire to rid Calais of all migrants means that no type of shelter is tolerated; some 500-600 people, including minors, sleep rough – regardless of weather conditions – sometimes in sleeping bags donated by aid organisations. The expelled say they are tracked day and night in wooded areas of the town. Because of this, they can no longer sleep, or even sit down or rest, and are constantly on the alert. These people are clearly physically and mentally exhausted.

All their water sources have been removed so they cannot wash or even drink. Their main request is water to drink and wash.

Although the Lille Administrative Court ruled on 22 March 2017 that the ban on the distribution of meals by aid organisations constituted inhuman or degrading treatment, only one distribution round is permitted in the evening and for just one hour, which is not enough to feed all those who so wish. Acting on prefectural orders, the security forces keep the rest away, irrespective of whether they are families or young children. One aid organisation distributes food to those who are too afraid to go to distribution points for fear of being stopped. Since a week ago, meals can be distributed at lunchtime, because a priest openly opposed police presence on the grounds of his church.

“ One aid organisation distributes food to those who are too afraid to go to distribution points for fear of being stopped. ”



### **Women and children are most affected**

Women no longer benefit from dedicated structured support since the dismantling of the Jules Ferry Centre, and they are vulnerable to rape and sexual exploitation. Some women have young babies and several others are due to give birth in the coming weeks. There does not appear to be any reception or housing facilities for them, even though these are essential for mother and child welfare.

Among the unaccompanied minors are new arrivals and others from reception and guidance centres for unaccompanied minors (CAOMI) and are intent on going to the United Kingdom. Reception of child welfare support involves reporting to the police station in the evenings and at night, which is a significant deterrent.

### **Aid organisations under pressure**

When aid organisations step in to fill the gap left by the public authorities in terms of facilities such as provision of showers and food and water distribution, they are obstructed and threatened. For instance, those whose vehicles are parked in front of the aid organisations' premises are booked, a long-standing organisation in Calais received a court order not to continue operating its kitchen until it complies with the required standards, those who help irregular migrants are threatened with legal action, etc. The Defender of Rights is also investigating the obstacles that aid organisations and minors may have experienced while trying to access the shower facilities that Secours Catholique provided until May.

It is also difficult for these organisations to advise migrants on how to access legal aid. In this regard, the Defender of Rights is disappointed that refugees are no longer taken from Calais to reception and guidance centres (CAO), and that it is no longer possible to submit an asylum application in Calais, as the Lille prefecture discourages both these measures.

While reiterating the recommendations he made in his decision of 20 April 2016, in particular with regard to minors (Decision MDE-2016-113), the Defender of Rights called for: an immediate end to this type of tracking, authorisation of meal distribution, and provision of shelter for minors, and of a place where the expelled migrants can rest, gather strength and consider the next step of their journey.

The Ombudsman urges the public authorities not to persist in practising what equates to a denial of the existence of the expelled migrants, who, while in our country should be treated with dignity, in accordance with the law and with France's binding international commitments.

[Report on the fundamental rights of foreigners in France](#)

[Summary of the report – English version](#)

## Children should not be detained in closed centres

### Federal Ombudsman of Belgium

As part of its investigation into the functioning of the closed detention centres run by the Immigration Office, launched at the request of the Belgian House of Representatives in 2008, the Federal Ombudsman recommended that children no longer be detained in closed detention centres. Indeed, it recommended that this be clearly established by law, as had been the case for unaccompanied minors<sup>1</sup>.

Since 2008, the Immigration Office has provided alternatives to detention in order to meet the specific needs of families with children. These range from coaching at home to providing the families with open accommodation run by the Office, better known as 'return houses'. These alternatives were clearly established in Belgian law in 2011<sup>2</sup>.

Since then, families with minor children have not been placed in closed detention centres<sup>3</sup>.

In his general policy note,<sup>4</sup> the Secretary of State for Asylum and Migration announced his intention to resume the detention of families with children in closed family units, to be built in 2017 at closed detention centre 127*bis*, near Brussels Airport.

His justification for this measure was the lack of cooperation by families on voluntary return and the large number of families fleeing the return houses before their removal<sup>5</sup>.

According to the Secretary of State, the use of closed family units would encourage families to cooperate more fully in their return process in order to avoid being held in closed detention centres. This should only be used as a last resort and for the shortest possible duration, and the design of the units should, wherever possible, be adapted to the needs of families<sup>6</sup>.

The Federal Ombudsman points out, however, that the conclusion of its 2008 investigation was clear: the detention of migrant children cannot be justified from



Catherine De Bruecker,  
Federal Ombudsman  
of Belgium.

1. General recommendation No 191, Investigation report 2009/2 of the Federal Ombudsman on the functioning of the closed detention centres run by the Immigration Office, p. 43.

2. Law of 16 November 2011 inserting Article 74/9 concerning the ban on detaining children in closed detention centres in the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and removal of foreign nationals.

3. With the specific exception of families with children who are held in the Caricole transit centre near Brussels Airport for a maximum of one night, pending their transfer to a return house or on the eve of their transfer to the airport (Question No 12965 by Ms Monica De Coninck of 19 July 2016, "Detention of migrant children", CRI, Chamber, 2015-2016, 54 COM 481, pp. 32-36. Response received on 19 July 2016).

4. General policy note of 27 October 2016, Chamber, 2016-2017, No 2111/017.

5. Between 2010 and October 2016, 33% of families fled return houses before they were removed.

6. See [the response](#) by the Secretary of State for Asylum and Migration, Theo Francken, to the letter from the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, on the detention of minors, 19 December 2016.



Guido Herman,  
Federal Ombudsman  
of Belgium.

a medical or legal perspective, even in materially altered conditions and for as short a period as possible<sup>7</sup>.

In ratifying the UN Convention on the Rights of the Child and adopting Article 22*bis* of the Constitution, the Belgian State promised to give precedence to the best interests of the child in all decisions concerning him/her.

According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “the deprivation of liberty of children based on their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and

may constitute cruel, inhuman or degrading treatment of migrant children (...). Depriving children of their liberty for exclusively immigration-related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure that children will appear at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child’s best interests”<sup>8</sup>.

The Special Rapporteur therefore calls upon all states to ensure that immigration detention is never used as a penalty or punishment of migrant children, including

for irregular entry or presence, and to provide alternative measures to detention that promote the care and well-being of the child.<sup>9</sup>

According to the Council of Europe’s Commissioner for Human Rights, immigration detention, even for a short period of time and in adequate material conditions, is never in a child’s best interests. He also points out that the development of open family units in Belgium has become a source of inspiration for other countries. Resuming the detention of families with

children would jeopardise these achievements and bring Belgium back to the situation prevailing before 2008, which resulted in the country being repeatedly found in violation of the European Convention on Human Rights<sup>10</sup>.

The Federal Ombudsman notes that placement in a return house has proved effective in two thirds of all cases. As far as he is aware, to date there has been no in-depth study of the reasons why a third of families leave the return house before actually being removed.

They are not necessarily trying to flee and to disappear underground. An evaluation of the return support mechanisms by coaches during the transfers to the return houses could identify the reasons for this failure.

“ In ratifying the UN Convention on the Rights of the Child, the Belgian State promised to give precedence to the best interests of the child in all decisions concerning him/her. ”

7. Several studies have shown that detention harms children and can have a serious and traumatic impact on their physical and mental health. See in this regard Investigation report 2009/2 of the Federal Ombudsman on the functioning of the closed detention centres run by the Immigration Office.

8. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 5 March 2015, A/HRC/28/68, No 80, p. 18.

9. Ibid, point m, p. 21.

10. See the letter from the Council of Europe’s Commissioner for Human Rights, Nils Muiznieks, to the Secretary of State for Asylum and Migration, Theo Francken, 12 December 2016.



Only a careful analysis of these reasons will identify the actions that are likely to enhance the effectiveness of the alternatives to detention, which should continue to be the absolute priority where children are concerned.

Moreover, detention in closed detention centres is costly in terms of both infrastructure and supervision, and it gives rise to frequent appeals, given that it is a serious interference in the exercise of the fundamental right to freedom. Consequently, effective use of public funds requires that all other mechanisms likely to ensure the effective implementation of removal decisions be exhausted first.

The Federal Ombudsman has called on the Belgian Parliament to carry out a study to find out why the procedures to remove families with children from return houses fail and to identify the measures that would make the alternatives to detention more effective in order to ensure the actual removal of those families.

Pending the results of this study, the Federal Ombudsman recommends that no further steps be taken, nor money spent, to detain families with children in closed units at the 127bis site near Brussels Airport.

Brexit: maximising  
transparency and  
certainty for EU  
citizens

## Highlights from the European Network of Ombudsmen 19-20 June 2017 conference

### European Ombudsman

During this session, the European Ombudsman, Emily O'Reilly, explained the difficulty for ombudsmen to be involved in the debate about Brexit without getting into the politics of the exit process. She pointed out that the two issues that ombudsmen can legitimately get involved in, i.e., transparency and citizens' right, seem to be part of the political armoury of the negotiations. While the EU side has committed itself to "unprecedented transparency", Ms O'Reilly noted, the British side has tended to keep its negotiating stance secret. She added that she had received some Brexit-related complaints about access to documents, particularly with regard to the benefits of EU citizens residing in the UK, and that she expected to receive more.



#### Session 2: Brexit – maximising transparency and certainty for EU citizens

Panellists (left to right): Rosemary Agnew, Scottish Public Services Ombudsman; Assya Kavrakova, Executive Director of the European Citizen Action Service; Cecilia Wikström, Member of the European Parliament, Chair of the Committee on Petitions of the European Parliament; Jesús Maeztu Gregorio de Tejada, Ombudsman of Andalucía, Spain; Emily O'Reilly, European Ombudsman; and Shada Islam, Moderator.

Vladimir Maňka, Member of the European Parliament, and Member of the Bureau, praised the European Ombudsman's role in promoting the rights of citizens, who expect, among other things, peace, stability and environmental protection. Noting that transparency and openness are crucial in EU decision-making and that Brexit is of great concern to EU citizens, Mr Maňka underlined that the fundamental rights and freedoms of citizens must be protected. In his view, although Brexit is a turning point for the EU, the future of the EU will not only be determined by Brexit, but by what the EU is capable of doing afterwards.

Others on the panel with the European Ombudsman were: Cecilia Wikström, Member of the European Parliament, Chair of the Committee on Petitions of the European Parliament; Rosemary Agnew, Scottish Public Services Ombudsman; Jesús Maeztu Gregorio de Tejada, Ombudsman of Andalucía, Spain; and Assya Kavrakova, Executive Director of the European Citizen Action Service.

Ms Wikström reported that Brexit is high on the agenda of the European Parliament because of the need to scrutinise the democratic process. To date, the Committee on Petitions has received around 150 petitions regarding citizens' rights in the Brexit



context. The safeguarding of citizens' rights is a pre-condition for proceeding with negotiations on other aspects of the exit process. For Parliament, EU citizens residing in the UK should enjoy the same rights as British citizens residing in the EU.

