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## **Ombudsman's annual report 2013**

### **European Parliament resolution of 15 January 2015 on the annual report on the activities of the European Ombudsman 2013 (2014/2159(INI))**

(2016/C 300/04)

*The European Parliament,*

- having regard to the annual report on the activities of the European Ombudsman in 2013,
  - having regard to Article 228 of the Treaty on the Functioning of the European Union,
  - having regard to Article 43 of the Charter of Fundamental Rights of the European Union,
  - having regard to Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties <sup>(1)</sup>,
  - having regard to the European Code of Good Administrative Behaviour as adopted by the European Parliament in September 2001,
  - having regard to the principles of transparency and integrity in lobbying published by the Organisation for Economic Cooperation and Development (OECD),
  - having regard to its previous resolutions on the European Ombudsman's activities,
  - having regard to Rule 220(2), second and third sentences, of its Rules of Procedure,
  - having regard to the report of the Committee on Petitions (A8-0058/2014),
- A. whereas the annual report on the activities of the European Ombudsman 2013 was formally submitted to the President of Parliament on 15 September 2014, and the Ombudsman, Emily O'Reilly, presented the report to the Committee on Petitions in Brussels on 24 September 2014;
- B. whereas Article 24 TFEU lays down the principle that every citizen of the Union may apply to the Ombudsman established in accordance with Article 228;
- C. whereas Article 228 TFEU empowers the European Ombudsman to receive complaints concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role;
- D. whereas Article 41 of the Charter of Fundamental Rights states: 'Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union';

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<sup>(1)</sup> OJ L 113, 4.5.1994, p. 15.

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- E. whereas Article 43 of the Charter states: 'Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role';
- F. whereas this definition does not limit maladministration to cases where the rule or principle that is being violated is legally binding; whereas the principles of good administration go further than the law; whereas according to the first European Ombudsman, 'maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it'; whereas this requires the institutions, bodies, offices and agencies of the Union not only to respect their legal obligations but also to be service-minded and to ensure that members of the public are properly treated and fully enjoy their rights;
- G. whereas the notion of good administration should be broadened to one of better administration, understood as an ongoing continuous improvement process;
- H. whereas the main priority of the European Ombudsman is to ensure that citizens' rights are fully respected and the right to good administration reflects the highest standards as expected of the institutions, bodies, offices or agencies of the Union; whereas the European Ombudsman plays a vital role in helping the EU institutions become more open, effective and citizen-friendly with the aim of strengthening citizens' confidence in the Union;
- I. whereas Emily O'Reilly was elected European Ombudsman by the European Parliament at its plenary session of 3 July 2013 and took her oath on 30 September 2013;
- J. whereas 23 245 citizens called on the Ombudsman's services for help in 2013; whereas with respect to the above, 19 418 citizens received advice through the interactive guide on the Ombudsman's website, while 1 407 requests were for information; whereas 2 420 requests were registered as complaints (2 442 in 2012); whereas 2 354 actions were taken by the Ombudsman on complaints received in 2013;
- K. whereas it is important that the Ombudsman should provide more detailed information on the types of complaints format, so that comparisons can be made across the years between complaints received in electronic format via the Ombudsman's interactive website and complaints received offline;
- L. whereas in 2013 the Ombudsman opened 350 inquiries (465 in 2012), of which 341 were opened on the basis of complaints and 9 were own-initiative inquiries;
- M. whereas in 2013 the Ombudsman closed 461 inquiries (390 in 2012), of which 441 were complaints-based and 20 were own-initiative inquiries; whereas of the inquiries closed, 340 (77,1 %) were submitted by individual citizens and 101 (22,9 %) by companies, associations or other legal entities;
- N. whereas the inquiries closed in 2013 concerned the following: requests for information and access to documents (25,6 %), the Commission as guardian of the Treaties (19,1 %), institutional and policy matters (17,6 %), administration and the Staff Regulations (16,5 %), competitions and selection procedures (14,8 %), award of tenders or grants (9,5 %), and execution of contracts (7,4 %);
- O. whereas regarding the inquiries initiated by the Ombudsman in 2013, the following key topics may be identified: transparency within the EU institutions, ethical issues, participation of citizens in EU decision-making, EU-funded projects and programmes, fundamental rights, and culture of service;

