European Ombudsman

Putting it Right?

Annex

Detailed analysis of the responses to the Ombudsman's remarks, recommendations and proposals in 2015

December 2016

EN

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A. Star cases

OI/9/2014/MHZ: Improving the respect of returnees' fundamental rights during Frontex-coordinated Joint Return Operations

EU migration policy includes the voluntary or forced return of irregular third country migrants (rejected asylum seekers and persons without a valid residence permit) to their countries of origin. By their very nature, forced return operations have the potential to involve serious violations of fundamental rights. This own-initiative inquiry sought to clarify how Frontex, as a coordinator of Joint Return Operations (JROs), ensures respect for fundamental rights and human dignity of the individuals being returned.

The Ombudsman obtained the views of Frontex and its Fundamental Rights Officer, inspected Frontex files and received contributions from members of the European Network of Ombudsmen, the European Union Agency for Fundamental Rights, the UN Refugee Agency and a number of NGOs. She found that, while there had been considerable progress, Frontex needed to make further improvements: enhancing the transparency of its JRO work; amending its Code of Conduct in areas such as medical examinations and the use of force; and engaging more with the Member States. Frontex must also do all in its power to promote independent and effective monitoring of JROs.

The Ombudsman closed her inquiry with a series of proposals to Frontex on how it could further improve its operations in this area. In its reply, Frontex fully accepted the vast majority of the Ombudsman's proposals.

As regards proposals involving overlapping competencies of Frontex and Member States, Frontex has shown great initiative by already consulting Member States on these matters. The development of a complaint form is a case in point. **It is commendable that Frontex has taken a proactive approach to encouraging the Member States to adopt procedures more firmly embedded in a fundamental rights framework.**

Frontex has shown itself to be proactive in other areas. It has included, in its revised Implementation Plan for JROs and its revised Best Practices for JROs, a requirement that families with pregnant women and/or children should board the aircraft separately and be seated separately from other returnees. Frontex has also signalled its intention to verify that independent monitoring bodies scrutinise national escorts' compliance with the relevant legal obligations in the context of forced returns. **The Ombudsman warmly welcomes this initiative.**

Frontex's willingness to engage with Member States has also led to improvements with regard to the presence of monitors on JRO flights, which has increased from 60% in 2014 to 78% in 2015. **The Ombudsman welcomes this increase and encourages Frontex to continue to emphasise to the Member States the importance of monitors on board all JROs.**

Another example of Frontex's engagement with the Member States is its decision to host a seminar for monitors in the first half of 2016 in which issues surrounding reporting were discussed with monitors. A further example is Frontex's collection of data from Member States concerning approved means of restraint. **The Ombudsman commends Frontex for all of these efforts.**

To address concerns relating to lack of transparency, Frontex said that it is considering publishing more information about JROs, either on its website or on its web-based information portal for registered users (FOSS). It subsequently announced that it is revising its website to take account of the new European Border and Coast Guard Regulation.[1] The revised text describing the new, broader mandate of Frontex in the area of forced returns will soon be made available on Frontex's website. Frontex also stated that, since January 2016, the FOSS includes a compilation of National Regulations in the Member States on the use of restraints and coercive measures applicable during return operations and a list of restraints authorised in the Member States. **The Ombudsman applauds Frontex's efforts to increase the transparency of its work in this area.**

As regards the use of Collecting Joint Return Operations, Frontex stated that it takes great care when concluding working arrangements with third countries and in deciding which countries are suitable for these kinds of operations. Frontex has also amended the text about JROs on its website to include information about flights under Collecting Joint Return Operations. **The Ombudsman welcomes Frontex's efforts to further clarify and explain the legal framework for Collecting JROs and encourages Frontex to go further in considering fundamental rights in the context of Collecting JROs.**

As regards amendments to the Code of Conduct for JROs, Frontex accepted most of the Ombudsman's proposals. In particular, Frontex has improved the handling of medical data: the information gathered by the doctor who carries out a returnee's examination is now provided to the doctor on board the flight. Frontex stated that it would provide guidelines as to what medical equipment should be on board a flight on FOSS. Frontex also stated that it would make clear that a returnee's medical information could be consulted by a person other than medical staff only in an emergency or when the returnee has consented to this. Since June 2016 the Guide for Joint Return Operations coordinated by Frontex has been published on the FOSS and on the Frontex website and includes, in annex, a list of recommended medical equipment and medication for doctors who take part in JROs. **The Ombudsman welcomes Frontex's efforts to improve the handling of returnees' medical data.**

In relation to the timing of medical examinations, Frontex stated that it is not opposed to this occurring closer to the date of the return flight. Ultimately, however, the timing of these examinations is in the hands of the Member States. Frontex conducted a survey of Member States and most replied that all returnees entering detention centres are medically examined. In only a few cases are medical checks not compulsory but doctors are always available in case migrants request medical attention. When the medical examination is conducted prior to removal, it is normally performed 24 hours before departure. **The Ombudsman welcomes the steps that Frontex has taken in relation to the timing of medical examinations and encourages it to consult Member States further on this issue.**

As regards amendments to the Code of Conduct regarding the use of force, Frontex stated that it will stress that the use of force must take into account the individual

[1] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.9.2016, p. 1–76.

circumstances of each person such as their vulnerability. It drafted such an amendment in the JRO Implementation Plan as well as the revised Best Practices for JROs shortly after receiving the Ombudsman's proposals. **The Ombudsman commends Frontex for its swift action on this point.** The Ombudsman also welcomes Frontex's commitment to make clear references in the Code of Conduct for JROs to Article 19 of the General Frontex Code of Conduct which defines the use of force and the circumstances in which such force may be used**. The Ombudsman welcomes the clarity that this action will bring.**

Finally, the Ombudsman applauds the positive and proactive approach of Frontex in its response and its final statement that it is committed to maintaining high standards in JROs, and to improve those standards where possible.

OI/8/2014/AN: Respect for the Charter of Fundamental Rights in the implementation of the EU's cohesion policy

This own-initiative inquiry concerned how the Commission ensures that the rights enshrined in the Charter of Fundamental Rights of the European Union are complied with in the implementation of the EU's cohesion policy by Member States. The inquiry was launched as the Union embarked on a new seven-year period of funding, covering 2014-2020, under a new legal framework.

EU cohesion policy seeks to reduce disparities in the levels of development between the various regions in the EU. Given the visibility of the Union in the projects that are funded through the cohesion policy – from improving emergency services in Romania to clearing land mines in Croatia – the Ombudsman believes that the Commission should do all in its power to ensure respect for fundamental rights as the money is spent. The fact that the Commission is not directly responsible for managing the funds should not be used as a reason for failing to act if fundamental rights have been, or risk being, violated. The Ombudsman made concrete proposals as to how the Commission should guarantee respect for fundamental rights in the awarding and implementing of programmes receiving European Social and Investment Funds (ESI Funds).

In its reply, the Commission pointed out that it has undertaken several measures. It has written to Member States to remind them of their obligations in relation to the Charter and the implementation of EU law. It has also been working on guidance notes for all relevant actors, such as local authorities and those involved in the implementation of the cohesion fund and on training sessions on the application of the Charter in this area of law. The Commission also explained that Regulation (EU) No 1303/2013[2] (the Regulation), which sets out the terms and conditions applying to different EU funds, requires that programmes in receipt of these funds must comply with EU rules on fundamental rights.

The Commission also set out the consequences for a Member State that fails to comply with fundamental rights in the implementation of EU law in the area of

[2] Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320–469.

cohesion policy. These range from suspension of payments to possible infringement proceedings. The Commission also informed the Ombudsman that it had launched a data collecting exercise to ascertain the systems each Member State has for handling complaints, with a view to promoting best practices amongst the Member States.

Finally, the Commission mentioned that there are several methods available to civil society to engage in the reporting of violations in the implementation of the cohesion fund. These included the direct reporting to the Commission of infringements by a Member State, as well as possible complaints via the SOLVIT and FIN-NET complaint handling systems. In addition, the annual report on the implementation of the Charter also includes information relevant for NGOs and EU citizens who wished to submit a complaint if they believe there has been a breach of EU law. The Commission also stated that it had set up 'Structured Dialogue' Expert groups - consisting of regional, local, urban and other public authorities, socio-economic partners and civil society organisations - to allow for "*open dialogue on issues regarding the implementation of ESI Funds*".

The Ombudsman applauds the Commission for its efforts to ensure respect for fundamental rights in the challenging situation of shared management of ESI Funds.

OI/10/2014/RA: Transparency and public participation in relation to the Transatlantic Trade and Investment Partnership ('TTIP') negotiations

The Commission is currently negotiating, on behalf of the European Union, a wide-ranging trade and investment partnership agreement with the United States (the Transatlantic Trade and Investment Partnership - TTIP). The negotiations have attracted unprecedented public interest, given the potential economic, social and political impact TTIP may have.

The Ombudsman opened an own-initiative inquiry aimed at ensuring that the public can follow the progress of these talks and contribute to shaping their outcome. In her opening letter to the Commission, the Ombudsman presented an initial set of suggestions to help make the negotiations more transparent and accessible. The Ombudsman also gathered ideas from the public during her inquiry. Responding to concerns expressed by the Parliament and civil society, among others, the Commission outlined a range of ambitious transparency measures in the course of the inquiry.

In her decision, the Ombudsman put forward ten further suggestions to the Commission in relation to greater proactive disclosure of TTIP documents, common negotiating texts, and enhanced transparency of TTIP meetings. The Ombudsman considered that, by following these suggestions, the Commission would ensure that the TTIP negotiating process can enjoy greater legitimacy and public trust. In its follow-up response, the Commission confirmed that it is building on its more proactive approach to publishing TTIP documents and outlined the full range of actions it has taken to inject greater transparency into the negotiations.

The Ombudsman welcomes the fact that the Commission engaged positively with her in this area of key importance to citizens. She applauds the fact that the Commission is leading by example and is convinced that the ambitious

transparency agenda it has set for TTIP augurs well for the transparency of future trade and investment negotiations.

From the outset of this inquiry, the Ombudsman emphasised the importance of proactive publication of TTIP documents in particular. In the meantime, the Commission has stepped up its proactive transparency policy, notably following its Communication of 25 November 2014 on transparency in the TTIP negotiations. For the first time, the Commission has published specific legal proposals during negotiations on a bilateral trade agreement. In the Commission's own words, *"in practical terms, most important negotiating documents on TTIP will be publicly available soon after they have been presented in the negotiations*".

While more can be done to increase public awareness of the content and implications of TTIP – particularly when consolidated texts of EU and US positions come close to being finalised – the Ombudsman is pleased with the way in which the Commission has further moved to build on the transparency measures already put in place. The Ombudsman further commends the Parliament and civil society groups which have pushed for more transparency. She points out that the democratic responsibility now lies with the elected representatives to scrutinise the negotiations on behalf of their constituents and engage with European citizens.

As part of this inquiry, the Ombudsman also made a number of suggestions to the Commission in relation to the transparency of meetings and contacts with interest representatives. While significant progress was made during the inquiry, notably under two Commission decisions adopted on 25 November 2014, there remains room for improvement. The Ombudsman will continue to monitor developments closely. She particularly welcomes, for example, recent progress as regards the publication of names of individuals who meet Commission representatives, following previous reluctance in this regard on the part of the Commission.

The Ombudsman welcomed the Commission's constructive engagement throughout the inquiry and is satisfied with the outcome.

OI/8/2013/OV: Establishing admissibility and evaluation review procedures in the award of grants by the Executive Agency for Small and Medium-Sized Enterprises (EASME)

This own-initiative inquiry concerned the fact that EASME did not provide a review procedure for grant applicants to the programmes for which EASME is responsible: the Horizon 2020 Research and Innovation Framework Programme, COSME (the EU Programme for Small and Medium-sized Enterprises), LIFE (the EU Programme for the Environment and Climate Action) and EMFF (the European Maritime and Fisheries Fund). The Ombudsman made two recommendations, asking EASME to: 1) establish an evaluation review procedure for applicants who respond to calls for proposals under the Horizon 2020 programme; and 2) establish a similar review procedure regarding the other EU programmes. The Ombudsman recommended that the review procedure should cover cases where applicants put forward claims of (i) procedural errors, (ii) factual errors or (iii) a manifest error of assessment.

EASME accepted and implemented both recommendations. The Ombudsman commended the agency for its swift and helpful response and made two further remarks, suggesting that EASME could: 1) set up an 'admissibility and eligibility review committee' for the COSME, LIFE, and EFF programmes; and 2) make it clear to applicants that the review of alleged *"procedural shortcomings"* can also cover manifest errors of assessment.