The Scottish Public Services Ombudsman spoke of the short, medium and long-term consequences of the UK's separation from the EU.

Ms Agnew drew attention to the short-term concerns of the exit process itself, given the political debate about the independence of Scotland. She observed that over time the danger that the different components of the UK are facing will become more evident. She also noted that Northern Ireland would have a land border with the EU.

**“ The Ombudsman described the socio-economic disparities between the UK retirees living on the Rock and the people living on the other side of the La Línea de la Concepción, where unemployment is rife. ”**

Ms Agnew suggested there is a risk the rights of EU citizens in the UK will diverge from those of UK citizens. Additionally, there could be a loss of legal safeguards, for example, in environmental law in the UK, which will move away from the stronger EU level.

The Ombudsman advised governments to embrace open governance. She used the example of Scotland, which has asked leaders of public bodies twice what issues they encounter on the ground and their impact at local level. She also remarked that there was an assumption that transparency

started with access to information. Ms Agnew explained that transparency rather starts with the participation of citizens in decision-making, access to public services and other instruments of state, and that access to information comes after all of these rights.

The Ombudsman of Andalucía explained the delicate consequences for his autonomous community and Gibraltar arising from Brexit. He noted that of the 240 000 UK nationals residing in Spain, 80 000 are in Andalucía, spread over the Costa del Sol and Gibraltar. These residents are elderly, with 40% over 65 years of age. Mr Maeztu indicated that there are 10 000 Andalusians residing in the UK. By contrast, they tend to be young (mostly between 25 and 44 years of age) and economically active.

There is also the question of Gibraltar, which could be used as a bargaining chip in the Brexit negotiations. The Ombudsman described the socio-economic disparities between the UK retirees living on the Rock (Gibraltar) and the people living on the other side of the La Línea de la Concepción (border between Spain and Gibraltar), where unemployment is rife. At least 11 500 workers, including foreign workers, cross La Línea daily to work on the Rock.

Given this situation, the Ombudsman wondered how the negotiations will proceed, and, for instance, what will happen to the single market's four freedoms of movement (of goods, capital, services and people) after the UK's departure from the Union.

In early 2017, the European Citizen Action Service (ECAS) conducted a survey on the key concerns of citizens about Brexit. The survey found that 96% and 86% of UK and EU respondents respectively feel that Brexit personally affects them. In the main, these are UK citizens residing in the EU and vice versa. Citing the findings of the survey, Ms Kavrakova stated that both UK and EU nationals value the right to move freely the most. They also tend to be concerned about their post-Brexit rights, and have become more socially and politically engaged.



## Transparency and the rights of citizens in the Brexit process

### European Ombudsman

Almost a year on from the UK's referendum, Brexit was on the agenda of the European Network of Ombudsmen conference. It was also top of the EU's agenda that week, as negotiations between the EU and the UK government began on 19 June 2017.

The European Ombudsman has already received a number of complaints either directly or indirectly related to Brexit, and is anticipating that this will increase. Of those directly related to Brexit, the focus is predominantly on the decision-making process and transparency. There are currently three ongoing inquiries, all of which concern access to documents in the EU institutions.

Transparency around the Brexit negotiations is the focus of a strategic initiative launched by the European Ombudsman in March 2017. Emily O'Reilly wrote to both European Commission President Juncker and the Secretary-General of the Council of the EU, Jeppe Tranholm-Mikkelsen, urging transparency in the negotiations and the need to ensure stakeholder input.

**“ The EU negotiating mandate has made clear that protecting EU citizens' rights will be a central priority in talks with the UK. ”**

Both institutions have already responded positively, with the Commission committing to “unique and unprecedented” transparency in the negotiations and the Council also indicating a desire to be proactive regarding transparency. The only issue still open is stakeholder input and how that will be organised, but this is something that will only become clear as negotiations progress.

The EU negotiating mandate has made clear that protecting EU citizens' rights will be a central priority in talks with the UK.

The European Commission is proposing that any agreement should safeguard the rights citizens have at the date of the withdrawal for the lifetime of the person concerned.

The Commission also wants to ensure that EU citizens continue to automatically acquire the right to permanent residence in the UK after legally residing there for a continuous period of five years, even if they moved to the UK less than five years before the date of withdrawal. Family members of EU citizens (regardless of nationality) should also continue to have the right to accompany or join them in the UK, subject to certain conditions.



Cecilia Wikström, Member of the European Parliament, Chair of the Committee on Petitions of the European Parliament; Jesús Maeztu Gregorio de Tejada, Ombudsman of Andalucía, Spain; with Emily O'Reilly, European Ombudsman, at the European Network of Ombudsmen 2017 conference.



Beyond the high politics of the negotiations, it is clear that Brexit will have – and is already having – a major direct impact on European citizens. There are approximately 3.2 million nationals from the EU-27 countries in the UK, with approximately 1.2 million UK citizens in other EU countries.

As a survey by the European Citizen Action Service made clear, many of the rights that EU citizens take for granted – such as the right of entry, social protection, consumer rights, voting rights, passenger rights etc., – will be affected.

While the agreement to be made will give legal clarity to the situation of citizens' rights, how this impacts the millions of Europeans affected by Brexit will become clear only when the agreement is being implemented. If they are not already doing so, ombudsmen across the EU will inevitably become involved in dealing with some of the issues citizens affected by Brexit face.

As these issues become more apparent, the European Network of Ombudsmen will clearly play a crucial role in helping us all to respond and to address systemic issues that we see emerging.



## Key concerns of UK and EU citizens directly affected by Brexit

### European Citizen Action Service

United Kingdom citizens in the EU and EU citizens in the UK feel personally affected by Brexit, value the right of free movement the most, know less about their rights post-Brexit but have become more socially and politically engaged.

These are the findings of a recent survey conducted by the European Citizen Action Service (ECAS). It is an international Brussels-based non-profit association with a pan-European membership and 26 years of experience. ECAS empowers citizens to exercise their rights and promotes open and inclusive decision-making through the provision of high quality advice, research and advocacy, as well as capacity-building to civil society organisations.



Assya Kavrakova,  
Executive Director of the  
European Citizen Action  
Service.

The Service designed and launched a survey on 29 March 2017, which coincided with the date Theresa May, the Prime Minister of the United Kingdom, submitted the letter that triggered Article 50 of the Treaty on European Union to the President of the European Council. The survey found that 96% of UK respondents and 86% of EU respondents feel personally affected by Brexit.

The aim of the survey was to gather the key concerns of citizens directly affected by Brexit, namely UK citizens living in the EU and EU citizens residing in the UK, to provide feedback to decision-makers who will be involved in the withdrawal negotiations. The survey received a total of 1 670 unique responses: 71% (1 190 responses) from British citizens and 28% (468 responses) from other EU citizens, including 26 responses from citizens holding dual citizenship. It was carried out in the framework of the [Citizen Brexit Observatory](#), a partnership of ECAS, the University of Sheffield's School of Law and the Law Centres Network, to support fair treatment of EU citizens living in the UK and UK citizens living in the EU.

The vast majority of the EU citizens who responded live in the UK (87%), while the predominant part of the UK citizens who responded live in the EU (45.4% of the British respondents reside in the UK or in a British overseas territory).



European Ombudsman

Survey [@ecas\\_europe](#): 77% of UK citizens have increased their social and political activism as a result of [#Brexit](#) [@AKavrakova](#) [#ENO2017](#)

ECAS survey: 77% of UK citizens have increased their social and political activism as a result of Brexit, said Assya Kavrakova, at the European Network of Ombudsmen 2017 conference.

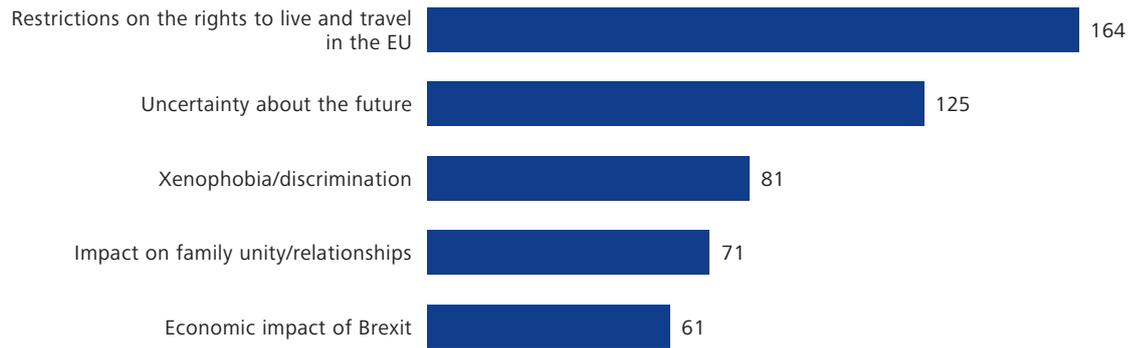


**“ UK citizens are more afraid of losing their European citizenship and of the economic impact of Brexit. EU citizens are more concerned about an uncertain future and fear discrimination and xenophobia. ”**

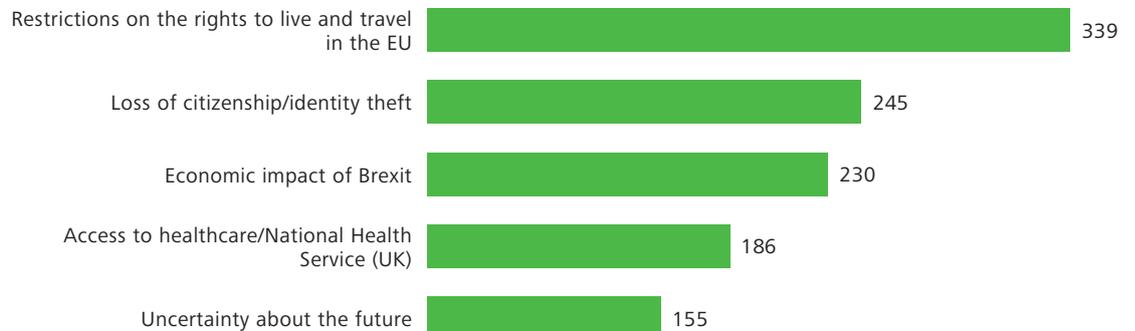
The age of the respondents of the two groups differs significantly. The majority of EU respondents were either young or at an economically active age up to 47 years (80% were either employed or self-employed). The majority of UK respondents, on the contrary, were over 56 years old. UK citizens younger than 40 years old accounted for only 12.9% of responses.

While the top concerns of both UK and EU citizens are related to restrictions to the right to move freely, UK citizens are more afraid of losing their European citizenship and of the economic impact of Brexit. EU citizens, on the other hand, are more concerned about an uncertain future and fear discrimination and xenophobia.