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- P. whereas the most common issues in the field of transparency concern refusal of access to documents or information by the institutions, with meetings being held in camera, and lack of openness regarding appointments to EU expert panels; whereas public access to documents is one of the rights guaranteed under the Charter of Fundamental Rights of the EU;
- Q. whereas in 2013 the Ombudsman received numerous complaints relating to conflicts of interest or 'revolving door' practices involving senior figures moving between closely related public and private sector posts; whereas the EU administration must attach the utmost importance to exemplary ethical conduct; whereas the Ombudsman accordingly published a set of public service principles and ethical standards; whereas many NGOs maintain that the Commission is failing to deal with what they describe as systemic 'revolving door' practices;
- R. whereas the Ombudsman works closely with various networks, the most prominent being the European Network of Ombudsmen, which comprises 94 offices in 35 European countries; whereas complaints which fall outside the Ombudsman's mandate are referred to the member of the Network best placed to handle the case; whereas 52,5 % of complaints received were transferred to other members of the Network;
- S. whereas Parliament's Committee on Petitions is a full member of the European Network of Ombudsmen; whereas in 2013 the Ombudsman referred 51 cases to this Committee; whereas 178 cases were referred to the Commission and 503 to other institutions and bodies;
- T. whereas the Ombudsman also cooperates with other international organisations, such as the UN; whereas the Ombudsman, Parliament, the Commission, the Fundamental Rights Agency (FRA) and the European Disability Forum (EDF) together form the EU framework under the United Nations Convention on the Rights of Persons with Disabilities (CPRD); whereas this framework is tasked with protecting, promoting and monitoring the implementation of the Convention at the level of the EU institutions;
- U. whereas the annual report for 2013 does not contain exact figures on the percentage of complaints which fell either within or outside the Ombudsman's mandate; whereas it is essential to include concrete numbers in future in all annual reports, so that comparisons between years can be made and trends and tendencies regarding the (in) admissibility of complaints can be easily discerned; whereas according to the report, of a typical 100 complaints received 68 fall outside the Ombudsman's mandate and are either transferred to national or regional ombudsmen, forwarded to Parliament's Committee on Petitions, or referred to other complaint-handling bodies such as the European Commission, SOLVIT, Your Europa Advice or the European Consumer Centres; whereas a follow-up procedure and information on complaints transferred to other institutions or bodies are needed to ensure that citizens' affairs are handled impartially, fairly and within a reasonable timeframe;
- V. whereas of a typical 100 complaints received only 32 fall within the Ombudsman's mandate; whereas 17 of these do not lead to an inquiry (9 are deemed inadmissible and 8 are found admissible but are considered to contain insufficient grounds for opening an inquiry); whereas of a typical 100 complaints received 15 give rise to an inquiry; whereas 4 of these are settled during the inquiry, 4 lead to findings of no maladministration, 1 leads to a finding of maladministration and 6 are considered to contain no grounds for further inquiries;
- W. whereas 80 % (40 cases) of inquiries where maladministration was found were closed with critical remarks addressed to the institution concerned and 18 % (9 cases) were closed with draft recommendations, which were either fully or partially accepted by the institution; whereas in one case (2 %) the Ombudsman drafted a 'Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex'; whereas the number of Special Reports submitted by the Ombudsman averages one a year;