In its response, EASME accepted the Ombudsman's further remarks and informed the Ombudsman that it had: 1) set up an admissibility and eligibility review committee for the COSME, LIFE and EMFF programmes, similar to the committee already established for the Horizon 2020 programme; and 2) amended its Manual of Procedure and the documentation intended for applicants to make clear that procedural aspects of the evaluation review can also cover manifest errors of assessment.

The Ombudsman welcomes EASME's constructive follow-up to both remarks.

B. Solutions accepted

1. European Commission

Cases 2527/2011/PMC and 17/2012/PMC: Termination of a Grant Agreement by the Commission

These cases concerned the alleged unlawful and unfair decision by the EU Delegation to Armenia to terminate a grant contract related to a project implemented in Armenia and Jordan. The termination was to the detriment of the complainant, an Italian NGO active in the field of development cooperation. After careful assessment of all the facts and arguments, the Ombudsman concluded that the Delegation's explanation for terminating the contract was incomplete. The Ombudsman therefore proposed that the Commission, in its supervisory role over EU Delegations, provide the complainant with a more comprehensive explanation as to the grounds for terminating the project.

In reply to the Ombudsman's proposal, the Commission declared that the Delegation had taken all the relevant factors into consideration when deciding to terminate the contract. However, it recognised that the explanation for terminating the grant might not have been sufficiently comprehensive. The Commission therefore sent a letter to the complainant explaining all the factors it took into account in its assessment.

Notwithstanding the fact that the complainant expressed its dissatisfaction with the Commission's reply to her proposal for a solution, the Ombudsman considered that the Commission had taken steps to resolve the matter and closed the two cases.

Case 1731/2012/PL: Recovery of sums by the Commission under an operating agreement

The case concerned the Commission's decision to recover EU funds that it had granted to a non-profit organisation between 2005 and 2009. The Commission judged that the purpose for which the funds were used, namely investment in

the organisation's social reserve[3], was ineligible. As the reserve had initially been set up with the Commission's support and cooperation, the organisation complained to the Ombudsman. Having inquired into the complaint, the Ombudsman made a proposal for a solution to the Commission, inviting it to reconsider its decision to recover the funds. In its reply, the Commission set out a number of measures it had taken in order to help secure the organisation's future and to address the matter of the recovery of funds from the social reserve. The Ombudsman considered these measures satisfactory and closed the case.

Case 181/2013/AN: Commission's refusal to grant access to documents containing environmental information

The case concerned the Commission's refusal to grant the complainant, an Irish NGO, full access to the questionnaires submitted in the context of a public consultation concerning energy projects. The Ombudsman inquired into the issue, including through an inspection of the relevant documents. She found that the Commission had not shown how the disclosure of the paragraphs redacted in those documents could have endangered the trade secrets of the relevant companies. The Ombudsman proposed a solution by which the Commission would grant full access to the questionnaires by disclosing the redacted paragraphs. In reply, the Commission disclosed most of the redacted information and explained why it could not disclose the remainder. The Ombudsman was satisfied with the Commission's reply. In light of this favourable outcome and the Commission's cooperation, the Ombudsman closed the case.

Case 1109/2013/DR: Exclusion from a Commission network of experts[4]

The case concerned the Commission's handling of a complaint against an expert who was subsequently excluded from a Commission network of experts due to his allegedly inappropriate behaviour. The Ombudsman inquired into the issue and found that the Commission's overall response to the allegations made against the expert was inadequate. The Ombudsman proposed that the Commission: (1) apologise to the complainant for its handling of the complaint made against him and review its decision; and (2) provide the experts in question with appropriate guidance and introduce measures aimed at raising awareness of harassment issues among the network in question.

In its reply, the Commission rejected the first point of the Ombudsman's proposal for a solution and reiterated its previously expressed views. However, the Commission accepted the second point of the Ombudsman's proposal for a solution. The Ombudsman closed the case, criticising the Commission for failing to give a proper hearing to the complainant, and for failing to carry out a sufficiently thorough assessment of the case before deciding to stop working with him.

[3] A social reserve is an amount set aside for payments an organisation would have to make to its employees in the event it became bankrupt and had to make its employees redundant.
[4] The Ombudsman also made a critical remark in this case, which is therefore mentioned more than once in this annex.

2. European External Action Service (EEAS)

Cases 26/2011/DK and 1307/2012/DK: Dismissal of a member of staff in a mission of the EEAS

The case concerned the complainant's dismissal as a member of staff in a European Union Police Mission, and his subsequent request to have access to the documents contained in his personal file.

The Ombudsman inquired into the issue and found that the complainant's dismissal was legal. However, she also found that the Mission should have waited for the completion of the internal review process, which actually dealt with the complainant's situation, before dismissing the complainant. The Ombudsman therefore suggested that the EEAS offer the complainant compensation in recognition of the errors made by the Mission. The EEAS accepted the proposal and offered EUR 2,000 in compensation to the complainant, who did not accept the offer. The Ombudsman considered that the amount offered by the EEAS was appropriate and that there were therefore no grounds for further inquiries into this aspect of the case. As regards the complainant's access to his personal file, the Ombudsman found that there had not been any maladministration on the part of the EEAS.

The Ombudsman noted, in the course of this inquiry, that the EEAS did not have any rules on whistleblower protection on which the complainant could have relied as a member of staff of the European Union Police Mission in Bosnia and Herzegovina. She, therefore, closed the case with a further remark to this effect.

3. European Economic and Social Committee (EESC)

Case 1770/2013/JF: Failure by the EESC to acknowledge wrongdoing in relation to the reassignment of a staff member[5]

The case concerned the reassignment of an EESC official from his post of Head of Unit to that of an administrator. After the official complained, the Ombudsman investigated the matter and concluded that the reassignment was a covert disciplinary sanction. Because no disciplinary proceedings had taken place, the reassignment was a misuse of power. Since the official had not been given the opportunity to defend himself, this action was also contrary to the Charter of Fundamental Rights of the European Union. The Ombudsman put forward a number of proposals for a solution to the complaint.

The EESC agreed to reassign the official to a post similar to his former post once, and if, he becomes fit for work (the official had subsequently taken leave on medical grounds). It also agreed to compensate him for the management allowance that he had lost because of his reassignment. The Ombudsman welcomed this. However, the EESC refused to accept that its decision to reassign the complainant was wrong. It also refused to annul the reassignment decision and to apologise to the complainant. The Ombudsman did not find the

[5] The Ombudsman also made a critical remark in this case, which is therefore mentioned more than once in this annex.

EESC's explanations to be convincing and made a critical remark as regards this aspect of the case.

4. Committee of Regions

Case 122/2014/PMC: The Committee agrees to disclose documents

The case concerned the handling by the Committee of a request for access to documents. The Ombudsman found that it was likely that more documents falling within the scope of the request existed. She proposed to the Committee to check whether further documents could be disclosed. The Committee accepted the Ombudsman's proposal and disclosed additional documents, thereby resolving the case.

5. European Personnel Selection Office (EPSO)

Case 1719/2013/CK: Alleged irregularities relating to the 'Talent Screener' used in a selection procedure

The case concerned alleged irregularities relating to the 'Talent Screener' question and answer form in a selection procedure organised by EPSO. The Ombudsman inquired into the issue. Taking into account the case-law of the Civil Service Tribunal and two recent Ombudsman decisions that challenged how the 'Talent Screener' is used by EPSO, she invited EPSO to request that the Selection Board examine the complainant's answers. In the event that the complainant attained the pass mark, he should then be admitted to the next phase of the selection procedure. EPSO accepted the Ombudsman's proposal for a solution, which was also to the complainant's satisfaction. The Ombudsman therefore closed the case.

6. European Aviation Safety Agency (EASA)

Case 2114/2011/KM: EASA's allegedly unfair dismissal of a staff member at the end of his probationary period[6]

The complainant is a former EASA employee whose contract was terminated at the end of a six-month probationary period due to, what EASA considered to be, poor team-working ability. The complainant claimed that conflicts over a prior agreement on his participation in lecturing activities outside his work had led to the decision. He objected to a statement in the report on the probationary period that he adopted "a megalomaniac approach" at work. Furthermore, he complained that he had been treated unfairly, as EASA had not given him any warnings about his performance.

Following her preliminary inquiries, the Ombudsman proposed to EASA that it apologise for using the term "megalomaniac", and questioned EASA's use of the term "stubborn and unaccommodating" to describe the complainant. The

[6] The Ombudsman also made a critical and a further remark in this case, which is therefore mentioned more than once in this annex.

Ombudsman also questioned whether EASA had given the complainant the opportunity to improve his performance during the probationary period.

EASA agreed to remove the term "megalomaniac approach" from the probationary period report and apologised for having used it. However, it defended its use of the terms "stubborn and unaccommodating" and it insisted that the complainant was aware, during his probationary period, that his colleagues and superiors were unhappy with his performance. It also maintained that it had acted correctly as regards the complainant's insistence that he be allowed to give lectures outside EASA.

The Ombudsman considered that, in general, EASA's reply was reasonable. However, she was not convinced by EASA's argument that it had acted correctly as regards the complainant's insistence that he should be allowed to lecture outside EASA. She closed the case with a critical remark as regards this issue and a further remark that EASA should consider reviewing its recruitment procedures to ensure that any commitments made to incoming staff are based on a clear evaluation of the potential impact of such promises on the functioning of EASA.

Case 272/2014/OV: Release of audit reports on aircraft maintenance organisations

The complainant made a request for public access to EASA's 'approval recommendation reports' relating to foreign aircraft maintenance organisations in which non-compliance with certain personnel requirements were found. EASA refused access on the basis of the need to protect its continued surveillance activity and the commercial interests of the organisations concerned.

The complainant turned to the Ombudsman, alleging that EASA had wrongly refused access. The Ombudsman took the view that EASA should, in principle, grant access to redacted versions of the 'approval recommendation reports'. Given that the complainant's request for access did not specify a certain period, the Ombudsman proposed that EASA could confer with the complainant to find a fair solution so as to grant partial access to at least some of the approval recommendation reports. EASA accepted the Ombudsman's solution proposal and informed her that, following its conferral with the complainant, it had agreed to assess the 3-year period preceding the complainant's request with a view to granting partial access to the relevant documents. The complainant was satisfied with this outcome and the Ombudsman closed the case.

7. European Chemicals Agency (ECHA)

Case 1606/2013/AN: The European Chemicals Agency (ECHA) takes steps to limit animal testing, where possible

The complaint was made by the European Coalition to End Animal Experiments and centred on ECHA's position regarding the limiting of animal testing. The complainant disagreed with ECHA's view that it could not reject proposals for substance testing that involve animals by arguing that the data could be generated by an alternative method not involving animal tests. These proposals are submitted to ECHA, in accordance with the REACH Regulation.

The Ombudsman's inquiry concluded that ECHA's interpretation of its role was too strict and did not take into account the fact that the avoidance of animal testing is one of the Regulation's guiding principles, along with the protection of human health and the environment. The Ombudsman thus proposed to ECHA (i) that it require all registrants to show that they have tried to avoid animal testing and (ii) that it provide registrants with all the information at its disposal that could allow them to avoid animal testing.

ECHA accepted both proposals. However, it also stated that it needed to hold further discussions with the Commission and the competent authorities in the Member States as regards the practical consequences of its acceptance of the first proposal. While the complainant expressed doubts, the Ombudsman considered that ECHA had settled the matter, but asked it to report on how it had implemented her first proposal within six months of the date of the decision. The Ombudsman also invited the complainant to monitor the outcome of this case.

ECHA duly reported to the Ombudsman on the implementation of her proposal. It stated that, since the closing of the Ombudsman's investigation, it had written to 12 registrants who had suggested animal testing in their proposals. ECHA provided them with a form to complete which required them to provide justifications on the use of animal testing and to explain whether they had considered suitable alternatives. Of these 12, one had decided to withdraw the testing proposal with the result that ECHA terminated the testing proposal process for that substance.

ECHA stated that it was working on further guidance for registrants to raise the quality of the explanations they provide in terms of how they have considered alternatives to animal testing. It also stated that it was working on a new form that would require a registrant, when submitting or updating a file with a testing proposal on vertebrate animals, to include considerations on alternatives. If registrants do not do this initially, they will be given a further opportunity to update the information. Failure to do so will result in their application being refused

ECHA also stated that it will reject a testing proposal if it is clear from the information in its possession that animal testing is not needed for the end-point in question. However, it also went on to state that if it does not have sufficient information on alternatives at its disposal to conclude that it is possible to avoid animal testing it will require the animal tests to be performed. This will allow ECHA to ensure respect for the main aim of the REACH Regulation, which is to ensure a high level of protection of human health and the environment as well as the objective to avoid animal testing.