**EU citizens' top 5 concerns (number of mentions)**



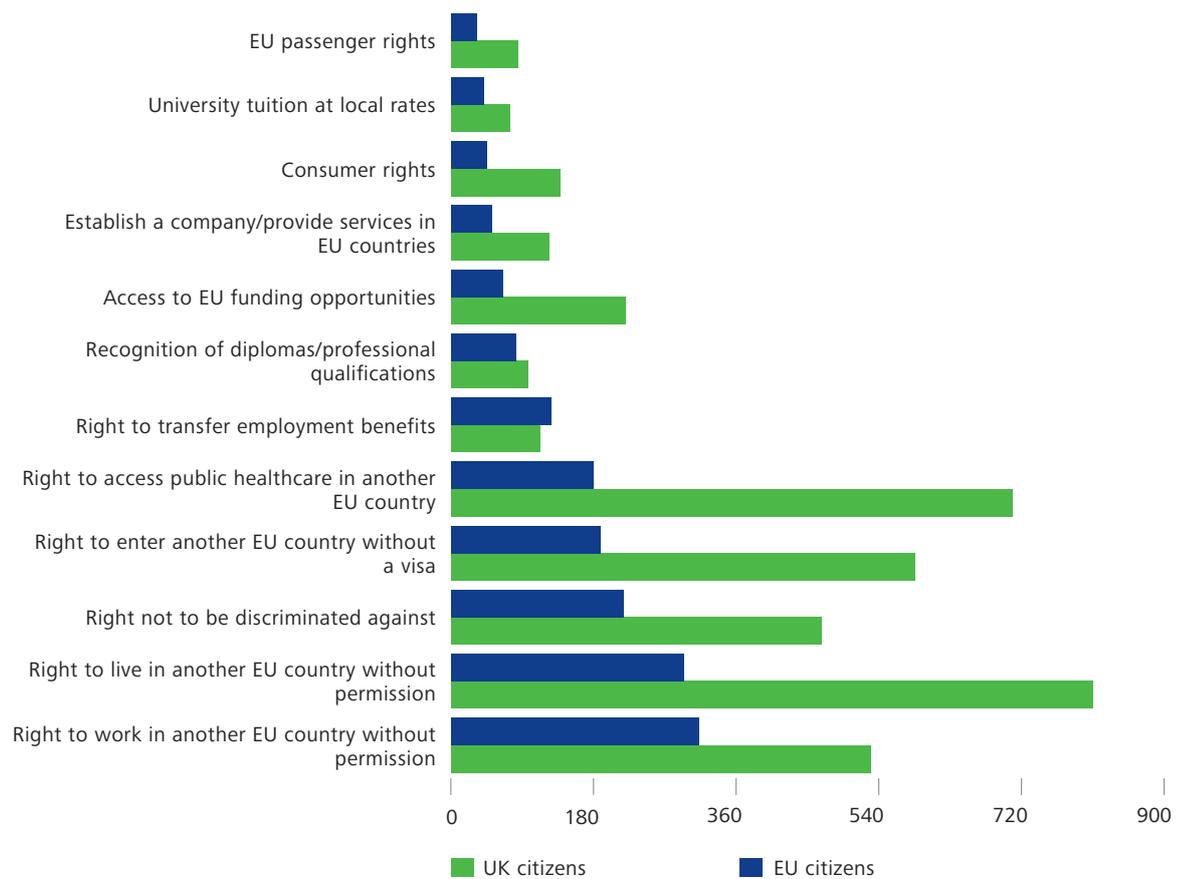
**UK citizens' top 5 concerns (number of mentions)**





As a consequence of the EU referendum vote in the UK, an increasing number of UK and EU citizens consider themselves less aware of their rights than before. The most valued rights of both UK and EU citizens are the right to: enter, live and work in another EU country; not to be discriminated against; and access the reciprocal healthcare system in another EU country.

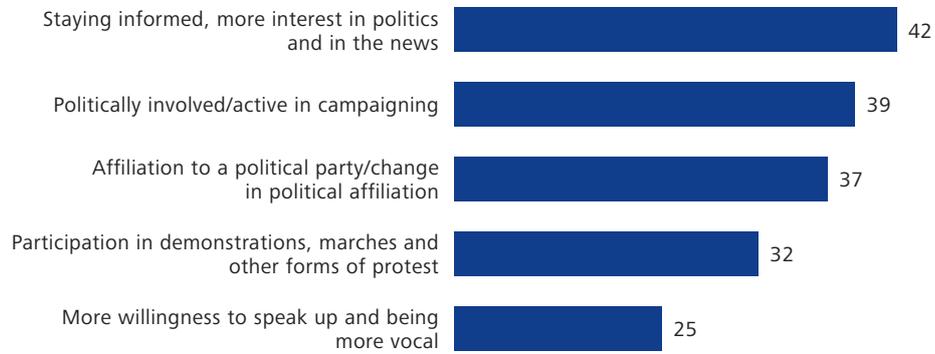
### Rights that EU and UK citizens value most (number of mentions)



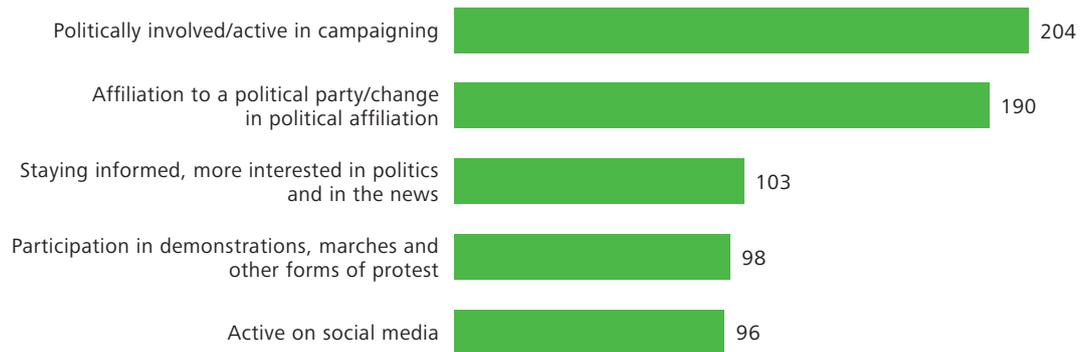
The majority of EU and UK citizens (four out of seven EU respondents and seven out of nine UK respondents) have become more socially and politically engaged since the Brexit process started. They have become better informed about the current political situation (mainly because they no longer trust the information from the media and politicians) and more vocal about their rights. Finally, as a consequence of the referendum, most of the respondents have tried to do as much as possible to reverse the Brexit decision, such as joining a pro-EU political party, attending demonstrations and being more active in carrying out pro-EU campaigns on social media.



### EU citizens' top 5 political/social actions (number of mentions)



### UK citizens' top 5 political/social actions (number of mentions)





# Ombudsman institutions' role in strengthening open government



## Highlights from the European Network of Ombudsmen 19-20 June 2017 conference

### European Ombudsman

The Organisation for Economic Co-operation and Development (OECD) and the European Ombudsman jointly carried out a survey on 86 national and sub-national ombudsman offices from 59 countries and territories worldwide and the European Ombudsman in March 2017.

**Gundi Gadesmann**

Input of ombudsmen should be taken into account in national open government policy making, says [@AlesBellantoni](#) from [@OECD](#) at [#ENO2017](#)

The input of ombudsmen should be taken into account in national open government policy-making, says Alessandro Bellantoni from the OECD at the European Network of Ombudsmen 2017 conference.

This was the OECD's first comparative survey on the role of ombudsman institutions in open government, a culture of governance that takes inspiration from the principles of transparency, accountability and participation, and seeks to foster democracy and inclusive growth.

Elena Gentili from the OECD's Public Governance Directorate presented the survey's findings. In the main, the survey concluded that ombudsman institutions linked to parliament have a culture of openness, in that many of them have adapted a code of conduct; require declarations of interest; communicate findings and decisions to parliament and the wider public; and use social media.

Ombudsman institutions such as in Austria, Wales and Lithuania have established mechanisms for engagement with external actors, for instance, through public



### Session 3: Ombudsman institutions' role in strengthening open government

Left to right: Shada Islam, Moderator with panellists: Marc Bertrand, Ombudsman of the Wallonia and Wallonia-Brussels Federation and President of the Association des Ombudsmans et Médiateurs de la Francophonie; Peter Tyndall, Ombudsman of Ireland and President of the International Ombudsman Institute; Emily O'Reilly, European Ombudsman, and Elena Gentili, from the OECD's Public Governance Directorate.



perception surveys. Others, including those in the Wallonia and Brussels-Wallonia Federation, the UK, Scotland and Ireland engage external actors through information-sharing and consultation. These practices improve knowledge of ombudsman institutions, increase access to the institutions' services, increase impact of such services, promote good practice, and facilitate analysis and detection of new areas of work.

The survey's findings identify five main contributions of ombudsman institutions towards open government. These institutions improve accountability, transparency and public service delivery, and heighten citizens' trust in public institutions, and participation in policy-making.

**“ In the view of the European Ombudsman, several ombudsman institutions are actually practising open government. ”**

On the whole, however, involvement of ombudsman institutions in the national open government agenda is rather low, standing at 14% in terms of strategy and just 9% with regard to mechanisms. Among the impediments to the promotion of the open government culture within ombudsman

institutions, the survey identified lack of a comprehensive approach and strategy and insufficient human resources. Some ombudsman institutions are mainstreaming open government, even though public institutions do not always welcome it.

In the view of Emily O'Reilly, the European Ombudsman, several ombudsman institutions are actually practising open government, for instance by publishing the findings of their investigations and conducting public consultations. Some barriers to open government are external, for example, in cases where governments do not want it, or where the ombudsman's mandate is limited. Open government often requires going to the limits of the ombudsman's mandate, said Ms O'Reilly, and ombudsman institutions must look to see where they can bring their skills to bear.

The other panellists were: Peter Tyndall, Ombudsman of Ireland and President of the International Ombudsman Institute; and Marc Bertrand, the Ombudsman of the Wallonia and Wallonia-Brussels Federation and President of the Association des Ombudsmans et Médiateurs de la Francophonie.

The Ombudsman of Ireland explained that ombudsman institutions are already working in areas that are central to open government, such as accountability, even though the use of open data has hijacked the open government agenda. So the main question is: how can ombudsman institutions occupy their open government space? They need to broaden the open government agenda at national level, as they are already doing so at international level. The danger though, Mr Tyndall emphasised, is that collaborating too closely with stakeholders could create public confusion about the role of ombudsmen.




**Seimo kontrolieriai**

Survey on Ombuds' role in open government carried out by #OECD highlighted the our initiative with radio stations on #humanrights #ENO2017

A survey on ombudsmen's role in open government carried out by the OECD highlighted our initiative with radio stations on human rights at the European Network of Ombudsmen 2017 conference.