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- X. whereas the Special Report submitted to Parliament was the result of a comprehensive own-initiative inquiry concerning the obligations of Frontex in regard to the Charter of Fundamental Rights of the European Union, and was ultimately motivated mainly by the agency's response to the specific recommendations of the Ombudsman for redressing the absence of an appeals mechanism for asylum seekers;
- Y. whereas a Special Report is the last resort of the European Ombudsman for dealing with cases of maladministration by institutions, bodies, offices or agencies of the Union; whereas the Ombudsman should further explore her political powers and develop the instruments available to her;
- Z. whereas compliance with the Ombudsman's proposals in 2012 was 80 %; whereas the Commission, which accounts for the highest proportion of the Ombudsman's inquiries, had a compliance rate of 84 %; whereas every year the Ombudsman publishes a comprehensive account of how the EU institutions have responded to the Ombudsman's proposals for improving EU administration; whereas the 20 % non-compliance rate regarding the Ombudsman's proposals represents a serious threat that could lead to further erosion of citizens' confidence in the effectiveness of the European institutions;
- AA. whereas the European Commission is the institution concerning which the Ombudsman receives the highest number of complaints; whereas one of the investigations concluded in 2013 concerned documents regarding the UK's exemption clause relating to the Charter of Fundamental Rights of the EU;
- AB. whereas the average length of inquiries in cases closed by the Ombudsman in 2013 was 13 months; whereas 22 % of cases were closed within 3 months, 37 % within 3 to 12 months, 14 % within 12 to 18 months, and 27 % after more than 18 months;
- AC. whereas the Ombudsman's budget in 2013 was EUR 9 731 371 and whereas the Ombudsman's establishment plan consists of 67 posts; whereas maintaining sufficient budget and human resources is essential to ensure the efficiency of the Ombudsman's services and rapid responses to citizens' complaints;
- AD. whereas Emily O'Reilly has been the first woman elected to the position of European Ombudsman;
1. Approves the annual report for 2013 presented by the European Ombudsman; congratulates Emily O'Reilly on her first annual report as Ombudsman and welcomes her approach in terms of keeping up positive working relations and cooperation with Parliament, in particular with its Committee on Petitions; acknowledges that 2013 was a transition year and that a large part of the annual report relates to the work of Professor Nikiforos Diamandouros, the outgoing European Ombudsman, and pays tribute to his legacy;
  2. Commits itself to restoring Parliament's practice of inviting the Ombudsman to plenary immediately after his/her election;
  3. Gives its full support to the new Ombudsman's stated ultimate goal, which is to help strengthen the structures and institutions of accountability and transparency at European level, in order to promote good administration for every EU citizen and resident, and to improve the quality of democracy in the Union; reiterates the crucial role of the European Ombudsman in addressing citizens' concerns and helping bridge the wide gap that exists between them and the EU institutions;
  4. Stresses the importance of social media as a channel for communication, and encourages the Ombudsman's office to make greater use of such media in order to raise public awareness of the Ombudsman's activities and promote the rights of EU citizens; considers, however, that the further digitalisation of the Ombudsman's services should not lead to the exclusion of citizens who do not have access to or cannot use the internet; calls on the Ombudsman to pay special attention to the needs of such citizens, so that every EU citizen is ensured equal access and can thus make full use of the Ombudsman's services;

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5. Notes that the Ombudsman's annual report has been revamped for 2013 and that in addition to the traditional print version, a downloadable interactive version is now also available in e-book format; further notes that the report has been split into two parts, one part being an easy-to-read reference text setting out the most important facts and figures on the Ombudsman's work in 2013, and the other containing an in-depth account of key cases investigated by the Ombudsman in 2013 <sup>(1)</sup>;

6. Commends this new approach on the Ombudsman's part, which was adopted to reflect her desire to make her institution as accessible and user-friendly as possible; encourages interested parties to read the in-depth investigations section entitled: 'Good administration in practice: the European Ombudsman's decisions in 2013', and to take to heart the Ombudsman's considerations and recommendations;

7. Notes that in 2013 the Member State with the largest number of complaints was Spain (416), followed by Germany (269), Poland (248) and Belgium (153); notes that as regards inquiries opened per Member State Belgium (53) takes the lead, followed by Germany (40), Italy (39), and Spain (34);