With a view to increasing the transparency of the process of submitting a proposal, ECHA will now publish the registrants' responses online. This will enable third parties to comment on the information provided by registrants as regards the use of animal testing in their proposals. ECHA also stated that it will take these comments into consideration when evaluating whether or not to reject proposals for animal testing. ECHA took steps to inform potential registrants and the public of the new procedures. It also met with the Commission, Member States and stakeholders to inform them about the new procedures. The Commission confirmed that the measures adopted by ECHA to implement the Ombudsman's proposal could be implemented without amending the REACH

Regulation. Finally, ECHA met with the complainant in this case to discuss its role in the prevention of unnecessary animal testing.

The Ombudsman welcomes the detailed response provided by ECHA but continues to monitor how her proposals are being implemented.

8. European Food Safety Authority (EFSA)

Case 684/2012/JF: Payment of dependent child allowances to a former employee

The Ombudsman investigated a complaint concerning EFSA's refusal to grant a dependent child allowance to a former employee. The Ombudsman proposed that EFSA should explain to the complainant what documents were missing and that, after receiving these documents, it review its decision. EFSA accepted the Ombudsman's proposal.

Following receipt of further documents from the complainant, EFSA retroactively granted its former employee over EUR 11,000 in dependent child allowances. It also committed to continue discussions with the complainant with a view to identifying further documents that could justify additional payments.

9. Education, Audiovisual, and Culture Executive Agency (EACEA)

Case 1462/2014/ANA: Handling of applications for funding for town twinning projects

The case concerned funding for a town twinning project under the Europe for Citizens' Programme. The complaint was made to the Ombudsman by an Irish non-profit organisation, which has run twinning projects with a French partner for 25 years. The organisation missed the deadline to apply for funding in 2015 because of changes made by EACEA to the deadline for applying for funding under the programme. It alleged that EACEA acted incorrectly when making those changes.

The Ombudsman inquired into the issue and made a proposal for a solution to EACEA, along with additional suggestions for improvements as to how it managed the scheme. As a result, EACEA provided additional clarifications to the complainant for the reasons behind the changes to the deadlines and agreed that the twinning project would receive funding for 2016. The Ombudsman concluded that EACEA had taken appropriate action to settle the case to the complainant's satisfaction.

C. Recommendations accepted

1. European Parliament

Case 2132/2012/OV: Parliament's dismissal of an MEP's assistant

The case concerned Parliament's dismissal of an MEP's assistant, following a request to do so by the MEP for whom the assistant worked. The Ombudsman concluded that Parliament's failure to include the MEP's request in the complainant's personal file, in addition to its failure to hear the complainant before the dismissal, constituted maladministration. She recommended that Parliament should make a compensation payment. The Ombudsman also recommended that Parliament should systematically include copies of MEPs' requests to terminate contracts in the personal files of parliamentary assistants. Parliament accepted both recommendations and proposed to make a compensation payment of EUR 1,500 to the complainant. The Ombudsman considered the complaint resolved and closed the inquiry.

Case 118/2013/AN: Professional mobility of an official

The case concerned Parliament's decision to disregard a derogation from its mobility policy (by which officials are reassigned to new posts after a maximum of 7 years), which it had granted to an official. The official had been granted the derogation as a result of her daughter's severe and irreversible disability. The Ombudsman inquired into the issue and found that Parliament could not lawfully revoke its derogation. She made a proposal to Parliament in this regard, which Parliament rejected. The Ombudsman thus made a recommendation, requesting Parliament to allow the derogation to continue to apply to the complainant for as long as her daughter's situation requires the mother's presence, even if this means indefinitely. While maintaining that its position was justified, Parliament accepted the Ombudsman's recommendation and the case was closed.

2. European Commission

Case 995/2011/KM: The Commission's handling of an infringement complaint concerning Germany's implementation of the ePrivacy directive[7]

The case concerned an infringement complaint submitted to the Commission in relation to the alleged failure of Germany to implement properly certain provisions of the ePrivacy directive. The complainant turned to the Ombudsman alleging that the Commission had failed to properly explain the reasons for not commencing an investigation. After inquiring into the matter, the Ombudsman made a recommendation. The Commission subsequently provided an adequate explanation in relation to some of the issues raised by the complainant. As regards the issues in relation to which the Commission did not provide an adequate explanation, the Ombudsman closed the case with a critical remark.

[7] The Ombudsman also made a critical remark in this case, which is therefore mentioned more than once in this annex.

Case 2093/2012/EIS: The Commission's handling of an infringement complaint related to air passenger rights[8]

The case concerned the Commission's handling of an infringement complaint related to air passenger rights. The complainant's flight from London to Sofia was cancelled because of heavy snowfall and he was re-routed via Munich. However, his flight was late arriving in Munich and he missed his connecting flight. The complainant thus had to spend the night there but his carrier did not offer overnight accommodation. Following contacts with the authorities in the UK and Germany, he submitted an infringement complaint to the Commission, alleging that the UK authorities were acting contrary to the relevant EU rules on air passenger rights. The Commission argued that the problems were caused by 'extraordinary circumstances', which meant that the complainant was not entitled to compensation under the applicable EU Regulation. It subsequently discontinued correspondence with the complainant.

The Ombudsman accepted the Commission's position that the complainant was not entitled to compensation due to the existence of 'extraordinary circumstances'. However, the Ombudsman took the view that the relevant rules leave no doubt that it is for the carrier to take the initiative to offer hotel accommodation and related services to passengers in cases of significant delays. The Ombudsman recommended to the Commission that, in dealing with such infringement complaints in future, it should take proper account of the carrier's duty of care to air passengers. As regards its decision to discontinue correspondence with the complainant, the Ombudsman did not agree with the Commission's view that his correspondence was "improper" and made another recommendation to the Commission in this regard.

The Commission accepted, in principle, the Ombudsman's second recommendation. While the Commission did not reject the Ombudsman's first recommendation, it is clear from its response that it does not share the Ombudsman's view regarding the extent of a carrier's duty of care to a passenger. In closing her inquiry, the Ombudsman dealt with this by way of a critical remark. She also forwarded her decision to Parliament's relevant committees, and to national ombudsmen, for information.

Case OI/1/2013/FOR: Staff recruitment in the area of development cooperation

This inquiry concerned the selection of staff to work for the Commission in the area of development cooperation. Specifically, it concerned the requirement that recruits should have gained a minimum of four years of professional experience working on a project or programme in a developing country. The Ombudsman inquired into the issue and found that the wording of the Notice of Competition drafted by the Commission was unclear and ambiguous. She made a recommendation to the Commission, which was accepted.

[8] The Ombudsman also made a critical remark in this case, which is therefore mentioned more than once in this annex.

Case 298/2013/CK: The Joint Research Centre's (JRC) selection procedure for the recruitment of grant holders

The case concerned a number of alleged irregularities regarding a selection process for a grant holder position at the Joint Research Centre (JRC). The Ombudsman inquired into the matter and found irregularities (i) in the establishment and application of the different selection criteria and (ii) in the tasks undertaken by the Recruitment and Training Unit. She made a recommendation to the JRC and asked it to acknowledge these irregularities, apologise for them and take measures to improve matters. In its reply, the JRC acknowledged flaws with the selection procedure as regards the selection criteria and apologised to the complainant. It also informed the Ombudsman that it had taken a number of initiatives to improve its selection procedures and avoid similar problems in the future. The Ombudsman concluded that the Commission had accepted her recommendation and closed the case.

Case 1848/2013/PL: Alleged discrimination in a recruitment procedure for a project co-financed by the Commission

This case concerned the recruitment procedure for a project co-financed by the Commission, which was alleged to breach the principle of non-discrimination on the grounds of nationality. The Ombudsman inquired into the issue and made a recommendation to the Commission, asking it to ensure that selection procedures concerning projects that it co-finances respect the principle of non-discrimination on the grounds of nationality. The Commission accepted the recommendation and undertook various actions to ensure its implementation. The Ombudsman closed the case.

Case 2004/2013/PMC: The Commission's handling of an access to documents request relating to the surveillance of the internet [9]

The case concerned the Commission's refusal to grant public access to documents concerning the surveillance of the internet by UK intelligence services. The Ombudsman recommended (i) that the Commission should grant access to one specific document (a letter from the UK Foreign Secretary to the then Vice-President of the Commission) and (ii) in the case of the other documents requested, that the Commission should either disclose them or properly justify why, in its view, disclosure had to be refused.

The Commission decided to disclose the UK Foreign Secretary's letter, thus accepting the first part of the Ombudsman's recommendation. However, it maintained its position not to disclose the other documents. It justified this position on the grounds that it was still investigating the question of whether the UK's mass surveillance programmes violate EU law, in particular regarding the individual's right to data protection. The Commission argued that until its investigation is definitively closed, early disclosure of the remainder of the documents concerned would negatively affect the dialogue between the UK authorities and the Commission. More generally, it argued that its capacity to conduct its investigation effectively, and to decide on the appropriate response,

[9] The Ombudsman also made a critical remark in this case, which is therefore mentioned more than once in this annex.

should be protected from the risk of external pressure. Finally, the Commission did not consider that there was an overriding public interest in disclosure.

The Ombudsman was not persuaded that the Commission had adequately justified its decision to refuse public access to the remaining undisclosed documents. As it neither disclosed these documents nor provided adequate reasons for refusing public access to them, it is clear that the Commission has rejected the Ombudsman's recommendation in relation to these documents. Furthermore, the Ombudsman noted that the Commission appears not to have taken any action as regards its investigation since 2013. The Ombudsman thus found that the Commission's actions in this case amounted to maladministration and, in fact, to serious maladministration given the importance of this particular issue for EU citizens.

Case 1021/2014/PD: The Commission's conduct in an anti-trust investigation into an alleged cartel

In 2012 and 2014, the then Commissioner responsible for competition made public statements concerning an ongoing investigation of a possible cartel. One of the companies being investigated complained to the Ombudsman that the statements were in breach of the principle of impartiality, as the statements gave the impression that the Commissioner had already decided what the final result of the investigation would be. The Ombudsman stated that some of the public statements made by the Commissioner could reasonably be perceived as suggesting that the Commission or the Commissioner had already decided the outcome of the investigation and that this constituted maladministration. The Ombudsman made a recommendation, which the Commission largely accepted. The Ombudsman thus closed the case with a finding of maladministration arising from the former Commissioner's public statements from 2012 and 2014.

3. European Aviation Safety Agency (EASA)

Case 1171/2013/TN: Increasing transparency as regards the members of EASA's 'rulemaking groups'

The complaint, which was submitted by the British Airline Pilots' Association, related to EU rules on flight and duty time limitations and rest requirements for commercial airlines. More specifically, it concerned the manner in which EASA conducted its process to update these rules. The complainant contended (i) that scientific advice should have had a more prominent role in the rulemaking process; (ii) that EASA had failed to provide evidence of the qualifications of the members of the 'rulemaking group' (a group of experts assisting EASA in the drafting of the rules); and (iii) that EASA did not deal adequately with conflict of interest issues.

The Ombudsman found no maladministration by EASA as regards the role of scientific advice in the rulemaking process. As regards how EASA manages possible conflicts of interest in the rulemaking groups, the Ombudsman found that it had revised its policy for mitigating such conflicts in line with a similar revision of the policy applying to its staff. As a result, the Ombudsman concluded that it was not necessary to inquire further into the issue. Finally, EASA accepted

the Ombudsman's recommendation to provide the complainant with anonymised information about the members of the rulemaking group. The Ombudsman therefore closed the case, encouraging EASA to adopt a more proactive approach to disclosing information available to it about the qualifications and expertise of members of the 'rulemaking group'. She also stated that she is considering looking into issues related to the work done by external experts for certain EU agencies.

4. European Chemicals Agency (ECHA)

Case 2186/2012/FOR: ECHA's refusal to provide public access to documents

EU law requires companies that produce or import chemicals to collect information on the properties and the uses of these chemicals, and to assess if they constitute a risk to humans or the environment. The companies must submit this information to ECHA, which evaluates it. ECHA may require further information from such companies, which may involve further tests being carried out, including tests using animals.

The complainant, an animal welfare campaigner, asked ECHA to give it public access to certain documents relating to ECHA's decision-making on whether certain tests using animals were in fact necessary. ECHA refused. It based its refusal to give access to the documents on the fact that publication of the documents would hinder scientific debate within ECHA. The Ombudsman inquired into the issue and found that the decision-making process in question had already been concluded. The argument that the process could be hindered by publication of the documents therefore appeared unreasonable. The Ombudsman made a recommendation that the documents be released. ECHA agreed to disclose the requested documents and, as a result, the Ombudsman closed her inquiry.