The presentation slide in the background lists the following:

- Ombudsman (Ireland):** service providers, when new service comes under their jurisdiction (e.g. with Citizens Information Centres that can receive complaints for the Ombudsman)
- Ombudsman's Office (Lithuania):** with radio stations on Human Rights programme
- Advocate (Romania):** since protocols with NGOs on promotion of human rights
- Office of Justice (Estonia):** since with CSOs on children rights



Mr Bertrand praised the joint collaboration between the OECD and ombudsman institutions, and the fact that the survey goes beyond Europe. Some countries, for example, Belgium, he added, are more committed to open government than others. The Ombudsman warned of the danger of ombudsman institutions being over-involved in open government, and the need to remain independent. He proposed that those institutions with experience in open government share it with those that do not have it, and raise awareness of the practice, including among citizens.

Some discussants expressed the view that ombudsman institutions' greatest strength is their independence, and that they cannot afford to be regarded as just another NGO. Others felt that national administrations should commit to including ombudsman institutions in open government strategy and policy-making, and that ombudsman institutions should better explain what they do.



## OECD preliminary survey results on the role of ombudsman institutions in strengthening open government

Organisation for Economic Co-operation and Development

Elena Gentili from the OECD's Public Governance Directorate presenting the preliminary findings of the OECD-European Ombudsman survey on the role of ombudsman institutions in open government to the European Network of Ombudsmen 2017 conference.

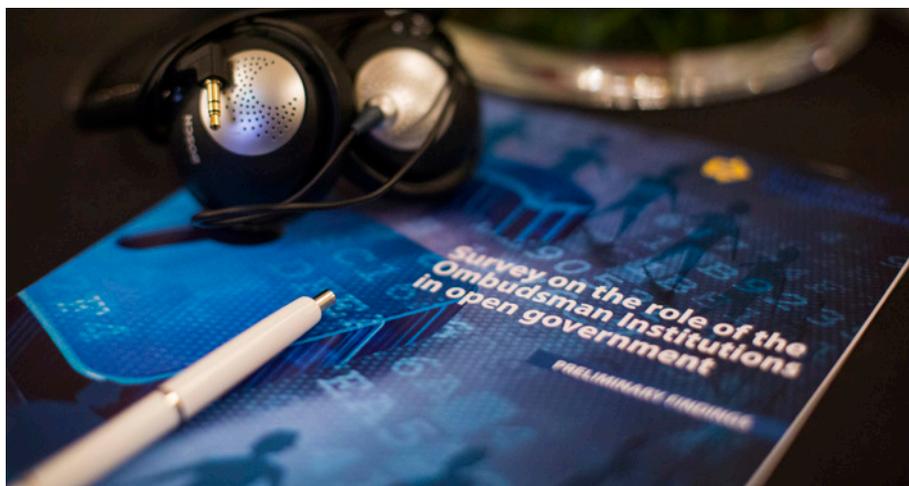


In a context of declining trust in government and rising populism, governments are asked to open up the policy-making cycle to give citizens a more active role, strengthen transparency and accountability. In this sense, the majority of European countries have committed to designing and implementing open government initiatives. Open government, as defined by the Organisation for Economic Co-operation and Development (OECD) is "a citizen-centred culture of governance that utilizes innovative and sustainable tools, policies and practices to promote government transparency, responsiveness and accountability to foster stakeholders' participation in support of democracy and inclusive growth".

Furthermore, recent findings of the report: *Open Government: The Global Context and the Way Forward* have shown that countries are increasingly moving from the concept of open government to what the OECD has termed "open state". Open state implies a broader collaboration between all key actors of the national open government agendas such as the legislative and judicial branches, independent institutions like the ombudsman, and the sub-national levels of government in order to create synergies to improve the overall impact of their initiatives.

Recognising the special position that ombudsman institutions occupy at the crossroads between citizens and the government, the European Ombudsman and several ombudsman institution networks, such as the Association des Ombudsmans

Cover of the OECD preliminary survey report on the role of ombudsman institutions in strengthening open government.





et Médiateurs de la Francophonie, the Association of the Mediterranean Ombudsmen and the International Ombudsman Institute asked the OECD to carry out a survey to collect better data on their role in national open government agendas.

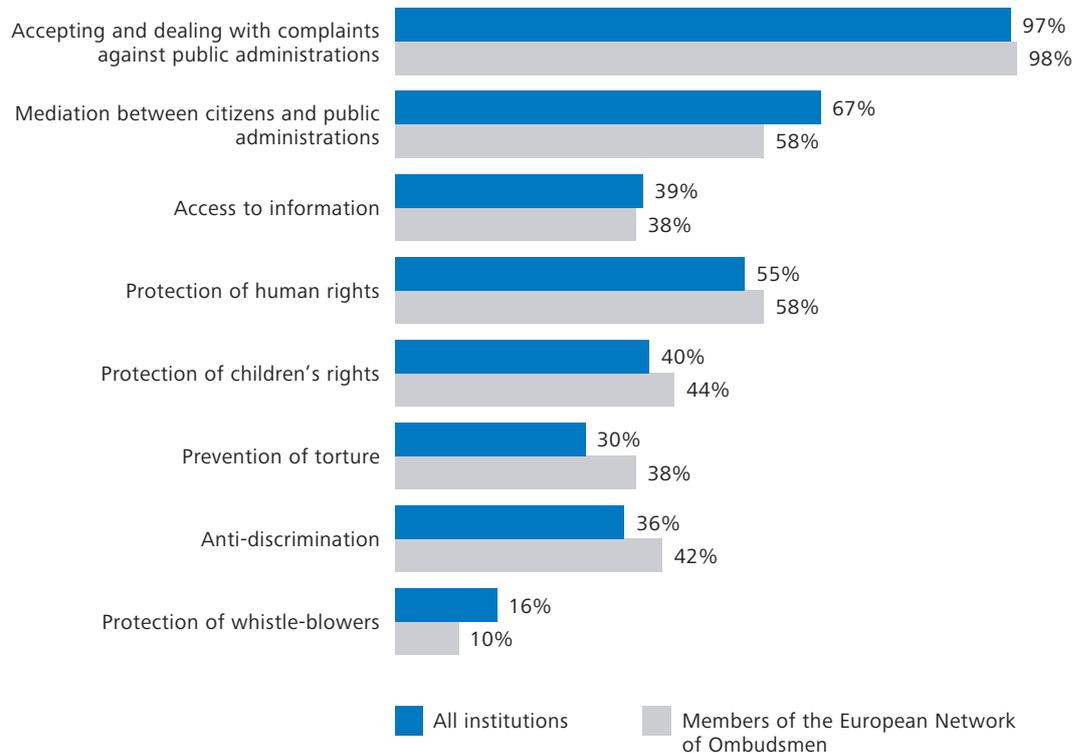
### The survey

Eighty-six national and sub-national institutions from 59 countries worldwide and the European Ombudsman responded to the survey, which examined open government in the functioning of ombudsman institutions, and their engagement in public governance and national open government.

Comparative data show that the open government principles of transparency, participation and accountability are well embedded in ombudsman institutions' DNA. For instance, 72% of ombudsman institutions make their vision, strategy or action plan publicly available, 90% are open to engage with a wide range of stakeholders such as civil society or media among others, to strengthen the knowledge of their institution among citizens, and increase citizens' use of services the institutions render. Furthermore, almost 70% use social media to inform about their work and engage with citizens and journalists. This gives the ombudsman institutions the basis to actively and strategically participate in the national or local open government agendas.

**“ Ombudsman institutions are in an ideal position to promote open state as they are at the crossroads between citizens and the government. ”**