8. Notes that transparency-related issues once again topped the Ombudsman's list of inquiries closed (64,3%), representing an increase on 2012 (52,7%); notes that the other key topics in complaints were ethical issues, citizens' participation in EU decision-making, EU-funded projects, fundamental rights, and culture of service;

9. Considers that transparency, openness, access to information, respect for the rights of citizens and high ethical standards are essential for building and maintaining citizens' and residents' trust in the European civil service; emphasises that trust between citizens and residents and the institutions is of paramount importance in today's difficult economic situation; agrees with the Ombudsman that transparency is a cornerstone of an advanced democracy, making it possible to scrutinise the activities of public authorities, evaluate their performance and call them to account; agrees equally that openness and public access to documents form an essential part of the system of institutional checks and balances; acknowledges the right of citizens to privacy and to protection of their personal data;

10. Notes that recommendations and critical remarks are not legally binding, but stresses that nevertheless the EU institutions can use them as an opportunity to fix a problem, learn a lesson for the future and avoid reoccurrence of similar cases of maladministration; urges all institutions, bodies, offices and agencies of the Union to cooperate fully with the Ombudsman and ensure full compliance with her recommendations, and also to make full use of the critical remarks; recalls that the Charter of Fundamental Rights (Article 41) includes the right to good administration as a fundamental right of citizens of the European Union;

11. Notes that a large majority of inquiries conducted by the Ombudsman over the past year (64,3%) concerned the European Commission; recognises that the Commission is the institution whose decisions are most likely to directly affect citizens, civil society organisations and businesses; understands that the Commission is therefore the main object of public scrutiny; notes with concern, however, that the share of complaints concerning the Commission has risen compared to 2012 when it was 52,7%; encourages the Ombudsman to examine the reasons for this increase in order to help improve the Commission's administration and thus increase the credibility of the EU institutions as a whole; calls on the new Commission to take rapid action to improve its performance with the objective of reducing the number of complaints against it; considers that the involvement of the Commission in opaque entities such as the Troika does not tend to promote transparency and accountability within the Union, nor does it respect the principle of subsidiarity;

12. Notes with concern that the percentage of complaints concerning EU agencies has almost doubled, from 12,5% in 2012 to 24% in 2013; suggests that the Ombudsman indicate whether this increase was the result of greater public awareness of complaints procedures or was caused by other factors, such as possible non-compliance of EU agencies with the Ombudsman's recommendations from previous years; encourages the Ombudsman to monitor developments in the agencies and report back in good time; supports the Ombudsman's plans to reach out to the various agencies with a view to emphasising the importance of good administration, good complaint handling, and a culture of service;

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<sup>(1)</sup> <http://www.ombudsman.europa.eu/en/activities/annualreports.faces>

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13. Is pleased to note that the percentage of complaints concerning the European Personnel Selection Office (EPSO) more than halved in 2013, down from 16,8 % in 2012 to 7,1 % in 2013; is equally pleased that the percentage of complaints against the European Parliament has decreased from 5,2 % in 2012 to 4,3 % in 2013; acknowledges the work of the Ombudsman and EPSO in bringing down the number of complaints against that agency;

14. Notes that in 2013 the Ombudsman published a new version of the European Code of Good Administrative Behaviour; calls on all the institutions to fully respect and implement this code; calls on the new Commission to adopt common binding rules and principles on administrative procedure in the EU's administration, and in particular to submit a draft regulation to this end; recalls that Article 41 of the Charter of Fundamental Rights of the European Union stipulates that 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union';

15. Encourages all EU institutions, bodies and agencies to improve their performance by deepening their commitment to good administration and to the principles of a culture of service to citizens; calls on them to assist the Ombudsman by speedily responding to her inquiries and to collaborate more closely with her in order to reduce the deadlines in the inquiry process for complaints; supports the Ombudsman in her efforts to further speed up the inquiry process and reduce the response timeframe for processing complaints with a view to serving citizens who exercise their rights in a timely and proper manner;