5. Executive Agency for Small and Medium-sized Enterprises (EASME)

See Case OI/8/2013/OV above under 'Star cases'.

D. Follow-up to critical and further remarks by institution

1. European Commission

Case 995/2011/KM: The Commission's handling of an infringement complaint concerning Germany's implementation of the ePrivacy directive

As outlined in the section above entitled 'Recommendations accepted', this case concerned an infringement complaint submitted to the Commission about Germany's alleged failure to properly implement certain provisions of the EU's ePrivacy directive. The Ombudsman found that the Commission's failure to provide a comprehensive and thorough explanation as to why it did not take

action on certain aspects of the infringement complaint amounted to maladministration.

In its response to the Ombudsman's critical remark, the Commission agreed — as part of its ongoing monitoring and review activities — to consider the impact of the Court of Justice's judgment in *Digital Rights Ireland and Seitlinger and Others*, as well as the general impact of e-mail marketing rules, on the ePrivacy directive and its application in national legal systems.

The Ombudsman considers that this commitment represents a reasonable response.

Case 1661/2011/LP: Commission lacks legal authority to unilaterally recover funds from the European Schools

A parents' association of the European Schools complained about the Commission's decision to issue an order to recover funds from one of the schools.

The Ombudsman inquired into the issue and found that the Statute of the European Schools did not empower the Commission to act unilaterally. The Ombudsman made a proposal for a solution, which the Commission refused. The Ombudsman made a subsequent recommendation, which the Commission also did not accept. The Ombudsman closed the case with the critical remark that the Commission's unilateral action to recover funds from the European Schools amounted to maladministration.

The Commission rejected the Ombudsman's critical remark. It reiterated that its unilateral recovery of funds from one of the European schools stemmed from its obligations under the Financial Regulation[10] and from its responsibility as regards the EU contribution to the budget of the European Schools. It equally considered that no provision in the Convention defining the Statute of European Schools[11] prohibits such unilateral recovery. It further argued that it had made all reasonable efforts to resolve the issue within the governance system of the European Schools and that there was no procedural means to bring the matter to Court. Finally, the Commission reiterated its commitment to inform the Board of Governors in advance where, in cases of disagreement, it intends to take unilateral action to recover funds.

The Ombudsman regrets that the Commission merely reiterated the same unconvincing arguments it submitted in the course of her inquiry.

Case 503/2012/DK: Alleged error in closing an infringement complaint

The case concerned the Commission's handling of a complaint concerning an Irish law governing the right to work as an architect. The Ombudsman closed the case with a critical remark, stating that the Commission erred by closing the complainant's infringement complaint without fully examining whether Sections 21-22 of the Irish Building Control Act 2007 are discriminatory.

In its reply, the Commission simply stated that it disagreed with the Ombudsman's legal analysis of the circumstances of the complainant and that it

[10] Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2002 L 248, p. 1 (the 'Financial Regulation'). This regulation has been now replaced by Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ 2012 L 298, p. 1.

[11] Convention defining the Statute of the European Schools, OJ 1994 L 212, p.3.

had therefore maintained its position that (i) it had fully examined the complainant's infringement complaint and that (ii) the relevant sections of the Irish act in question are not discriminatory.

The Ombudsman notes the Commission's disagreement with her in this case.

Case 809/2012/JF: Recovery of amounts paid in error to a former EU civil servant who was unable to manage his affairs due to invalidity

Due to a software problem, the Commission paid a former EU civil servant dependent child allowances that he was no longer entitled to receive. Once the Commission discovered its mistake, it started to recover the overpaid amount.

The former civil servant's wife contested the recovery, arguing that neither she, nor her husband could have noticed the mistake. She could not have noticed it because she had never been an EU civil servant and therefore did not know the system. Her husband could not have noticed it because he had suffered a severe stroke, which left him unable to manage his affairs. The Commission maintained that, according to the Staff Regulations, it was obliged to recover the allowances paid in error.

During her inquiry, the Ombudsman repeatedly pointed out to the Commission that the former civil servant's health condition prevented him from noticing the mistake and that it was unfair to require his wife to have the same level of awareness of the overpayment as can be required, under the Staff Regulations, of a former EU civil servant. The former civil servant's wife was not her husband's legal representative and had never worked for the EU.

In addition, she had informed the EU institutions of any changes in the family situation, such as whether the children went to school or not. The Ombudsman thus recommended the Commission to rescind its decision to recover the overpayment.

The Commission rejected the Ombudsman's recommendation, insisting that the recovery was based on a correct interpretation of the Staff Regulations and relevant case-law. The Ombudsman did not agree that the Staff Regulations and related case-law applied to the former civil servant's wife. The Ombudsman was disappointed that, despite having acknowledged that the recovery created a difficult situation for the family, the Commission had not taken the opportunity to minimise the negative impact of its mistake. The Ombudsman found that the recovery was unfair and disproportionate and that the Commission had committed maladministration. She closed the case with a critical remark.

In its reply to the critical remark, the Commission maintained its view that the conditions for recovery had been fulfilled in this case.

The Ombudsman regrets that, not only does the Commission contest the finding of maladministration, but also that there is nothing in its reply to suggest that the risk of a similar case occurring in the future has been reduced.

Case 2093/2012 EIS: Commission makes alternative suggestions following the critical remark in a case concerning air passengers' rights

As outlined in the section above entitled 'Recommendations accepted', this case concerned the Commission's handling of an infringement complaint related to

air passenger rights. The Commission argued that the problems suffered by the complainant in this case were caused by 'extraordinary circumstances', which meant that the complainant was not entitled to cash compensation under the applicable EU Regulation. It subsequently also discontinued correspondence with the complainant. The complainant turned to the Ombudsman.

The Ombudsman accepted the Commission's position as regards the existence of 'extraordinary circumstances' (which were related to snowfall), as a result of which the complainant was not entitled to compensation. However, the Ombudsman took the view that the relevant rules leave no doubt that it is for the carrier to take the initiative to offer hotel accommodation and related services to passengers in cases of significant delays.

The Ombudsman recommended to the Commission that, in dealing with such infringement complaints in future, it should take proper account of the carrier's duty of care to air passengers. As regards its decision to discontinue correspondence with the complainant, the Ombudsman did not agree with the Commission's view that his correspondence was "improper" and made another recommendation to the Commission in this regard.

The Commission accepted, in principle, the Ombudsman's second recommendation. While the Commission did not reject the Ombudsman's first recommendation, it was clear from its response that it does not share the Ombudsman's view regarding the extent of a carrier's duty of care to a passenger. In closing her inquiry, the Ombudsman dealt with this by way of a critical remark. She also forwarded her decision to Parliament's relevant committees, and to national ombudsmen, for information.

In its response to the Ombudsman's critical remark, the Commission took the view that the relevant EU Regulation did not contain an explanation of how or if any compensation should be provided when different passengers found themselves in different situations. In the Commission's view, there is a distinction between the right to financial compensation under Article 7 of the Regulation and the right to care under Article 9. The Commission stated that outside of Article 7, the Regulation does not provide any basis for any other form of financial compensation. However, the Commission did suggest that the complainant may be entitled to compensation under national law through a damages action for a breach of Article 9 by the air carrier. It also stated that the Montreal Convention may prove useful in providing a legal basis for such an action.

The Commission suggested that a solution to the situation whereby air passengers may be forced to overnight within an airport due to 'extraordinary circumstances' could be to improve the enforcement of the Regulation by the National Enforcement Bodies (NEBs). It undertook to address this with the NEBs.

Although the Ombudsman regrets that the Commission continues to take a restrictive approach towards its interpretation of the Regulation, she welcomes the fact that the Commission has undertaken to address this matter with the NEBs.

Case 2400/2012/ANA: The Commission's handling of a procurement procedure

The case concerned a tender procedure of the Commission for the provision of IT management and related services.

The complainant, a consortium whose bid for the contract in question was unsuccessful, contended that the Commission awarded the contract to a tenderer who offered a solution inferior to what was required by the contract.

The Ombudsman found that, by considering that the winning tender was in conformity with the tendering specifications, the Commission committed maladministration. She recommended that the Commission (a) acknowledge the maladministration committed and (b) address the complainant's claim for compensation.

In light of the Commission's refusal to accept the Ombudsman's recommendations and to provide convincing reasons for that refusal, the Ombudsman closed the case by addressing two critical remarks to the Commission. In the first critical remark, the Ombudsman emphasised that contracting authorities should ensure that tenders submitted in public procurement procedures financed by the Union budget will be accepted and evaluated only if they comply with all the award criteria laid down in the tendering specifications. In this case, by considering that the winning tender was in conformity with the tendering specifications, although it offered a different solution from that specified, the Commission failed to meet this requirement.

In the second critical remark, the Ombudsman reminded the Commission that the obligation to make good any damage caused forms part of the right to good administration. She consequently criticised the Commission for refusing to examine and subsequently make good the losses incurred by the complainant as a result of the Commission's failure to abide by the specifications set out in its tender procedure.

In response to the first critical remark, the Commission maintained that it did not make a manifest error of assessment and that therefore it did not commit maladministration.

In its reply to the second critical remark, the Commission argued that it had examined the complainant's claim for compensation. However, given that it maintained the view that it did not commit maladministration, it considered the complainant's claim to be unfounded and disproportionate.

The Ombudsman regrets that, in a tender procedure involving large amounts of public money, the Commission maintains a position that is at odds with the specifications of the call for tender and its replies to tenderers' questions.

Case OI/9/2013/TN: The Commission agrees to further improve the European Citizens' Initiative (ECI) procedure

Since its introduction in April 2012, the ECI allows a group of at least one million EU citizens to call on the Commission to propose new EU legislation. After receiving a number of complaints, the Ombudsman decided to investigate if the ECI procedure was properly functioning, as well as the Commission's role and responsibility in this regard.

Following the Ombudsman's inquiry - which included input from ECI organisers, civil society organisations and other interested persons - the Ombudsman addressed 11 guidelines for further improvement to the Commission. While noting that the Commission had done a lot to implement the ECI in a citizen-friendly way, the Ombudsman believed that more could be done. The Ombudsman's guidelines concerned issues such as: the advice given to organisers regarding EU competences; the reasons given when rejecting an ECI; the public debate emanating from an ECI, including the public hearing in the European Parliament; and improvements to the online system for collecting signatures and submitting ECIs, taking into account the needs of persons with disabilities and data requirements on statements of support.

In response to the guidelines, the Commission acknowledged the problems that ECI organisers are facing, while arguing that the ECI procedure, as a whole, is working. The Commission committed itself to make further improvements, within the limits of the existing legal framework, and to take other concerns into consideration when discussing a possible revision of the ECI Regulation.

The Ombudsman welcomes the Commission's willingness to improve the functioning of the ECI procedure, as well as its very concrete proposals for improvement in some areas. However, it made only vague statements as regards deficiencies in other areas. The Ombudsman encourages the Commission to live up to its commitments. She also encourages any citizen who continues to encounter problems with the ECI procedure, on issues where the Commission has committed to make improvements, to turn to her. She will try to help within the limits of her mandate.

Case 44/2013/ANA: The Commission's handling of travel arrangements for Turkish Cypriot NGO representatives

The case concerned the Commission's handling of an official visit to Brussels by members of Turkish Cypriot NGOs and followed from a complaint submitted by a former Cypriot MEP. As part of her decision, the Ombudsman noted that the Commission had not accurately presented the facts in this case. She highlighted the importance of providing accurate information to the Ombudsman and invited the Commission to draw lessons for the future.

In its reply, the Commission informed the Ombudsman that it has improved its procedures by making sure that participants in visits to Brussels from Cyprus can clearly express their preferences for their travel arrangements. The Commission provided an annex with evidence of its new practice and said that it would ensure that the same practice applies to all future official visits by Cypriot citizens to Brussels.

The Ombudsman welcomes the Commission's commitment to improve its procedure and its apology to the complainant. She emphasises the importance of her 'further remark' as regards providing accurate information to the Ombudsman.

Case 1109/2013/DR: Exclusion from a Commission network of experts

As outlined in the section above entitled 'Solutions accepted', this case concerned the Commission's handling of a complaint against an expert who was

subsequently excluded from a Commission network of experts due to his allegedly inappropriate behaviour. The Ombudsman closed the case, criticising the Commission for failing to give the complainant a proper hearing, and for failing to carry out a sufficiently thorough assessment of the case before deciding to stop working with him.