### Mandate of ombudsman institutions

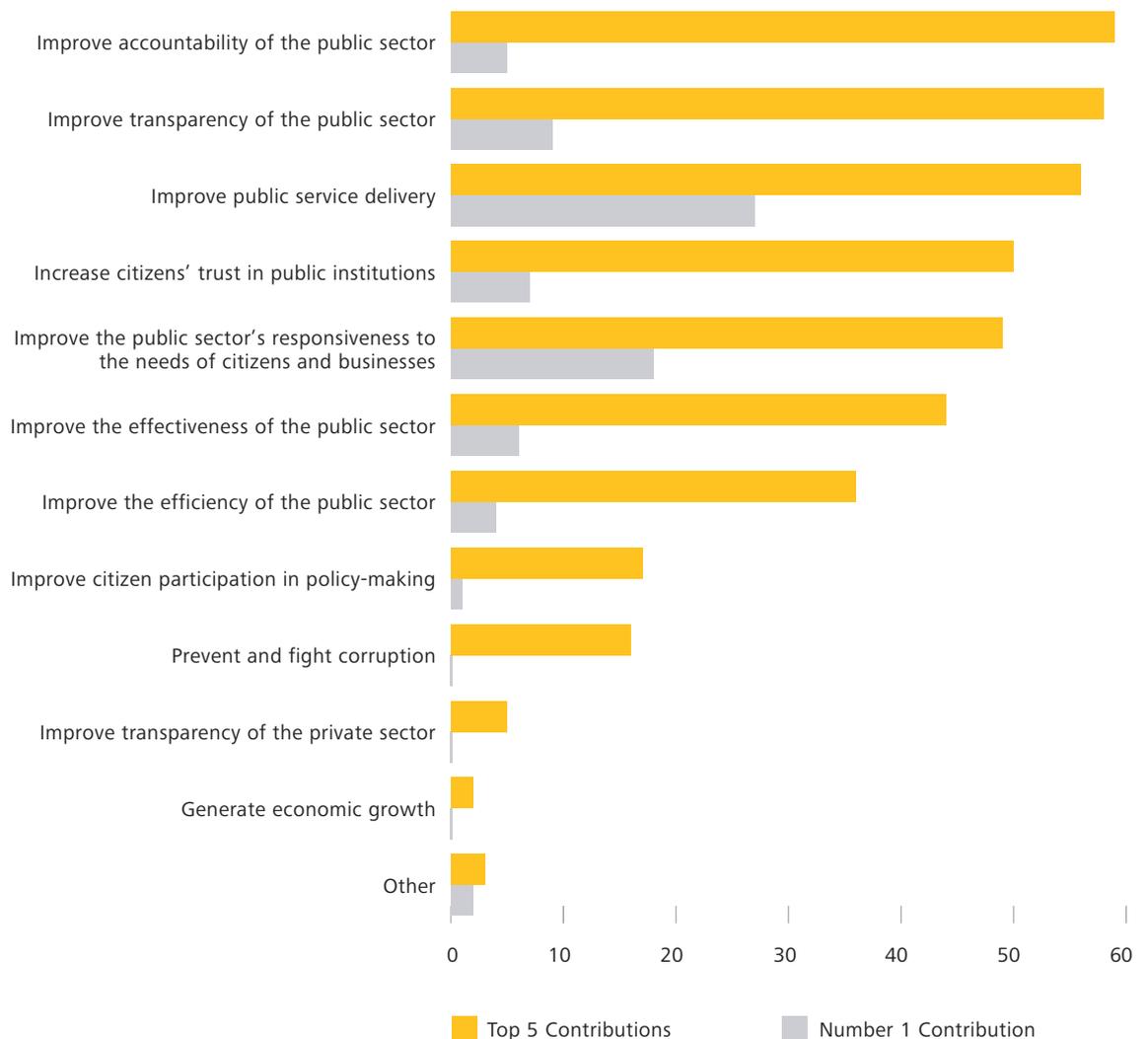




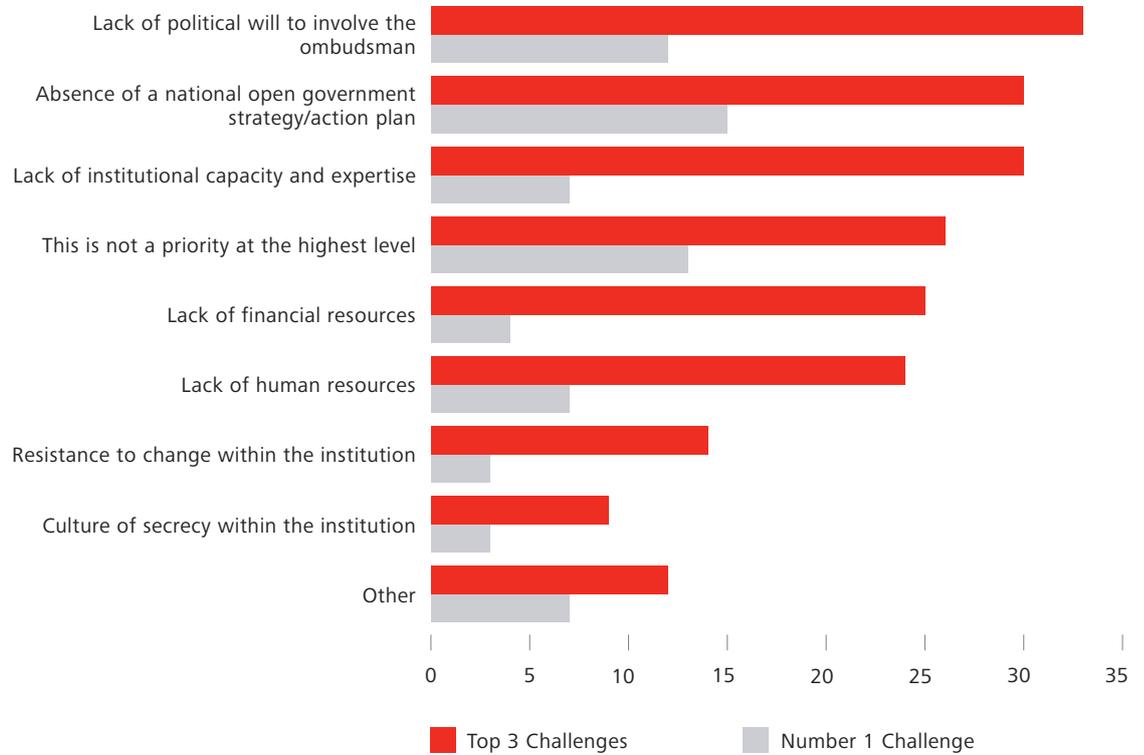
Ninety-seven percent of the ombudsman institutions deal with complaints against public administration, 67% serve as mediators between citizens and public administration and 61% are involved in overseeing access to information rights (either as the official institution charged with overseeing the right to access information or in handling access to information complaints). Furthermore, the ombudsman institutions' main role is to improve public service delivery and responsiveness of the public sector to the needs of citizens and businesses.

However, few recognise how this contributes to the whole policy cycle, from the definition of needs to evaluation. Moreover, when asked about their contribution to public governance reforms, only 32% of the institutions that contributed to the survey acknowledged that they were involved in open government reforms. Likely, there is a lack of recognition that, whenever public administration, legislative and anti-corruption reforms deal with increasing public institutions' transparency, accountability and inclusiveness, there is indeed a major contribution to the open government agenda on the part of ombudsman institutions. In fact, only 27% of the institutions affirmed that they conducted reflections about their role in promoting open government.

### Contribution of ombudsman institutions to public governance reforms



### Main challenges to engaging in national open government reforms



Ombudsman institutions revealed that the main challenges to engaging in national open government reforms are the lack of political will to involve the ombudsman, the absence of a national open government agenda and the lack of capacity and expertise within the institution. Concerning the second point, even if the OECD promotes the adoption of a comprehensive open government strategy, ombudsman institutions could find a way to promote open government reforms regardless of whether a strategy exists at the executive or state level, while playing a role in pushing for its adoption and, once adopted, monitoring the implementation of the strategy's commitments.

  **Gundi Gadesmann**

Ombudsmen are not (yet) really involved in national open government agendas, says [@OECD/@EUombudsman](#) survey [#ENO2017](#)

Ombudsmen are not (yet) really involved in national open government agendas, says the OECD survey, presented to the European Network of Ombudsmen 2017 conference.

The OECD invites all interested ombudsman institutions to participate in the survey in order to further enrich the data. While these preliminary findings can shape the future agenda of the open government movement and the role of ombudsman institutions, the OECD will provide in-depth analysis to identify common practices and approaches per region and per level of competence and mandate. For further information, please contact [katharina.zuegel@oecd.org](mailto:katharina.zuegel@oecd.org)



## Working group on the implementation of open government policies: views from the European Network of Ombudsmen

### European Ombudsman



Working group in discussions.

Participants in this working group discussed the extent to which ombudsman offices pursue open government policies; what more they could do; and what the potential obstacles may be.

The Chair, Tonu Basu, from the Open Government Partnership (OGP), set up the discussion by asking participants to share examples of transparency reforms or initiatives that ombudsman offices had been involved in.

The discussion showed that while ombudsmen may not use the term open governance, several of the measures they either recommend to public administrations or implement internally are open governance policies.

The Norway office, for example, promotes public access to documents as well as freedom of speech among civil servants while its Hungarian counterpart publishes all decisions on its website and seeks to reinforce civil society organisations by organising meetings and conferences with them.



Tonu Basu from the Open Government Partnership, chairing the working group.



Spanish and Italian regional offices bring together local leaders, or service providers, with citizens, so that problems can be dealt with quickly and efficiently, while Ireland's Lobbying Register (the Ombudsman of Ireland is among those overseeing it) has seen a significant sign-up by lobbyists.

At the EU level, the European Ombudsman office opened an own-initiative investigation into the transparency of the negotiation of the Transatlantic Trade and Investment Partnership (TTIP). This initiative, along with pressure by civil society and Members of the European Parliament, helped trigger a much more proactive approach to publishing TTIP-related documents.

The Chair then explained how OGP works and gave examples of the kind of policies that governments and civil society around the world are taking.

Some government actions include setting up an e-consultation platform allowing all draft laws to be consulted by citizens (Croatia); a public register obliging companies to give information about their actual end owners (UK); a budget-monitoring website (Georgia); and citizens voting on how EU funds should be spent (France).

The core of the discussion focussed on how to get ombudsmen more involved in OGP. The Chair put three ideas to the floor:

- ombudsmen could be dialogue brokers between civil society and government;
- ombudsmen could propose concrete measures for government action plans;
- ombudsmen could forge coalitions for reform.

Of the three proposals, there was most reticence about ombudsmen being dialogue brokers between civil society and government, with many believing this could compromise their office's independence.

Other points raised by participants include the already significant workload of ombudsman offices; the potential political delicacy of pushing open government policies, and the lack of mandate to act in this area or the lack of own-initiative powers.

However, some discussants suggested that ombudsmen's core mandate of dealing with maladministration is flexible enough to allow ombudsman offices to do more on open government issues.

A representative of the OECD which, in cooperation with the European Ombudsman's office, surveyed the open government practices of ombudsmen's offices in several networks, suggested that citizens are keen to have an independent body such as the ombudsman monitoring open government policies and actively pushing for public sector reform. The discussion further covered the fact that the volume of complaints in ombudsman offices provided a strong evidence base to identify areas of government that needed to be made more transparent and responsive to citizens.

The OECD representative noted that while not all ombudsman offices have the power to make own-initiative inquiries, all ombudsmen can make recommendations, which could be sources for open government reforms.

Open questions arising from the working group included whether individual open governance actions by ombudsman offices can be implemented on a wider scale and how to continue and build upon this initial discussion among ombudsmen.

“ Some discussants suggested that ombudsmen's core mandate of dealing with maladministration is flexible enough to allow ombudsman offices to do more on open government issues. ”



## Open Government Partnership and the EU: making a case for a citizen-centric approach to policy-making

### Open Government Partnership



Paul Maassen, Director of Civil Society Engagement, Open Government Partnership, a panellist in the fourth session of the European Network of Ombudsmen 2017 conference: **Current and future challenges for ombudsmen.**

There is no denying that globally, we are witnessing decreasing levels of citizens' trust in public institutions and a spike in populist discourse in politics, and Europe is certainly not immune to these trends. On the face of it, several countries in the EU might be close to the top in terms of global indices, such as the Open Budget Index, the Transparency International Corruption Perception Index, the Open Data Barometer and the quality of freedom of information laws. However, recent events like the Brexit process, heavily polarised electoral campaigns, the refugee crisis, perceived elite capture, and grand corruption, have shown that public leaders in Europe must work out creative and citizen-friendly responses to these deep-rooted challenges.

These structural drivers of growing citizen distrust and alienation, among other things, can be tackled in part by making government more open, participatory and responsive to citizens, by involving them in decision-making on issues that directly affect them and responding to their concerns. The idea of open government is that by making government open to public input and oversight, we can make it better. Open Government Partnership (OGP) was launched five years ago with the simple but powerful objective – in the words of one of its founders, former President of the United States, Barack Obama – of ensuring that governments truly serve their citizens rather than serving themselves.

At the core of OGP is a domestic dialogue between government and civil society co-creating open government commitments that are locked in two-year action plans and independently monitored. High level political backing gives the process momentum and helps unblock challenges. The progress of each country – both on the delivery of the commitments made and on the quality and depth of the collaboration – is independently monitored. By publicly sharing country progress and challenges, OGP provides credibility and visibility to the reforms, and opportunities for peer learning. So it creates a magic troika of dialogue-action-monitoring.

Buzzwords aside, open government really is an approach to doing government differently. Whatever your goals are in terms of policy advocacy – whether it is related to anti-corruption or better health outcomes – you can apply that approach and use OGP as a tool. For political leaders, it provides a platform to turn their promises into concrete commitments in national action plans, get buy-in from society and internationally to showcase their successes on this agenda. For civil servants, being part of OGP gives this agenda political commitment and internationally they get access to expertise and inspiration. For civil society, OGP gives a guaranteed seat at the heart of policy-making, a way to turn their tasks into action. The satisfaction rates, the fast growth from 8 to 75 countries and the close to 3 000 commitments made in just five years point to the appetite.



At the moment, 21 of the 28 EU countries are members of OGP. And a number of them have developed ambitious policy reform to build bridges with citizens and find better ways to bring citizens voices into policy decision-making as these examples show.

The Italian government put the details of one million projects and EUR 100 billion in EU funding online in a very user-friendly way. The projects ranged from small student loans to highway bridges. The most inspiring bit of this OpenCoesione project comes from their spin-off projects that created opportunities for citizens, journalists, and civil society to actively monitor and report on the data released by government. For example, school students were trained to be on-the-ground auditors, visiting project sites, asking questions of local authorities and suggesting solutions, several of which have been implemented.

Through OGP, Croatia created opportunities for the public to be consulted on all new laws and regulations. On the [e-Savjetovanja](#) (e-consultation) platform, any Croatian citizen can comment on the latest pieces of draft legislation and directly shape new laws.

In Ireland and Chile, there has been reform of rules governing lobbying, including the creation of a public register in Chile where authorities must disclose information on meetings with lobbyists, travel, donations and presents received, with sanctions and fines for non-compliance, and monitoring and evaluation by an independent Council for Transparency. It has led to a number of news articles on the non-compliance with lobbying legislation, and the infolobby platform is used by citizens with an average of 8 000 visits per month to track and monitor public authorities, and has citizens using the platform to request meetings with politicians resulting in democratisation of access, with more than 16 000 people and entities securing meetings – this is the bridge back to broadening participation.

In Georgia, the Supreme Audit Institution has taken two transformative actions to combat corruption and make public institutions more responsive and accountable. It mandated the publication of all political party finances, which watchdog groups like Transparency International are using to track whether donors benefit from public contracts, providing tools for citizens to track elite capture. The Audit Institution also launched a project called Budget Monitor that not only displays great interactive visualisations on how budget is spent but also allows citizens to report corruption risks they encounter in budget spending or suggest public institutions to be audited.

Independent oversight agencies – the core constituency that the European Ombudsman office engages with – have used OGP, but we have only scratched the surface with them. There is a great deal of potential and need for ombudsman offices to partner with OGP and lead efforts around embedding a culture of openness and engagement with citizens. It is inaccurate to say that OGP is only working with governments; rather we work with reformers across governments, including independent agencies. We see independent oversight agencies as key drivers of opening up more channels of dialogue between governments and citizens.

In closing, a call to partnership: in OGP, we see all of you as partners in building a powerful, positive movement for greater openness and deeper democracy, and a countervailing force against closed government. Ultimately, OGP is a way for government and citizens to re-imagine a different engagement – from confrontation to collaboration. Independent oversight institutions are a critical third part of the partnership beyond government and civil society. Collectively, we hope that as reformers we can work together to inspire and support, and shape a renewed, stronger government-citizen relationship.

“ At the moment, 21 of the 28 EU countries are members of OGP. And a number of them have developed ambitious policy reform to build bridges with citizen. ”

## Resolving complaints through mediation rather than supervision

### Ombudsman of Andalucía, Spain



Jesús Maeztu Gregorio de Tejada, Ombudsman of Andalucía, Spain.

Conflict between the public and government authorities is a natural by-product of the relationship between the two entities and of the normal approach to defending individuals' interests against the general or collective interest.

Society is undergoing very rapid change and institutions must adjust accordingly. Specifically, the public needs new ways of dealing with the disputes it has with governments, namely more communication, flexibility, participation and consensus.

However, the model that ombudsmen use to manage these conflicts is supervisory: a third party is expected to settle a

matter by upholding or rejecting the arguments put forward by one of the parties and branding the other a loser, which does nothing to help future relations.

This supervisory, investigative model does not ultimately provide the public with the opportunity to participate in resolving their difficulties. Quite the reverse: following a legal investigation, the ombudsman gives a ruling and provides an answer designed neither by the public nor the authority concerned.

This model is very useful in cases where the authorities have no discretionary decision-making powers because the administrative law in question is too rigid, sometimes allowing for no variation or choice in different courses of action in order to resolve a matter. It is also useful if the aim is to set a precedent and to rely strictly on a legal position in order to settle a dispute.

**“ Mediation offers a safe, controlled space in which the parties can hold discussions and narrow the gap between the interests they represent, while playing a part in reaching a settlement. ”**

Not all cases are like this, however; some complaints from the public can be resolved with a measure of creativity through various proposals that could result in a win-win situation for the authorities and the complainants, in full compliance with the legal framework.

The established model works well for certain kinds of disputes but its scope is not universal and neither does it meet the need for participation, direct dialogue or the search for an agreement capable of resolving a dispute; hence the challenge facing ombudsmen is to offer an alternative.

Mediation is emerging today as a new model for intervention for ombudsmen. In appropriate cases, mediation offers a safe, controlled space in which the parties can hold discussions and narrow the gap between the interests they represent, while playing a part in reaching a settlement.



Ombudsman Jesús Maeztu Gregorio de Tejada with citizens.

The Ombudsman of Andalucía has set up its own professional mediation service customised to the profile of our form of organisation, namely one that should always assert respect for, and guarantee, rights and freedoms.

We have opted for mitigated voluntary participation for government bodies. They participate in the first working session although they are not required to continue with the mediation process, much less come to an agreement. Nonetheless, the mediator stresses the importance of reaching an agreement and the many direct and indirect advantages that the method offers for resolving a matter.

The challenge was launched some months ago and involves everyone who works at the Ombudsman's office in designing a communications strategy intended to demonstrate and convince the various government authorities and the public of the advantages of mediation.

In 2017, we have already used mediation in over 60 cases in Andalucía, demonstrating that we are on the brink of a new era in rights protection.



## Ombudsmen representing the rights of future generations – the Hungarian example and the international dimension

### Hungarian Ombudsman for Future Generations

Intergenerational equity in an economic, sociological and legal context is the concept of fairness or justice between generations. In a world with diminishing resources and widespread consumerism with sometimes insatiable appetite, it is of essential importance that the voice of future generations be heard. This article aims to give a snapshot of what the Hungarian Ombudsman for Future Generations does and the office's international opportunities and challenges.

The Hungarian ombudsman institution was established in 1995, and the country was among the first ones to also establish the independent position of the Parliamentary Commissioner or Ombudsman for Future Generations in 2008. This position underwent

“ **The Ombudsman for Future Generations is responsible for the protection of the right to: a healthy environment, the preservation of physical and mental health, the protection of natural resources, biological diversity, and cultural assets.** ”

substantial changes in 2011. Now, the Ombudsman for Future Generations is a deputy of the Commissioner for Fundamental Rights. The Ombudsman for Future Generations pays special attention to the protection of rights enshrined in fundamental law, including values considered determined as interests of future generations.

The Ombudsman for Future Generations is responsible for the protection of the right to: a healthy environment, the preservation of physical and mental health, the protection of natural resources, biological diversity, and cultural assets, all being the common heritage of the nation. The constitutional embeddedness of these rights and the concept that

fundamental law concerns Hungarians of the past, present and future, gives a strong legal background to the work of the Ombudsman for Future Generations.

There have been significant developments at the broader international level in the promotion of solidarity between generations that could potentially pave the way for the establishment of the institutional protection of the rights of future generations in the future. Former UN Secretary-General, Ban Ki-moon, issued a report in 2013 on *Intergenerational solidarity and the needs of future generations*. It introduced several national institutions that were created to represent and protect the needs of future generations. These institutions can serve as important models for the further promotion of intergenerational solidarity at national, regional and global levels.

The Hungarian Ombudsman for Future Generations was one of them, alongside the offices of the former Wales Commissioner for Sustainable Development (Future Generations Commissioner for Wales since 2015), Finland's Committee for the Future, the former Israeli Commissioner for Future Generations, the German Parliamentary Advisory Council for Sustainable Development, Canada's Commissioner for the Environment and Sustainable Development, and the New Zealand Parliamentary Commissioner for the Environment.

Inspired by the report, the Hungarian Ombudsman for Future Generations convened an international conference in 2014 in Budapest, inviting representatives of the above mentioned institutions, along with internationally acknowledged scholars, experts, and NGOs active in the field of intergenerational solidarity. It was at his initiative, that the [Network of Institutions for Future Generations](#) (NIFG) was created. It encompasses all the model institutions mentioned in the UN Secretary-General's report as an independent, non-formal network of institutions worldwide for the protection of the interests of future generations.



Establishment of the Network of Institutions for Future Generations in 2014: ombudsmen, internationally renowned legal experts and academics gather for future generations.

The NIFG's primary goal is the sharing of knowledge and dissemination of the best practices of its member institutions engaged in the promotion of responsible, long-term governance. The NIFG consists of a diversity of institutions and we aim to enlarge our membership with similar institutions joining in the future.

One of the main priorities and challenges for the NIFG members is how our diverse institutions can play a significant advisory role with respect to the national implementation of Sustainable Development Goals (SDGs). The Hungarian Ombudsman for Future Generations is leading a project that summarises the relevant human rights standards and requirements from the case practice of the Commissioner for Fundamental Rights. The aim is to provide guidelines for the national government in designing the focus and actions necessary for the national implementation of SDGs.

The Commissioner's office investigates all sorts of human rights complaints, and we believe that addressing the human rights concerns identified in ombudsmen's reports resonates well with the holistic, interlinked nature of the SDGs and can help ensure that implementation of the national SDGs fosters progress with respect to environmental, social and economic challenges at the same time.

# Current and future challenges for ombudsmen

## Highlights from the European Network of Ombudsmen 19-20 June 2017 conference

### European Ombudsman

In these challenging times, it is worth highlighting the instances of good work by public administrations. In March 2017, the European Ombudsman, Emily O'Reilly, inaugurated the European Ombudsman Award for Good Administration. The Award's aim was to showcase and share the best practices of the EU institutions, bodies and agencies, whose work for the good of citizens often goes unnoted.

Two hundred people attended the event to celebrate the good administration exemplified by 90 projects. Prizes were awarded in seven categories with the overall Award for Good Administration 2017 going to the European Commission's Directorate-General for Health, whose nominated unit developed EU collaboration in the sharing of vital information and expertise to help millions of Europeans suffering from rare diseases.

With this reference to the Award for Good Administration, the European Ombudsman opened the session on current and future challenges for ombudsmen at the European Network of Ombudsmen 2017 conference. On the panel with her were: Andreas Pottakis, the Greek Ombudsman; Ülle Madise, the Chancellor of Justice of Estonia; Lora Vidović, Ombudswoman of Croatia; and Paul Maassen, Director of Civil Society Engagement, Open Government Partnership.

Digitisation often leads to easier, quicker and more transparent communication with public administrations, and once people start using it, they want to continue. However, ombudsmen need to be aware of the digital divide – between those who have access to the Internet and those who do not – said Ms Madise. This divide is also a problem in Estonia, even though it is one of the most digitally advanced societies in the world.

**“ Digitisation often leads to easier, quicker and more transparent communication with public administrations, and once people start using it, they want to continue. ”**



Presentation of conclusions from working groups at the European Network of Ombudsmen 2017 conference

Panellists (from left to right): Lora Vidović, Ombudswoman of Croatia; Ülle Madise, Chancellor of Justice of Estonia; Paul Maassen, Director of Civil Society Engagement, Open Government Partnership; Andreas Pottakis, Greek Ombudsman; Emily O'Reilly, European Ombudsman; and Shada Islam, Moderator.