In its response to the critical remark, the Commission acknowledged that it had acted in a swift manner following the complaint made regarding the expert's behaviour but maintained its view that it did so to protect the Commission's reputation. In its view, it acted according to the rules applying to membership of this network of experts. The Commission also stated that its decision to stop working with the expert did not undermine his reputation and had no adverse financial impact on him.

The Commission's follow-up response is disappointing.

Case 1205/2013/JF: Audit of an EU funded project

The complainant, a Swedish company, disagreed with the conclusions drawn by the Commission following an audit of a project for which it was in receipt of EU funds and turned to the Ombudsman for help. The Ombudsman opened an inquiry into the Commission's alleged lack of objectivity and alleged failure to comply with the applicable rules.

The Ombudsman found no maladministration by the Commission, as it had based its conclusions on the information available to it at the time. However, she noted that the complainant was in possession of evidence of which the Commission was not aware. She suggested that the Commission consider assessing the relevant tax declaration and bank statements that the complainant would submit to it in due course.

The Commission agreed to assess the tax declaration and bank statements provided that the complainant also submitted relevant supporting documents.

The Commission agreed to follow up on the suggestion made by the Ombudsman.

Case 1756/2013/ZA: Recognition of national diplomas

The case concerned the Commission's refusal to employ a candidate on a reserve list for contract agents in EU Delegations because it considered that the specific diploma he held (from an institute for continuous training and social development education in the Wallonia-Brussels Federation in Belgium) did not amount to a post-secondary diploma.

The Ombudsman pointed out that, according to EU law, the Commission must respect the nature of diplomas as decided by the national authorities issuing them. It should therefore avoid comparing hours, subjects and exams from one type of national establishment to another, as this would call into question the national authority's decision on the nature of the diploma.

The Ombudsman also pointed out that the only requirement laid down in the call for expressions of interest was that a candidate's diploma must be a post-secondary one, something that the Belgian authorities had confirmed in this case.

Furthermore, the call for expressions of interest did not contain any specific provision or description as to the type of post-secondary diploma required.

The Commission maintained its initial position. It argued that its practice, not to consider a diploma from an institute for continuous training and social development education as a post-secondary diploma, had been applied to all similar previous cases. It also noted that although this practice had been challenged in complaints under Article 90(2) of the Staff Regulations, it has never been challenged before the Court of Justice. Finally, it noted that a comparative analysis and evaluation of the candidates' diplomas ensures equal treatment of all candidates, which is important in view of the huge diversity of the education systems of the 28 Member-States.

The Ombudsman regrets that the Commission has merely referred to its existing practices rather than taking the opportunity to review them in the light of the Ombudsman's analysis.

Case 2004/2013/PMC: The Commission's handling of an access to documents request relating to the surveillance of the internet by the UK intelligence services

As outlined in the section above entitled 'Recommendations accepted', this case concerned the Commission's refusal to grant public access to documents concerning the surveillance of the internet by UK intelligence services. The Ombudsman recommended that the Commission grant access to a letter from the UK Foreign Secretary to the then Vice-President of the Commission. She further recommended that the Commission disclose two letters to the UK authorities, as well as the related citizens' complaints, or properly justify why, in its view, disclosure had to be refused.

The Commission decided to disclose the UK Foreign Secretary's letter, thus accepting the first part of the Ombudsman's recommendation. However, it maintained its position not to disclose the other documents, arguing that it was still investigating the question whether the UK's mass surveillance programmes violate EU law, in particular regarding the individual's right to data protection. The Commission argued that until its investigation is definitively closed, early disclosure of the remainder of the documents would negatively affect the dialogue between the UK authorities and the Commission. More generally, it argued that its capacity to conduct its investigation effectively, and to decide on the appropriate response, should be protected from the risk of external pressure. The Commission did not consider that there was an overriding public interest in disclosure.

The Ombudsman was not convinced that the Commission had adequately justified its decision to maintain its refusal to grant public access to the remaining documents. Given that the Commission did not appear to have taken any action as regards its investigation since 2013, the Ombudsman found that the Commission's refusal to grant access amounted to *serious* maladministration, given the importance of the issue for EU citizens. She closed her case with a critical remark.

The Commission replied that it had, in the meantime and in light of the prevailing factual and legal circumstances, re-evaluated the documents in question and

decided to grant access to the two Commission letters, as well as the citizens' complaints, subject to the redaction of personal data.

The Ombudsman welcomes the Commission's decision to give access to the relevant documents, which should go some way towards informing the public about its actions as regards the surveillance of the internet by UK intelligence services.

Case 2266/2013/JN: Keeping an adequate written record of the Commission's meetings held in the context of public consultations

The inquiry concerned a request for access to documents relating to EU-funded water sector reform projects in Egypt. The Ombudsman suggested that the Commission should keep a written record of its meetings held in the context of public consultations in order to increase transparency.

The Commission informed the Ombudsman that it had identified internal guidance documents that it would amend in order to implement her suggestion. Specifically, the Instrument for Pre-accession Assistance (IPA) II programming instructions now contains guidance on how to properly record the consultation process. In addition, the Directorate General's common Manual of Procedures that will enter into force in January 2017 will also instruct staff as to how to properly record consultations with stakeholders.

The Commission's response is satisfactory.

Case 2432/2013/NF: Better provision of information by the Commission when issuing debit notes under African, Caribbean and Pacific Group of States supply contracts

The case concerned the Commission's issuing of debit notes under a number of supply contracts, which the complainant had concluded with the Secretariat of the African, Caribbean and Pacific Group of States ('ACP Secretariat') to implement an EU-funded programme. The complainant failed to meet a number of delivery deadlines and the ACP Secretariat, as Contracting Authority, imposed penalties. The complainant turned to the Ombudsman about the Commission issuing debit notes for the penalties. The Ombudsman found that, when issuing the debit notes, the Commission was acting in its role as 'paying authority' on behalf of the ACP Secretariat, and that the Commission did not have any discretion in this regard. The Ombudsman thus found no maladministration by the Commission. However, the Ombudsman issued a further remark asking the Commission, in the future, to explain to third-party contractors that it is acting on behalf of the third-party Contracting Authority when issuing debit notes under a Financing Agreement in the framework of an EU cooperation agreement.

In response, the Commission informed the Ombudsman that it has taken concrete measures to avoid misunderstandings in the future. The Commission's 'prior information letter', which is sent to a debtor before the recovery order is established, will from now on provide better information. In similar situations to the present case, the Commission will explicitly inform the debtor about the respective roles of paying authority and Contracting Authority with regard to issuing debit notes. The Commission has also included relevant instructions in its internal guidance document for financial and contractual procedures, which

is published by its Directorate General for International Cooperation and Development (DG DEVCO).

The Ombudsman welcomes the Commission's positive and constructive follow-up to her further remark.

OI/5/2014/MDC: Termination of a grant agreement

This case concerned the Commission's decision to terminate a grant contract with an Icelandic NGO, on the grounds that Iceland had suspended its accession negotiations with the EU, and thus no further financial assistance to that country was warranted. Iceland has since withdrawn its candidature.

The Ombudsman inquired into the issue and disagreed with the Commission's stance. She proposed a solution to the Commission, which it rejected. Given that the Commission did not put forward any new arguments that could alter the Ombudsman's assessment, and, noting that a recommendation was unrealistic in light of the Commission's clear decision not to reconsider its position, the Ombudsman closed this inquiry with a critical remark. The Ombudsman was particularly critical of the fact that the Commission, in its dealings with a third country NGO, had failed to exemplify these standards which the EU expects accession states to achieve. In this case, the actions of the Commission have had the effect of undermining not just its own reputation but also that of the EU more generally.

In its reply, the Commission stated that it had taken note of the Ombudsman's conclusions and that, after having reviewed the case, it had decided to maintain its previous position that the conditions to terminate the contract had been lawfully fulfilled. The Commission concluded by stating that it would not comment further on this case as, in November 2015, it received notice that the beneficiary had initiated legal proceedings against the Commission in Belgium.

The Ombudsman notes that the issue is now before a competent court and that she therefore can take no further action in relation the case, in line with the Ombudsman's Statute.

OI/7/2014/NF: The composition of the Civil Dialogue Groups brought together by the Commission's Directorate-General for Agriculture

The Commission's Directorate-General for Agriculture has relied on the advisory groups for expertise regarding the Common Agriculture Policy ('CAP') since the 1960s. In 2013, following the EU's latest reform of the CAP, the Commission revised its advisory group system and put in place a new legal framework for what is now called its 'Civil Dialogue Groups (CDGs)'. The CDGs enable the Commission to receive advice and maintain a regular dialogue with representative associations and civil society. The legal framework, Commission Decision 2013/767/EU, now requires a "*balanced representation*" of interests in the groups.

In 2014, the Commission made a formal decision on the membership and overall composition of the 13 CDGs. The Ombudsman opened an own-initiative inquiry aimed at reviewing the selection process and final composition of the groups. The review aimed to strengthen citizens' trust in the selection process and in the general work of the groups, which are involved in a highly sensitive

policy area that accounts for a significant share of the EU budget. In light of the groups' capacity to influence matters relating to the CAP, the Ombudsman emphasised that the Commission should make every effort to ensure a balanced representation of interests in deciding on the groups' composition.

The inquiry showed that the Commission was facing a complex and challenging task. In her decision, the Ombudsman found that the Commission had drawn up and applied a clear procedure for selecting CDG members. It had also made considerable efforts to improve the balance in the groups compared to the past. The groups were re-designed to reflect the current CAP: their overall size was reduced; more than 40 of the 68 appointed member organisations are new to the system; the strength of the most powerful economic stakeholders was reduced; and the overall proportion of non-economic interests in the groups improved, albeit marginally.

However, the Ombudsman found a lack of clarity regarding what constitutes 'balanced representation' of the various interests. The Ombudsman found that the Commission documents, which should have specified the purpose and compositional nature of the CDGs, were lacking in detail, as regards what the Commission wished to achieve in terms of balanced representation within the groups and how it intended to achieve this. In addition, the Ombudsman considered that it was impossible for the public to understand the CDG selection process because of a lack of publicly available information, which limited the scope for outside review of the CDGs' composition.

The Ombudsman made ten proposals to the Commission to help improve the overall CDG process. Six of the proposals concerned the process by which the 13 groups were established. These proposals aimed at ensuring greater transparency of the selection processes and final decisions on group membership. The other four proposals concerned the establishment of CDGs in the future. These proposals focused on the need for better prior description of what would constitute a balanced representation of interests and the desired composition of the groups.

In its follow-up response, the Commission largely accepted the Ombudsman's proposals regarding the existing groups or provided adequate explanations as to why no further action would be necessary or appropriate. In response to the proposals regarding future CDGs (expected to be established after 2020), the Commission expressed its willingness to take the Ombudsman's proposals into account. Two proposals regarding the balanced representation of the groups were subsequently subsumed under the Ombudsman's more general own-initiative inquiry OI/6/2014/NF into the transparency and composition of Commission expert groups.

The Ombudsman considers that the Commission's follow-up is satisfactory.[12]

See Case OI/8/2014/AN above under 'Star cases'.

See Case OI/10/2014/RA above under 'Star cases'.

[12] Because two of the proposals regarding the balanced representation of the groups have been largely subsumed under the Ombudsman's more general own-initiative inquiry OI/6/2014/NF into the transparency and composition of Commission expert groups, they are not included in the statistics in this Report.

Case 240/2014/FOR: Alleged lack of public consultation by the Commission regarding a list of energy infrastructure projects

In this case, the Ombudsman found that the applicable rules require extensive public consultation on the impact of individual projects to be carried out by national authorities. She pointed out that public consultation involved the provision of detailed information to the public on individual projects and the organisation of public meetings on individual projects at local level. The Ombudsman considered that the Commission's public consultation on the creation of a list of energy infrastructure projects to be given priority for funding by the Commission, should not replicate this national-level consultation process. The Ombudsman therefore concluded that the Commission was correct in applying a pan-European focus to the consultation it carried out.

However, the Ombudsman made a critical remark as regards the failure of the Commission to make a relevant document (the list of projects) available to the public during the consultation period in languages other than English. She also made a further remark that the Commission should seek to use more dynamic means of making its public consultations known to the public.

In its follow-up reply, the Commission stated that it is devoting significant resources to its public consultations, with a view to widening the participation of citizens, associations and other stakeholders in the EU's decision-making process. The Commission acknowledged that multilingualism is key for citizens to exercise their right to participate in the democratic life of the EU even if adherence to multilingualism is sometimes subject to time constraints and available resources. The Commission stated that, for projects under the Trans-European Energy Networks (TEN-E) programme, it already follows the suggestion contained in the Ombudsman's findings and that the process of public consultation has been updated and strengthened in this regard.