The Chancellor of Justice of Estonia also spoke of the need to keep personal data safe in a digitalised world. She suggested that internal and external control mechanisms be put in place to secure information systems and avoid misuse or abuse of personal data.

In addition, Ms Madise talked of the success of the digitalised healthcare system in her country. Not only is it convenient, especially for children and the elderly, but doctors also have easy access to x-rays, for instance, making it possible for patients to be treated from anywhere in the country.

One major issue so far is that digital treatment should be transparent, and large hospitals are opposed to that suggestion. Ms Madise mentioned that insurance firms and banks are very keen to obtain access to the data in the health system, and that her office was able to stop a proposed change to this end in Estonian law. She encouraged ombudsmen to be vigilant about such attempts.

For the Ombudswoman of Croatia, the question of maintaining good administrative standards in times of reduced resources is twofold: do ombudsmen maintain standards, and how does it affect those they serve?

To the question: do governments have sufficient means? Ms Vidović's answer was a definite yes. However, in her view, governments do not prioritise effectively and this can affect vulnerable people the most. In some villages, for instance, public transport is totally unavailable during school holidays, which contributes to marginalisation, especially among the elderly. She underlined the need for accountability where citizens do not know their rights, and tend to distrust the ombudsman's office.

As a response to current and future challenges, Ms Vidović suggested that ombudsman offices go beyond complaints and identify other areas of work. She argued it is also worth seeking out citizens, especially those living in precarious circumstances, and educating them about their rights, and the role of the ombudsman institution.

Referring to the challenges his office faces, Mr Pottakis mentioned the large scale humanitarian crisis; budgetary cuts (by roughly a third); new responsibilities, such as taking on the roles of National Preventive Mechanism and National Monitoring Mechanism, and accompanying forced returnees.

For his part, Mr Maassen encouraged ombudsman institutions to continue contributing towards the articulation of reform, and most importantly, to help public administrations in the prioritisation and implementation of reforms. He also urged the institutions to inspire public administrations and citizens by showcasing their work.



## Helping ombudsman institutions resolve cases of threats and restrictions by their governments

### International Ombudsman Institute

In the past few years, the International Ombudsman Institute (IOI) has dealt with many cases of ombudsman institutions facing threats and restrictions by their governments. This is one of the most serious challenges ombudsmen are facing now and will face in the future. Therefore the IOI General Assembly unanimously adopted the Wellington Declaration on Ombudsmen in November 2012.

Among other important matters, the Declaration clearly stresses that “an ombudsman diligently fulfilling his/her mandate, shall not be subject of any form of physical, mental or unjustified legal coercion”. The Declaration further opposes “any financial restrictions which would limit the independence of the ombudsman and restrict the ability of an ombudsman to protect the fundamental rights of persons”.

This approach was again confirmed and further underlined at the World Conference in Thailand in November 2016 with the Bangkok Declaration. In this Declaration, the IOI “condemns any intimidation and reprisals, such as restrictions of budget, staff or mandate against the independent work of ombudspersons around the world” and reaffirms that it “takes threats against ombudsman institutions very seriously and supports members facing restrictions through all available means.”

Threats, intimidation and reprisals against an ombudsman are often a result of the ombudsman’s work, the increasing efforts they make to protect and promote human rights, the fight against corruption and the fact that they hold a mirror up to governments. Threats to ombudsman institutions come in a variety of forms: budgetary cuts, staff restrictions, denied permissions to travel – even death threats. These kinds of limitations and restrictions go against the crucial principle of independence. Without being independent, ombudsman institutions cannot fulfil their mandate. This is also the objective of such threats – to affect the very existence and functioning of the ombudsman institution and to undermine its independence and legitimacy.

Reports relating to ombudsmen operating under difficult circumstances or even under threat coming to the attention of the IOI have become more frequent in recent years. First, the IOI took action on a case-by-case basis. But it soon realised that this does not suffice. Eventually, the alarming developments have led the IOI to enhance its efforts in protecting and assisting ombudsmen under threat. The IOI now acknowledges this as one of its core tasks, especially when democracy and the rule of law are weakened, undermined or come under threat.

One of the most exemplary support projects was launched in Barcelona during an international IOI conference in 2016. The result of this conference was the development of a set of guidelines to establish principles and courses of action to coordinate IOI support. When supporting a member in need, the IOI will always respect its values and principles and most importantly apply a “do-no-harm” principle. Coordination and communication of any actions and at all stages of the process is of utmost importance – in particular with the ombudsman institution in question. The purpose of the guidelines is to provide an overview of the options for support available and clarify the procedures to be followed should such cases come to the attention of the IOI.

“ One of the most exemplary support projects was launched in Barcelona during an international IOI conference in 2016. ”



In 2016, the IOI successfully dealt with such a case. A colleague from Poland – the Commissioner of Human Rights, Adam Bodnar – faced restrictions and intimidation from his government and sought support from the IOI. In close collaboration with him, the IOI initiated a fact finding mission, including meetings with government representatives, NGOs, press conferences, reports to the EU, etc. – thus reaching out to the broadest possible international public with information on this case.

Also, IOI President Peter Tyndall and the President of the IOI European Region, Rafael Ribó, joined the mission personally, which sent a very strong message to the authorities in Poland. Even though the budget of the Polish Commissioner of Human Rights was not increased, it was at least not reduced as in the previous year.

This illustrates that the IOI is strongly dedicated to upholding the mandate of its members and takes its mission to support members facing restrictions through all available means, very seriously.

IOI guidelines on support to colleagues under threat (including all the details, principles, procedure and courses of action) can be accessed on our [website](#).

## Working group on how to maintain good administrative standards in times of reduced resources: members of the European Network of Ombudsmen share experience

### European Ombudsman

Since the financial crisis set in about a decade ago, ombudsman institutions have experienced significant challenges in terms of financial and human resources. Members of this working group shared their experience on what they do to maintain good administrative standards when resources are reduced. The Ombudswoman of Croatia, Lora Vidović, chaired this group, whose discussions took place on the premise that the worst is behind us, even though the crisis has lasted a long time and the inequality gap is getting bigger. The working group discussed the challenges brought about by the crisis and how ombudsman institutions are responding to them.



Lora Vidović,  
Ombudswoman  
of Croatia.

### Challenges

**Budgetary cuts:** the participants singled out budgetary cuts as the main consequence of the financial crisis for their offices. The cuts range from 10% to 40%, and in some cases the budget has simply been frozen.

**Expansion of the ombudsman's mandate:** the second most important challenge is the expansion of the ombudsman's mandate to cover completely new areas of work, without providing sufficient resources. In Croatia's case, the office has in the last 10 years taken on the new roles of National Preventive Mechanism, Equality Body and National Human Rights Institution. Malta demonstrated further that as this expansion has not been accompanied by additional resources, it has tended to weaken the institution rather than strengthen it.

**More complaints and cases and new fields:** apart from increasing the number and type of complaints and cases, the crisis has also opened new fields of complaints and investigation, such as rural development, unemployment, and homelessness, in Croatia for instance.

**Same needs, ineligibility for benefits:** more and more people whose needs have not changed have become ineligible for benefits, and public administrations have become intransigent. Ireland drew attention to cases where public administrations deny applicants benefits if their incomes are even just one euro above the cut-off figure for qualifying for the benefits.

**Ombudsman unknown:** Belgium referred to sections of the population (including the very poor and newly arrived migrants with low levels of education) who were not aware of the office of the ombudsman, and even if they were, they would not know how to approach the office. Due to their 'invisibility', ombudsman offices do not have easy access to these people.



#### European Ombudsman

In the battle between good standards vs reduced resources in public administrations, prioritisation is key says [@OmbudsmanHR](#) [#ENO2017](#)

In the battle between good standards vs reduced resources in public administrations, prioritisation is key, says the Ombudswoman of Croatia at the European Network of Ombudsmen 2017 conference.

Security concerns infringe fundamental rights: participants also agreed that because of security concerns, in particular due to recent terrorist attacks in several European countries, some fundamental rights are being infringed.

Difficulty finding the right staff: working group discussants agreed this has become difficult because of competition from the private sector, where terms of employment are often more attractive. Fortunately, Malta added, people who work in ombudsman institutions do so out of conviction, and their motivation and quality of work can be counted on.

Difficulty proving the benefits of good administration: due to the crisis, underlined Belgium, ombudsman offices may experience difficulties proving the benefits of good administration to citizens, especially when it comes to long-term projects that governments implement because then such projects become a political matter.

### Responses

The exchange in the working group revealed that ombudsman offices have established effective remedies to counter the challenges brought about by the crisis through: creativeness, prioritisation, synergies, cost-cutting and delegation of responsibilities and tasks.

**“ Ombudsman offices have established effective remedies to counter the challenges brought about by the crisis through: creativeness, prioritisation, synergies, cost-cutting and delegation of responsibilities and tasks. ”**

Creativeness: ombudsman offices have become more creative and learnt to do more with less. For instance, after a 40% reduction in its budget, senior staff of the Ombudsman of Ireland started delegating certain responsibilities and tasks to other staff, which freed up the former for other responsibilities. This move generated a 35% increase in productivity.

Better time management: ombudsman offices have become better at managing their time. Cyprus, for example, created templates and standardised letters to respond to certain types of complaints or requests for information. The office is

now also making more effective use of IT, disseminating the annual report and other publications only electronically. However, there is fear that this practice could alienate the ombudsman's office from those it serves.

Sharpened negotiating skills: Cyprus managed to acquire a building at a lower price than the one announced.

New synergies: ombudsman offices, as Belgium explained, have created synergies with stakeholders, such as collateral institutions, which are also answerable to parliament.

Greater contribution to policy-making: through participation in policy-making discussion groups and systemic research as in the case of Croatia, and intervention in debt management, as in the case of Ireland.



Best practices: England explained that in the UK, ombudsman offices have shared their standardised complaints templates with public administrations.

Rethinking staff skills: ombudsman offices are moving away from hiring only case-handlers with a legal background to hiring staff with a variety of backgrounds, which increases emotional intelligence in case-handling.

Participants in the working group agreed that the issues raised and responses put forward concern ombudsman offices across the board.

## Enabling citizens to enjoy their human rights in times of austerity

### Ombudswoman of Croatia

The economic crisis and austerity measures have, in recent years, impacted enjoyment of human rights in many European countries in not just economic, social and cultural terms, but also civil and political ones. Examples that can be reported on, include access to social welfare, the labour market, health services, as well as to courts and free legal aid.