The Commission remarked that it had recently conducted a public consultation on the proposed second list of Projects of Common Interest (PCI). The relevant public consultation notice was published in 23 EU official languages on the websites of "Your Voice in Europe" and "DG Energy". The Commission specifically asked the project promoters to provide information in their replies, both in English and in the national languages, in order to allow citizens to participate fully in the public consultation. There were more than 600 replies submitted to the consultation in different official EU languages[13].

As regards the Ombudsman's further remark, the Commission stated that it had already developed three communication tools with the aim of increasing transparency and public participation in the EU's decision-making process.

The **first tool**, "PCI Map Viewer"[14], is an interactive map, which provides information on the Projects of Common Interest, such as implementation plans, funds allocated and project-specific specifications.

The **second tool** is a web-based service provided by the Commission to create collaborative workspaces[15]. It is divided into categories and interest groups, allowing group members to share information and resources.

[13] The results were published on the DG Energy website:
http://ec.europa.eu/energy/en/consultations/consultation-list-proposed-projects-commoninterest
[14] Available at http://ec.europa.eu/energy/infrastructure/transparency_platform/map-viewer
[15] https://circabc.europa.eu

The **third tool** is a Grid Infrastructure Toolkit[16], which was developed following discussions with different stakeholders and targeted research[17]. The toolkit provides users with essential components for successful, inclusive project communication and stakeholder integration.

The Ombudsman considers that Commission has responded adequately to her findings.

Case 400/2014/DK: Communication by the Commission in State aid case

The case concerned the Commission's alleged failure to inform the complainant about the 'priority status' of a State aid complaint that he submitted in August 2013. During her inquiry, the Ombudsman found that, in the meantime, the Commission had informed the complainant that his complaint would not be treated as a priority case. However, she also found that the Commission did not explain the reasons for its decision.

The Ombudsman closed the case with the critical remark that the Commission's failure to inform the complainant, within a reasonable period of time, whether his State aid complaint was a priority case or not constituted maladministration.

In its reply, the Commission accepted the Ombudsman's findings and stated that it endeavours to ensure regular and efficient communication with citizens submitting market information or formal complaints in State aid proceedings. The Commission committed to continue to strengthen this principle through internal training, to ensure that all relevant staff members are familiar with the requirements, which are set out in the "Code of Best Practice".

The Commission's reply is satisfactory.

Case 402/2014/PMC: Time limit for collecting signatures to a European Citizens' Initiative

According to the rules governing European Citizens' Initiatives (ECI)[18], organisers have twelve months to collect signatures and statements of support. A group of citizens behind a particular European Citizens Initiative ("ECI") expressed the concern that the online system for collecting signatures and statements gives organisers less than twelve full months, particularly if they choose to use their own software, rather than that provided by the Commission. The twelve-month period starts from the date of registration, which is a precondition for full access to the Commission's online collection system. However, the online collection of signatures and statements can start only when the online collection system has been certified by the competent national authority, which can take up to a month.

The Commission was of the opinion that the ECI Regulation does not guarantee the organisers twelve full months to collect signatures online. However, it informed the Ombudsman that it makes efforts to facilitate the process.

The Ombudsman found that, on the basis of the current legislation, the Commission's position was reasonable and concluded that there had been no

[16] http://grid-communicationstoolkit.eu

[17] A study commissioned by the Commission: *"Grid infrastructure development: European Strategy for raising public acceptance*".

[18] Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65, 11.3.2011, p. 1–22.

maladministration. However, she suggested that the Commission should inform ECI organisers, who intend to use software other than that provided by the Commission for their online collection system, about its preliminary assessment of the admissibility of their proposed initiatives. ECI organisers, who use the software and hosting services provided by the Commission, are informed of the Commission's preliminary conclusion that an ECI fulfils the registration criteria when they are sent a hosting agreement. It is important to ensure ECI organisers wishing to use their *own* hosting services are treated in the same way as those wishing to use the software provided by the Commission. Providing them a preliminary assessment would help ensure they do not waste financial and organisational effort unnecessarily.

The Commission replied that it cannot inform organisers before it takes a formal decision as to the admissibility of initiatives, given that, up until that point in time, the decision may be subject to change. However, the Commission also stated that it is aware that there are timing issues with the ECI process and that it intends to pursue the matter further.

The Ombudsman regrets that the Commission is unwilling to implement her further remark, which aimed at ensuring equal treatment between those who use their own software and those who use the software and hosting services provided by the Commission. However, she hopes that the Commission will take the opportunity to address the timing issues in the context of the revision of the ECI Regulation.

Case 659/2014/JF: Communicating clearly with contractors

The complainant was replaced from his position as an expert in a consortium, as part of the consortium's application for an EU-funded 'service contract', following a request by the Commission. The Ombudsman identified shortcomings in the way in which the Commission had communicated with the consortium and made a critical remark.

In its reply, the Commission regretted that the complainant had received imprecise and misleading information and assured the Ombudsman that it would instruct its staff to take particular care to communicate in a clear and unambiguous manner when dealing with contractors.

The Commission has taken steps to avoid unclear communication with contractors in the future.

Case 685/2014/MHZ: Commission refuses to grant access to documents

The complainant submitted a public access to documents request for correspondence between the Commission and Polish authorities regarding the costs of filing legal claims in public procurement proceedings in Poland. The Commission invoked an exception to the right of public access and withheld the requested documents, claiming it needed to protect an ongoing investigation into the matter. It did not accept the complainant's argument that there was an overriding public interest in disclosure, as many complaints on the matter had been submitted to the Polish Constitutional Tribunal ('the PCT').

On the basis of her inquiry, the Ombudsman found that the Commission had failed to provide proper justification for its decision. As the PCT had annulled

the relevant national legislation in the meantime, and the Commission's investigation had thus become redundant, the Ombudsman suggested that the Commission could proactively send the complainant the requested documents without the need for a new access to documents request, but the Commission insisted that the correct administrative procedure should be complied with in each case. The complainant was subsequently granted access after he had made a new request. The Ombudsman decided to close the case with two critical remarks.

In its reply, the Commission rejected the Ombudsman's findings of maladministration. As regards the Ombudsman's remark that the Commission had failed to demonstrate that it had properly assessed the possible existence of an overriding public interest, the Commission reiterated its previous stance, notably the legal reasoning laid down in its response to the 'confirmatory application'. It concluded that its assessment of an overriding public interest had been performed accurately and the exception to withhold the documents had been correctly applied.

As regards its insistence on the need for the complainant to make a new access to documents application, the Commission explained that this is the fairest and most efficient administrative procedure, which also ensures legal certainty.

The Ombudsman notes that the Commission failed to adopt a proactive approach to making documents public in this important case, even after its investigation had ended. The Ombudsman regrets that there is nothing in the Commission's reply to suggest that the risk of similar maladministration occurring in the future has been reduced.

Case 904/2014/OV: More transparency on the rules governing the Commission's public consultations

The complaint concerned the alleged failure by the Commission to carry out an adequate public consultation in advance of drawing up its Proposal for a Regulation concerning the European single market for electronic communications and a Connected Continent. That proposal dealt, among other things, with the phasing out of roaming charges.

The complainant alleged that the Commission was wrong to use the call for urgency in the Conclusions of the spring 2013 European Council as justification for rushing through the consultation process. In addition, it argued that the Commission had failed (i) to identify the different types of stakeholders to be consulted, (ii) to address the points raised by the Impact Assessment Board, (iii) to carry out a proper inter-service consultation, and had also (iv) deliberately attempted to conceal the lack of a public consultation.

The Ombudsman did not find maladministration in relation to any of the issues raised. Regarding the Commission's limited public consultation, the Ombudsman considered that the Commission's reliance on its own right to set policy priorities, and to make policy choices, was reasonable in the particular context of the legislative proposal. However, she made a further remark that the Commission should amend its 2002 Communication[19], which lays down rules

[19] Commission Communication COM(2002) 704 final of 11 December 2002 "*Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*".

on public consultation in relation to legislative proposals. In the Ombudsman's view, these rules should provide more specific guidance on the limited circumstances in which, exceptionally, the standard minimum level of public consultation need not be undertaken.

The Commission accepted the Ombudsman's further remark and informed her that it had issued new Guidelines on Stakeholder Consultation[20] stipulating that for each new legislative initiative, evaluation or Fitness Check and Green Paper, a consultation strategy should be established. This consultation strategy should contain the consultation objectives, targeted stakeholders, envisaged tools and instruments and, if necessary, an explanation as to why, exceptionally, no or only a limited public consultation would be envisaged. This consultation strategy should be set out in the roadmap or 'inception impact assessment', which describes planned Commission initiatives, and is published on the Commission's website. The consultation strategy should also be published on the consultation website linked to the specific initiative together with the synopsis report outlining the overall results of the consultation work and feedback, at the end of the process.

The Ombudsman welcomes the Commission's constructive follow-up to her further remark.

Case 943/2014/MHZ: Commission takes steps to improve the procedure for dealing with requests for public access to documents

The complainant, a Polish farmer, submitted a request to the Commission for public access to documents concerning two EU pilot cases against Poland. Following an unsatisfactory response from the Commission, he turned to the Ombudsman, who found that the Commission's handling of the request did not meet the requirements of good administration. The Commission subsequently granted access to the documents in question and promised to make changes to its procedures in order to minimise the risk of similar mistakes occurring in the future.

The Ombudsman closed the case but noted, in a further remark, that improvements were necessary to ensure that the procedure for handling requests for access to documents is made more citizen-oriented and user-friendly.

In its response, the Commission explained that the necessary steps had been taken to revise its standard template letters and drafts. The Commission also clarified that the time limit for submitting a confirmatory request runs from the date when the applicant receives the reply to the initial request in the language of his or her application.

The Commission also clarified the internal approval procedure as regards dealing with access to documents requests. As regards the uniform application of deadlines, the Commission explained that internal arrangements within the Directorate-General concerned (DG Agriculture and Rural Development) had been improved to ensure a smooth and timely delivery of the requested documents. Also in this regard, its *Internal Vademecum*, which sets out guidelines on access to document requests, contains a provision that allows for a 15-day extension of deadlines in *"exceptional cases only"*, for instance when dealing with

[20] http://ec.europa.eu/smart-regulation/guidelines/ug_chap7_en.htm.

lengthy files, due to a large number of requested documents or if there is a need to consult a third party. The *Internal Vademecum* has been circulated to all staff, who were reminded about the need for prompt cooperation in the treatment of requests.

While the Ombudsman does not agree with the Commission's reference to the consultation with a third party as an exceptional circumstance, she appreciates the Commission's overall constructive response to her further remark and welcomes the Commission's commitment to improve the relevant procedures.

Case 1381/2014/PL: Ensuring smooth and regular communication with complainants in State aid complaints

The complainant, a Spanish MEP, lodged a complaint with the Ombudsman alleging that the Commission had failed to decide within a reasonable period whether it should open a formal investigation into a State aid complaint. The complaint, submitted in December 2012, concerned alleged State aid granted by the Netherlands in the shipbuilding sector.

The Ombudsman inquired into the issue and found no maladministration by the Commission. In particular, the Ombudsman noted that the complainants had submitted further information to the Commission in December 2013. As a result, further clarifications were needed from the Dutch authorities to complete the Commission's assessment. The Commission made it clear that it would open a formal State aid investigation only if it has serious doubts as to the compatibility of the measures with the internal market, on the basis of the information and evidence at its disposal. This assessment can be carried out only when the information is complete.

Following the submission of the new information, the Commission obtained the Dutch authorities' views on 29 April 2014. In February 2015, the Commission concluded that there were no grounds to initiate a formal State aid investigation. In her decision, the Ombudsman noted that the Commission had thus dealt with the complaint within 12 months of having received all of the relevant information.

The Ombudsman therefore decided to close the case with a finding of no maladministration. However, she noted that the Commission did not always inform the complainant in a timely manner of the steps being taken in its ongoing preliminary investigation. She made the following further remark to the Commission: *"The Commission should keep in mind the importance of smooth and regular communication with complainants in State aid complaints."*

In its reply, the Commission fully agreed with the Ombudsman on the importance of smooth and regular communication with complainants in State aid complaints and stated that it will continue to highlight this principle in internal training sessions.

The Ombudsman welcomes the Commission's positive follow-up to her further remark.

Case 121/2015/NF: A contractual dispute

While the Commission followed up positively to the Ombudsman's critical and further remarks in this case, it has not been possible to publish details for fear of

aggravating the contractual dispute between the complainant and the Commission.

Case 174/2015/FOR: Alleged conflict of interests of a member of a scientific committee evaluating the risks of removing PIP breast implants

The Ombudsman inquired into the issue of an alleged conflict of interests and found that the expert concerned had initially not declared all his interests. However, when the Commission asked him to produce the relevant information showing that he was not in a conflict of interests, he did so. The Ombudsman concluded that the Commission was correct to find, after examining this newly submitted information, that the expert was not in a conflict of interest situation.

The Ombudsman found, however, that the complainant was correct to be concerned when it discovered that the Commission did not initially have the necessary information to take a view on the expert's independence. The Ombudsman therefore made suggestions for improvements as regards how the Commission gathers and analyses such information. The Commission's response shows that the Commission is aware of the need for great vigilance in this area and that it is willing to take the necessary steps to deal with the matter.

The Ombudsman welcomes the steps taken by the Commission to reinforce how it monitors possible conflicts of interests by developing guidelines that will apply across all Commission services, including on declarations of interests.

Case 258/2015/EIS: Commission agrees to improve procedures to deal with requests for sign language interpretation at events

The complainant is a deaf person and a sign language user. She registered for the "Erasmus+ Sport Infoday" organised by the Commission and the Education, Audiovisual and Culture Executive Agency (EACEA). When submitting her application to participate in the event, the complainant asked for international sign language interpretation to be provided. She wished to attend the event together with a representative of the European Deaf Sport Organisation (EDSO).

The organisers subsequently informed the complainant that there were no international sign language interpreters available. The complainant replied that the representative of EDSO had already bought his flight ticket as he had been led to believe that there would be interpreters available. In the absence of confirmation of an alternative form of interpretation, the complainant did not attend the event.

The complainant submitted a complaint to the Ombudsman. In particular, she complained about the Commission's failure to provide international sign language interpretation to allow her to participate in the event in question. She also mentioned that she would like the organisers of the event to find a solution to the problem, for example, by providing the information she missed through other means, such as providing a transcript of the day and/or providing a video of the event with sign language interpretation. She also stated that the EDSO representative had travelled to Brussels in vain and should thus receive compensation for his travel costs.

In its replies to the Ombudsman, EACEA apologised to the complainant and stated that if the complainant had had a similar experience in the past this was because no official requests for sign language interpretation had been made during the

registration phase. EACEA stated it had been in contact with the EDSO representative in order to reimburse his travel expenses. Concerning future events, EACEA would continue to pay close attention to such requests in order to be able to offer this service upon request.

The Ombudsman closed the case suggesting that it would be appropriate for EACEA to review its existing arrangements for the provision of sign language interpretation. If it finds that these arrangements are not sufficiently developed so as to ensure the provision of sign language interpretation (on its own initiative or, in the case of particular support needs, where reasonable notice is given), then it should take steps to revise its arrangements to improve its ability to meet the support needs of persons with disabilities.

In the case of public events not specifically aimed at persons with disabilities, it would also be important to ensure that persons with disabilities wishing to attend such events could easily do so. These comments apply not just to the EACEA but also to the Commission and to all EU institutions and agencies.

The Commission responded stating that it would improve communication channels between departments when organising the provision of sign language interpretation and continue to maintain a list of possible interpreters. It also stated that EACEA had made videos of the event available online and communicated this to the complainant. The EDSO representative had been contacted about the reimbursement of his travel expenses. Finally, the Commission stated that participants in a similar upcoming event who had requested sign language interpretation had been told not to undertake financial commitments until they had received confirmation of the presence of interpreters.

The Ombudsman is happy to note that the Commission has given due attention to this matter and implemented procedures to ensure that it is in a better position to deal with such requests in the future.

2. European Court of Auditors (ECA)

Case 1043/2015/PMC: Failure to provide a reply in correct German

The complainant complained about the linguistic quality of the ECA's reply to his information request. While his request was written in German, the ECA had replied in English, enclosing what the complainant argued was a translation in flawed German. In the complainant's view, this action was contrary to his fundamental right to write to the EU institutions in one of the official languages of the EU and receive an answer in the same language.

In the course of the Ombudsman's inquiry, the Court (i) acknowledged that there were problems with its translation, and, more importantly, (ii) rapidly provided a proper translation into German of its reply to the complainant's information request. The complainant was satisfied with the quality of the translation provided. Given that it was not entirely clear whether the Court's action was limited to the case at hand or constituted a systemic shortcoming, the Ombudsman asked the ECA to make sure that the problem identified was not of a systemic nature.

In its reply, the ECA stated that replies drafted in a language different from that of the request will, from now on, be systematically sent to its internal translation service to verify the quality of translations.

The Ombudsman considers that, by categorically checking the quality of replies that have to be translated, the Court has responded in a satisfactory manner (and with commendable swiftness) to her further remark.

3. European External Action Service (EEAS)

Cases 26/2011/DK and 1307/2012/DK: Whistleblower protection in a service for which the EEAS is responsible

As outlined in the section above entitled 'Solutions accepted', the Ombudsman found in this case that the EEAS did not have any rules on whistleblower protection on which the complainant could have relied as a member of staff of the European Union Police Mission in Bosnia and Herzegovina. She therefore made, in her decision closing the complaint, a further remark that the EEAS should put in place procedures and staff training to ensure that the errors that occurred in the case are not repeated. The Ombudsman also suggested that the EEAS should draw up appropriate rules for the protection of whistleblowers.

In its reply, the EEAS stated that it had already decided to organise staff training to ensure that the errors occurred in the complainant's case are not repeated and that it had instructed all civilian Common Security and Defence Policy missions to implement Standard Operating Procedures on whistleblowing protection.

The Ombudsman notes with satisfaction that the EEAS has fully complied with her suggestions made in the further remark. The follow-up actions by the EEAS are therefore appropriate and satisfactory.

4. European Economic and Social Committee (EESC)

Case 1770/2013/JF: Failure by the EESC to acknowledge wrongdoing in relation to the reassignment of a staff member

As outlined in the section above entitled 'Solutions accepted', the Ombudsman investigated a case concerning the reassignment of a staff member of the EESC from his post of Head of Unit to that of administrator. The Ombudsman found the reassignment to be a covert disciplinary sanction, without any disciplinary proceedings. Because the staff member had not had any opportunity to defend himself, the sanction was an abuse of power and a violation of the Charter of Fundamental Rights of the EU. The Ombudsman made a number of proposals to settle the case amicably, including that the EESC annul its decision to reassign the staff member.

The EESC refused to annul its reassignment decision, without giving any convincing reasons. The Ombudsman therefore closed the case criticising the EESC's failure to recognise its own wrongdoing.

In its reply to the Ombudsman's critical remark, the EESC stood by its reassignment decision, without providing any additional explanations.

The Ombudsman regrets that the EESC refuses to acknowledge its wrongdoing despite having been given numerous opportunities to do so. EESC staff members have a legitimate expectation that the EESC acts in accordance with the relevant rules applicable to work relationships between the EU institutions and their staff, as interpreted by the EU Court. The EESC's behaviour in this case undermines the confidence that its staff is entitled to have that their individual rights will be respected. The case is all the more serious in that the EESC violated the Charter of Fundamental Rights.

5. European Investment Bank (EIB)

Case 349/2014/OV: Public access to an EIB investigation report into allegations of tax evasion in a mining project in Zambia

The complaint concerned the EIB's refusal to grant the complainant, an NGO that campaigns against tax evasion in developing countries, access to an investigation report of the EIB's Inspectorate-General into allegations of tax evasion by a company to which the EIB had granted a loan for a mining project in Zambia.

Considering that the relevant investigation had been closed in 2011, the Ombudsman made a recommendation to the EIB that it should reconsider its refusal and either grant access to a redacted version of the report or, should this not be possible, provide the complainant with a meaningful summary of the main findings of the report. In its reply, the EIB released a summary to the complainant and published it on its website.

Since the summary did not contain any further information on the main findings, the Ombudsman concluded that the summary could not be considered a meaningful addition to the information already available. Furthermore, the Ombudsman noted that the EIB had failed to comply with the rules of its own 'Transparency Policy' in its decision on this case. She closed her investigation with two critical remarks.

In its response, the EIB noted that it had reviewed its Transparency Policy, which now expressly stipulates a presumption of confidentiality for documents and information pertaining to its (closed) investigations, but also provides for the possibility of disclosing a summary of closed investigations. The EIB considered that it had thus found a balanced solution, taking all the interests at stake into consideration. It furthermore maintained its view that the summary it released to the complainant and published on its website was in accordance with the Ombudsman's recommendation.

The Ombudsman regrets that the EIB challenges her finding in this case in relation to the summary that was made available.

Furthermore, the Ombudsman notes that the EIB has, in the meantime, published its amended EIB Group Transparency Policy. By providing for a presumption of confidentiality even after investigations have been closed, the

EIB makes public access to its investigation reports difficult. The Ombudsman is now dealing with a complaint in relation to the Transparency Policy.[21]

6. European Personnel Selection Office (EPSO)

Case 827/2014/PL: EPSO's disclosure of information to candidates

The case concerned a selection procedure CAST/S/1/2011 for translators. EPSO refused to provide the complainant with (i) the names of the members of the selection panel and (ii) a copy of the text that had to be translated during the test. The Ombudsman opened an inquiry, following which EPSO decided to disclose the names of the selection panel members in CAST procedures in the future. EPSO also provided the complainant with a copy of the requested document.

The Ombudsman made a further remark that EPSO should consider, in future translation competitions, proactively providing the original text when the unmarked text is provided. Taking into consideration the further remark by the Ombudsman, EPSO established new General Rules Governing Open Competitions, according to which EPSO will automatically publish on its website the source of the texts used in competitions once the results have been established and communicated to candidates.

By agreeing to disclose to candidates the original texts used in competitions, as well as the names of selection committee members, EPSO has improved its administrative practices. The Ombudsman concludes that EPSO has thus increased the transparency, objectivity, and fairness of the competitions it organises.

Case 1881/2014/NF: Publication of complete and accurate information on the minimum points required for candidates to qualify for the subsequent round in recruitment competitions

The case concerned the complainant's exclusion from an open recruitment competition organised by the EPSO, which covered two salary grades. The complainant sat the admission tests for the higher grade of the competition and obtained the necessary pass mark. When the Selection Board found that the complainant did not have sufficient professional experience to take part in the higher grade of the competition, it re-assigned the complainant to the competition's lower grade. In comparison to the candidates who had taken the admission tests in the lower grade of the competition, the complainant did not rank among the candidates with the highest marks. According to the notice of competition, the complainant was therefore not eligible to be invited to the assessment centre. The Selection Board thus excluded the complainant from further participation in the competition.

The Ombudsman found no maladministration with regard to the complainant's exclusion. However, EPSO had initially stated on its blog that all candidates having obtained pass marks in the admission tests were admitted to the assessment centre for the competition's lower grade. While this information was not, in itself, incorrect, it did not take into account the situation of re-assignment from the higher to the lower grade of the competition. The Ombudsman therefore

[21] As such, only one of the critical remarks in this case is deemed to have been replied to unsatisfactorily.

issued a further remark to EPSO and asked it to ensure that the information provided on its blog, concerning the minimum points needed for candidates to be invited to the assessment centre, is complete and accurate including in the case of candidates benefiting from a reassignment between different grades.

In response, EPSO recognised the importance of providing all candidates with accurate information concerning open competitions. EPSO stated that it had already taken measures to ensure that all online communication to candidates about the progress of competitions is complete and accurate.

EPSO's follow-up to the Ombudsman's further remark is satisfactory.

7. European Anti-Fraud Office (OLAF)

Case 1229/2014/ZA: OLAF should inform the complainant of the outcome of its investigation

The complainant informed OLAF about alleged mismanagement of EU funds in Greece. OLAF failed to acknowledge the complainant's correspondence and also failed to inform the complainant of any action it had taken. The Ombudsman opened an inquiry and inspected OLAF's file on the complaint. Following her intervention, OLAF acknowledged the procedural shortcomings in its handling of the case and apologised. It also informed the complainant of the steps it had taken on the substance of the case. OLAF also took steps to avoid similar situations in the future. The Ombudsman found that OLAF had taken adequate steps to address the procedural shortcomings that had occurred in this case.

To avoid similar problems in the future, particularly with respect to 'coordination cases'[22], the Ombudsman called on OLAF to enhance its procedures so as to ensure (i) consistent monitoring of coordination cases, which are transmitted to competent authorities without recommendations, and (ii) timely assessment and transfer to the competent authorities of information received.