When governments are faced with difficult choices, they prioritise, and many times it is the most vulnerable who are most affected by those choices – the impoverished, victims of violence, children, the elderly, people with disabilities, and prisoners. However, the question is not whether there are sufficient resources or not, but how the government prioritises them. Our role, as ombudsman and National Human Rights Institutions, is to evoke accountability of the authorities for allocating resources towards certain services that guarantee the enjoyment of human rights. In order to do so, we need to find creative ways that go beyond basic complaints-handling tools, such as formal letters, and reach out to local and central authorities more directly. Our experience is that, in terms of gathering information as well as having recommendations implemented, it is much more effective to be in direct contact with the stakeholders. When we talk to local authorities they see that we care, they approach the matter differently, and take our recommendations on board more often.

An example of the complaints we receive is the unavailability of public transport in rural areas, particularly in the summer. Local authorities provide for the subsidised transport only during the school year and at other times people in that area, particularly the elderly, are left with many difficulties, for example, how to get to the doctor's appointment, the post office, or buy groceries. Poverty, combined with physical isolation, contributes to their social exclusion, which is detrimental to their wellbeing.

Another example is the city of Zadar which has seven small islands within its administrative jurisdiction, inhabited by between 60 and 550, mostly elderly, people. We visited the islands and met the citizens, had a meeting with the Deputy Mayor and his associates, and in the following months, continued the dialogue in writing. One of the results was that the city's budget provided for the salaries of one person per island to take care of the elderly in terms of their basic needs such as cleaning and groceries.



Ombudswoman Lora Vidović with citizens on the Island of Molat, Croatia.



The village in Croatia that has no public transport after the school year ends.

This shows very well how it is possible to influence, but the actions have to be timely and include direct contact.

This approach is also an opportunity to fight the mistrust, often directed not only towards the institutions in general, but at us as well. When citizens see us on their islands and in their villages, we can fight against that mistrust and show we actually care. Participation and empowerment are equally important because citizens can exercise their rights only if they know them. So, if we want the ferry lines to respond to the islanders' needs, we must actually have the islanders at that table when the lines and the prices are discussed. After all, they know very well what is and what is not fair. With that in mind, we have to convince local authorities and service providers to include those affected by the decisions in the discussion, in a non-discriminatory manner.

**“ When citizens see us on their islands and in their villages, we can fight against that mistrust and show we actually care. ”**

Of course, when it comes to our office's issues with the budget, either in terms of cuts or addition of new mandates without providing sufficient funds to exercise them, using the Paris Principles in negotiating the budget with the authorities is a strategy which can be facilitated by ombudsman institutions, regardless of whether they have a National Human Rights Institution status or not. After all, independence of the ombudsman institution is one of the main prerequisites, therefore the Paris Principles that require sufficient resources for independent institutions can be very helpful. Additionally, treaty bodies are a useful tool as well, since the same remark is often part of their final conclusions and recommendations for strengthening independent monitoring bodies.

Finally, to make our efforts more successful, it is important to exchange experience and practices, and the European Network of Ombudsmen conference offers a valuable opportunity to do so.

## Working group on the exchange of best practices for digital administrations within the European Network of Ombudsmen

### European Ombudsman



Ülle Madise, Chancellor of Justice of Estonia.

Participants in this working group discussed the availability of non-digital means of accessing public services in the digital age. There was a recognition that there should be alternative means of access for those who did not have Internet access and those who chose not to use the Internet for accessing public services. Members of the Network also exchanged best practices for digital administrations during their discussions, chaired by Ülle Madise, Chancellor of Justice of Estonia.

All citizens enjoy the right to good administration under the Charter of Fundamental Rights of the EU and the

delivery of services exclusively by digital means was not compatible with this right. While there were many drivers both for citizens and administrations to make use of digital technology for the delivery of public services, there was a risk of denial of rights if there was no freedom of choice over the means of access.

This led to a discussion about the conditions for Internet access for all. The two key elements are infrastructure and skills. The infrastructure should ensure universal coverage and consistent high speed broadband provision. There was a recognition that more progress is needed in most EU countries to achieve the necessary infrastructure which would support good universal access. Remote, rural areas are most likely to be disadvantaged in this respect.

With regard to skills, governments should ensure that appropriate training and learning opportunities are available for all citizens who wish to use digital technology but have no experience or knowledge about how to use it. There was a recognition that this

**“ Ombudsmen have an important role to play in supporting citizens who are denied access to public services or who receive a less than adequate level of service. ”**

is more likely to be an issue for the older members of society and that over time all citizens will develop an appropriate level of skills in the use of digital technology through mainstream education.

There is also a cultural issue here. Historical comparisons were made with the invention of the television and its gradual introduction into people's homes and current acceptance as an essential means of accessing entertainment and information.

Similarly, there was a time when some people were reluctant to open bank accounts, preferring to carry out their financial business exclusively in cash. While those attitudes have largely disappeared over time, there remains a body of people who choose not to use Internet banking services, out of fear or suspicion, even when they have the available technology and skills to do so.

Ombudsmen have an important role to play in supporting citizens who are denied access to public services or who receive a less than adequate level of service, either because they do not have access to digital technology or because they exercise



Working group  
in discussions.

freedom of choice to use other, more traditional means. There is a recognition that digital administration tends to be cheaper and more efficient. However, citizens should not be discriminated against because they are unable or unwilling to use it.

Ombudsmen must observe the same principles in their own service to citizens. While online services, including online complaints forms and advice, are increasing in use and popularity, it is important that ombudsmen serve all their citizens equally, without discrimination. A discussion followed on varying practices regarding physical access to ombudsmen's offices, availability for telephone contact and the use of social media for increasing awareness of ombudsman services and as a means of active communication with citizens, particularly younger citizens.

The issue of prisoners' rights was raised. Prisoners were routinely denied access to the Internet and yet they had a legitimate need for access to information required to support their own exercise of fundamental rights (e.g., the website of the European Court of Human Rights, the Supreme Court and the ombudsmen).

For ombudsmen's outreach work, digital technology and social media offer important opportunities for reaching a wider audience of citizens and potential complainants. The value of this should not be underestimated. However, many workshop delegates stressed the need also for direct contact with citizens, face-to-face where possible, through visits, public meetings and office appointments for individuals. Service delivery through a variety of channels is the way to achieve best practice and to maximise public access. Digital administration offers many opportunities but does not meet the needs of all citizens.

## The regression of democratic values in Spain

### Ombudsman of Catalonia

The regression of rights in Spain is a major challenge. The Ombudsman of Catalonia, relying on the ombudsman institution's mandate to guarantee human rights and democratic values, has taken steps to address this thorny issue. The Ombudsman's office submitted a report in April 2017, stating that Spain is suffering from democratic regression that is affecting fundamental rights and freedoms recognised in national and international legal frameworks.

“ **The influence of the executive over the Prosecutor's Office has been apparent in judicial proceedings involving politicians for acts committed in the exercise of their duties.** ”

The regression particularly affects Catalonia. Statements warning of these setbacks, which are unfitting in a context of the rule of law, have gone beyond the State level and have been echoed by prominent international organisations, such as the Council of Europe's Group of States against Corruption (GRECO), the Venice Commission (an advisory body of the

Council of Europe, composed of independent experts in the field of constitutional law) and the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff. They have called for reforms to ensure the separation of powers.

Under the title *Human rights regression: Elected officials' freedom of expression and the separation of powers in the Kingdom of Spain*, the report denounces the Spanish government's use of the judiciary, especially evident with regard to the political conflict in recent years with Catalan institutions. In this sense, the report maintains there must be a return to traditional constitutional case law, in which parliamentary resolutions for political momentum did not have legal effects, and were not jurisdictionally challengeable. It is the new interpretation of the Spanish Constitutional Court that has allowed criminal charges to be brought against the President and other members of the Presiding Committee of the Parliament of Catalonia.

Furthermore, the report stresses that the reform of the Constitutional Court in 2015, driven by the Popular Party, has become one of the leading exponents of the blurred separation of powers in Spain, because of the sanctioning authority granted to the

Constitutional Court. This formula is practically unknown in comparative law, as showed by the Venice Commission, which has clearly reported that the Constitutional Court decides on the separation of elected officials.

The influence of the executive over the Prosecutor's Office has been apparent in judicial proceedings involving politicians for acts committed in the exercise of their duties and has led to the accusation and sentencing of the former President of the government of Catalonia and three ministers of his cabinet.

Regarding the criminal charges against elected officials related to the freedom of expression and disobedience, the Ombudsman suggests that possible interpretations must be sought, to avoid the use of criminal proceedings to solve



Cover of the Ombudsman of Catalonia's report on the regression of rights.



The Ombudsman of Catalonia, Rafael Ribó, presenting his report on the regression of rights to the general public at the headquarters of Barcelona Bar Association (ICAB) in May 2017.

political conflicts. In this context, measures against individuals, especially those holding elected office, should be limited as much as possible to scenarios of violence, turmoil and in general, any true risk to the integrity of the State. Consideration must be given to the possibility of allowing the defendants who do not wish to appear voluntarily to notify the court, making it possible to continue with the trial and proceedings without having to make any arrests.

In light of scandals such as the revelation of conspiratory conversations between the then Minister of Home Affairs and the previous Director of the Anti-Fraud Office of Catalonia, the Spanish government must adopt all measures necessary to investigate what transpired, without prejudice to determining any criminal or political liabilities that may arise.

The document also refers to Mr de Greiff's report, which shows that Spain has not faced up to its past or done sufficient justice. According to the Rapporteur: "The most serious shortcomings are to be found in the spheres of truth and justice. No State policy was ever established with respect to truth; there is no official information and no mechanisms for elucidating the truth".

The Ombudsman's report also shows that there is abuse in terms of glorification of terrorism and hate speech crime. Regarding the glorification of terrorism, the Ombudsman shows some examples such as the "puppeteers" or the case of a public twitter account holder who was sentenced for making fun of the death, in a terror attack, of the first Vice-President of the government during the dictatorship. According to the Ombudsman, it is necessary to review the legislation in force and case law doctrine to achieve a perfect balance as regards hate crimes, glorification of terrorism and freedom of expression.

The Ombudsman has submitted the report to the Parliament of Catalonia. The office has also submitted the report to the European Commissioner for Human Rights, the Ombudsman of Spain, the governments of Spain and Catalonia and the Spanish Parliament, among others. The Ombudsman has presented the report to the general public in Barcelona and Madrid.

# Conclusion



My thanks to all of you who contributed to our second issue of *Network in Focus*. The contributions are of a very high quality and variety, and give insight into the major issues that confront us as ombudsmen, as members of civil society, as politicians and as citizens. I hope that members of our Network, as well as other readers, will find the issue interesting and helpful for their work.

I also wish to thank all of you who attended our 2017 European Network of Ombudsmen conference in Brussels in June. I hope that you found the experience interesting and worthwhile. For my part, it was a great honour to host the conference, which was an opportunity to hear and participate in such informed, open and often captivating discussions.

I look forward to your feedback and contributions to our next issue of *Network in Focus*, and to seeing you at our next conference, which will take place on 8 and 9 March 2018 in Brussels.

Emily O'Reilly



Participants in the 2017 annual conference of the European Network of Ombudsmen, which took place in Brussels on 19-20 June.



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