OLAF informed the Ombudsman of its intention to duly consider her remarks in the context of revised instructions, which it was intending to publish, to clarify certain procedural aspects related to coordination cases.

The Ombudsman takes note of OLAF's statement. She will carefully review the instructions once they have been finalised by OLAF.

Case 45/2015/PMC: OLAF's actions following receipt of a whistleblowing report

The case concerned OLAF's actions after receiving a whistleblowing report about the European Aviation Safety Authority (EASA), which allegedly manipulated an aviation security inspection report. Following a preliminary assessment, the Ombudsman was concerned about OLAF's apparent decision to dismiss the case and to refer the whistleblower back to EASA, despite the fact that the whistleblower had consciously chosen to turn to OLAF rather than to EASA. The Ombudsman took the preliminary view that such a decision might impact

[22] One of three categories of OLAF cases, coordination cases are cases that OLAF transmits to national authorities, when it considers that they are better placed to conduct the required investigations, with OLAF subsequently coordinating with the national investigation.

negatively on the effectiveness of the whistleblowing provisions applicable to EU staff. She therefore decided to open an inquiry into the matter.

After inspecting OLAF's files, the Ombudsman found that OLAF had, in fact, considered if an investigation should be opened. In addition, OLAF had not dismissed the case but had asked EASA to examine the matter and to report back on the results of its investigation. Furthermore, OLAF had reserved the right to open a formal inquiry at a later stage. The Ombudsman therefore found that OLAF had dealt appropriately with the whistleblowing report.

However, the Ombudsman considered that OLAF could have provided better information to the whistleblower. She made a further remark to OLAF, inviting it to consider informing whistleblowers in a more explicit way that a decision not to take immediate action, but to transmit a case first to another EU institution or body for their assessment, does not imply that OLAF has dismissed the case. Instead, it should be considered as constituting an appropriate first step in assessing the grievance reported by the whistleblower. In reply, OLAF informed the Ombudsman that it will take her suggestion "*duly into consideration*".

The purpose of the Ombudsman's further remark was to avoid the need for whistleblowers to have to turn to the Ombudsman to obtain information on how OLAF has dealt with their case. OLAF's response to the further remark is non-committal; while strictly speaking it has agreed to act on that further remark, in so far as it will take it "*duly into consideration*", there is no commitment to acting in the spirit of the further remark in individual cases in the future. This is disappointing.

8. European Aviation Safety Agency (EASA)

Case 2114/2011/KM: EASA's allegedly unfair dismissal of a staff member based on a negative probationary period report

As outlined in the section above entitled 'Solutions accepted', the case concerned the dismissal of an EASA employee based on an overall negative assessment in his probationary period report. The complainant had argued that this was, in part, due to a dispute about the complainant's wish to continue his external lecturing activities, which was also mentioned in the report. The Ombudsman did not agree with EASA that it had acted correctly in refusing to allow the complainant to continue his lecturing activities and issued a critical remark. The Ombudsman also addressed a further remark to EASA in which she suggested that it consider reviewing its recruitment procedures to ensure that any promises made to incoming staff are based on a clear evaluation of the potential impact of such promises on the functioning of EASA.

In its reply, EASA stated that there was no evidence that the complainant had made a formal request to EASA to be allowed to carry out external lecturing engagements. It considered the report's reference to the complainant's external activities to be factually correct and fair. EASA also took the view that its current recruitment procedures are adequate for preventing a situation whereby a candidate would be led to believe that there is an oral commitment to derogate from the applicable rules, such as regarding external activities. However, EASA declared itself willing to remind selection panels not to deviate from the

applicable rules. EASA also pointed out that the induction training for newcomers covers the rights and obligations of staff related to outside activities.

The Ombudsman regrets EASA's unwillingness to acknowledge that the complainant's wish to continue his lecturing activities was legitimate. However, she welcomes EASA's statement that it will remind selection panels not to make commitments that go beyond the applicable rules.

Case 1171/2013/TN: Increasing transparency as regardsthe members of EASA's rulemaking groups

As outlined in the section above entitled 'Recommendations accepted', the Ombudsman inquired into certain aspects of EASA's work on EU rules on flight and duty time limitations and rest requirements for commercial airline transport. She made a further remark that EASA should consider adopting a decision to publish information available to it about the qualifications and expertise of the members of its 'rulemaking groups' (a group of experts assisting EASA in the drafting of the rules), after having informed the persons nominated as members of its intention to do so.

The Ombudsman's suggestion was based on her view that, by making public information about the expertise of rulemaking group members, EASA can reassure the public that the rulemaking process takes account of input from experts with the necessary qualifications, knowledge and experience. This transparency should ensure greater trust in the outcome of the rulemaking process. It should also increase the democratic legitimacy of the eventual legislation by allowing citizens to be better informed about the rulemaking process that precedes the legislative process.

In reply to the Ombudsman's further remark, EASA stated that it is fully committed to guaranteeing a high level of transparency to ensure trust and credibility, but that it will not publish information on the qualifications and expertise of the members of its rulemaking groups. According to EASA, the rulemaking groups do not make proposals on behalf of EASA, but merely support it in developing draft regulatory material. The credibility of its proposals is not based on the background of the members of rulemaking groups, but on the fully transparent, fact-based and consultative process that leads to the publication of an Opinion or a Decision. In addition, EASA considers that making background information about all the members of its rulemakings public would undermine administrative simplification and would not be proportionate in the context of its rulemaking activities.

The Ombudsman regrets EASA's unwillingness to publish information about the qualifications and expertise of the members of its rulemaking groups, which, she adds, would not necessarily have to be the members' CVs, as EASA suggests. The Ombudsman is still convinced that a solution could have been found, which would not have entailed a disproportionate administrative burden. It is difficult to see how a process can be "fully transparent" when certain information relating to the process is not.

9. European Banking Authority (EBA)

Case 1561/2014/MHZ: Investigation into the EBA's procedures for dealing with requests

The case concerned a delay by the EBA in dealing with the complainant's request for it to investigate an alleged breach of EU law by the Estonian Financial Supervisory Authority. The Ombudsman inquired into the issue and found that the EBA was able to justify its delay for the most part. For this reason, and also because the EBA apologised for the delay and undertook to improve its procedure, the Ombudsman did not find maladministration. Since, in the course of the inquiry, the EBA established internal deadlines for dealing with similar requests, the Ombudsman encouraged it to formalise these deadlines by amending its Rules of Procedure. She thus closed the case with a further remark asking that the EBA consider formalising the initial deadlines established by its project management tool by amending its 2014 Decision adopting Rules of Procedure for Investigation of Breach of Union Law (BUL RoP) accordingly.

The EBA responded to the Ombudsman's further remark, stating that the internal deadlines established for project management had enabled a complaint made in 2015 to be fully analysed within four months. A further month was then necessary to communicate this to the requester.

However, the EBA explained that it did not wish to further amend its Rules of Procedure for Investigation of Breach of Union Law, as it had been involved in litigation before the Board of Appeal of the European Supervisory Authorities and the General Court in 2015. This litigation revolved around the interpretation of Article 17 of Regulation (EU) No 1093/2010 in relation to the EBA's "*discretion to dismiss requests to investigate originating from information submitted by the public*". As a result of these actions, and given the positive results stemming from the new project management tool, the EBA wished to wait before making any amendments to the Rules of Procedure for Investigation of Breach of Union Law. However, the EBA stated that it has undertaken to inform requesters by when it would deal with their requests.

The Ombudsman welcomes the commitment of the EBA to inform requesters of the time frame for dealing with complaints and understands the need to wait before considering amendments to the Rules of Procedure for Investigation of Breach of Union Law.

10. European Food Safety Authority (EFSA)

Case 346/2013/SID: Alleged conflict of interest in the Working Group on Genetically Modified Insects

The complainant, a UK NGO that monitors developments in the field of genetic technologies, complained to the Ombudsman about EFSA's handling of alleged conflict of interest issues involving a member of an EFSA working group on genetically modified insects. The expert in question was employed by the University of Oxford, which has a direct financial interest in a biotechnology company that develops and promotes genetically modified insects.

In her decision, the Ombudsman found that, prior to the appointment, EFSA should have requested the expert concerned to provide it with details of the relationship between the university and the biotechnology company, as well as the mechanisms in place to ensure this relationship did not compromise the independence of the expert. It should then have studied those details with a view to determining if they were sufficient to remove even the appearance of a conflict of interest. By failing to do so, EFSA did not verify that the necessary mechanisms were in place to ensure the independence of the expert. The Ombudsman found this to be maladministration and made a critical remark that EFSA failed to ensure that those experts who work in academia declare all relevant information to EFSA. In addition, the Ombudsman noted that EFSA did not take adequate account of the changing nature of universities in its conflict of interest rules and its Declarations of Interests forms. She therefore made the further remark that EFSA should revise its conflict of interest rules, and the related instructions and forms it uses for declarations of interests.

In its reply, EFSA stated that it had carefully considered the Ombudsman's decision and found that its implementation would be problematic for several reasons. EFSA argued that: there is no clear legal basis for it to obtain information on the interests of the employers of experts appointed to working groups; that there is a lack of capability, or competence, to ensure the appropriate enforcement of the procedure both vis-à-vis the concerned experts and the bodies not directly subject to EFSA's authority; and that it would risk impacting on the availability of scientific experts and, in turn, EFSA's ability to fulfil its mission.

However, EFSA also stated that it had launched a project in May 2015 to reconsider its 'Independence Policy' and to examine, in detail, the balance to be struck between the conflicting imperatives of experts' independence and expertise availability. EFSA undertook to inform the Ombudsman about the outcome of its review process.

The Ombudsman is disappointed that EFSA explicitly rejected her remarks. The Ombudsman's remarks do not imply that EFSA cannot use experts from academia, but simply that it must check if those experts have conflicts of interest. This is entirely reasonable and feasible, and would clearly not make it impossible to obtain experts.

By way of mitigation, EFSA explained what alternative ways it is currently studying in order to enhance its regime on conflict of interests. The Ombudsman will examine the outcome of this process before considering what further steps to take on this important issue.

11. European Institute for Gender Equality (EIGE)

OI/7/2013/MHZ: Improving the internal functioning of the EIGE

The Ombudsman visited the EIGE as part of the Ombudsman's programme of visits to EU agencies aimed at spreading good practice among the agencies in their relations with citizens. The visit looked at (i) the Institute's initial contacts with the public, (ii) transparency, dialogue and accountability, (iii) recruitment, (iv) tenders and contracts, (v) conflicts of interest and (vi) whistleblowing. Further inquiries were deemed necessary as regards the EIGE's handling of

harassment complaints. The Ombudsman issued a decision dealing with the points raised during her inquiry and included further remarks in relation to the prevention of harassment, fixed-term traineeships and clarifying the relationship between the senior management and the staff committee. The EIGE took steps to improve its performance on all of these aspects.

The Ombudsman applauds the EIGE for having complied with the suggestions outlined in her decision. The Ombudsman also welcomes the Institute's response to her further remarks concerning the prevention of harassment, fixed-term traineeships and clarifying the relationship between senior management and the staff committee.

12. European Agency for the Management of Operational Cooperation at the External Borders (Frontex)

See Case OI/9/2014/MHZ above under 'Star cases'.

13. Europol

Case 1329/2014/EIS: EUROPOL introduces a new e-recruitment module following the Ombudsman's inquiry

The case concerned EUROPOL's recruitment procedures and the role that selection committees play in this context. The complainant had submitted two different job applications. He was not invited to an interview in either case. He questioned the procedures on the grounds that, in one of the selection procedures, he received higher points for the same work experience than in the other.

The Ombudsman inquired into the issue and found that there had been no maladministration. However, she made a further remark to EUROPOL, suggesting that it provide candidates with useful information on how they may request a review from the selection board before resorting to the redress avenues open to them under the Staff Regulations.

In its response to the Ombudsman's further remark, EUROPOL explained that while it does not intend to introduce an additional stage in the recruitment process, it introduced a new e-recruitment module in November 2016. This new module ensures that an automated notification is sent to candidates to inform them whether they have been shortlisted or not. It thus provides all candidates with information about the result of the shortlisting process, allowing them to contact EUROPOL at that stage, in line with the agency's Recruitment Guidelines. Additionally, the agency's Recruitment Guidelines provide for a feedback stage, prior to formal appeal proceedings by applicants. Hence, candidates may request feedback on their application after the date of the meeting that is convened to draw up the shortlist.

The Ombudsman is pleased to learn about EUROPOL's new e-recruitment module, which should help address the shortcoming identified in this case.

14. Executive Agency for Small and Medium-sized Enterprises (EASME)

See Case OI/8/2013/OV above under ‘Star cases’.

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