16. Notes that overall compliance with the Ombudsman's recommendations stood at 80 % in 2012, slightly down from 82 % in 2011; supports the Ombudsman in her ambition to improve the compliance rate; urges the Commission, in particular, to make all efforts to improve its compliance rate; is concerned at the 20 % non-compliance rate, and urges the institutions, bodies, offices and agencies of the Union to respond and react within a reasonable timeframe to the critical remarks of the Ombudsman and to make all the necessary efforts to improve their follow-up rate through the prompt implementation of the Ombudsman's recommendations and critical remarks; looks forward to the specific information that will be provided in the Ombudsman's upcoming annual report on compliance in 2013;

17. Notes that the Ombudsman found maladministration in 10,8 % of the inquiries closed in 2013 and that in 80 % of these cases she addressed critical remarks to the institution concerned; notes that in 18 % of maladministration cases the Ombudsman's draft recommendations were fully or partly accepted by the institution;

18. Notes that the Ombudsman submitted one Special Report to Parliament, the subject of which was the absence of a mechanism in the Frontex agency for dealing with complaints about fundamental rights infringements arising from its work; is confident that this Special Report will be the subject of a report to be drawn up by its Committee on Petitions in cooperation with its Committee on Civil Liberties, Justice and Home Affairs;

19. Encourages the Ombudsman to deepen her relations and cooperation with the various networks, in particular the European Network of Ombudsmen and the framework under the United Nations Convention on the Rights of Persons with Disabilities; recalls Parliament's call in the Committee on Petitions' Annual Report of 2012 for the setting-up, by Parliament, of a network encompassing petitions committees in the Member States, which could be supplementary to the European Network of Ombudsmen;

20. Recalls that its Committee on Petitions is a full member of both networks mentioned above; notes that in 2013 the Ombudsman referred 51 complaints to the Committee; considers that, given the parallel and sometimes complementary work that the Committee on Petitions does in ensuring that EU legislation is duly implemented at every level of administration, more resources should be devoted to this committee, by analogy with those of the European Ombudsman;

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21. Takes note of the Ombudsman's new strategy 'Towards 2019', which comprises three main pillars indicated by the words Impact, Relevance and Visibility; understands that the Ombudsman intends to make a larger impact by conducting strategic investigations into systemic problems, that she wishes to strengthen her role by contributing to key EU debates, and that she intends to increase her visibility by enhancing her outreach to stakeholders and attracting attention for important cases;
  22. Urges the Ombudsman to continue her efforts to improve communication channels and build on the work done in the framework of the European Year of Citizens 2013, as well as to improve the provision of information to European citizens so that they are properly informed on the Ombudsman's services and sphere of responsibility;
  23. Reiterates the importance of the European Citizens' Initiative as a new tool for enabling citizens' direct involvement in the decision-making process in preparing European legislation;
  24. Welcomes a number of important investigations which the Ombudsman has launched, such as the inquiries concerning the lack of transparency in the Transatlantic Trade and Investment Partnership (TTIP) negotiations, whistleblowing in the EU institutions, lack of transparency in Commission expert groups, 'revolving door' and conflict of interest cases, fundamental rights in cohesion policy, and the European Citizens' Initiative; looks forward to the findings of these inquiries;
  25. Welcomes the decision of the Council of the European Union to publish the EU negotiating directives for the ongoing negotiations on the TTIP between the EU and the US; equally welcomes the decision of the Commission to publish more EU negotiating texts and to allow broader access to other documents in the context of the TTIP negotiations; considers that the fact of closely monitoring transparency in the TTIP negotiations has strengthened the role of the Ombudsman as guardian of EU transparency; endorses the Ombudsman's call for a transparent policy approach and an information campaign on TTIP, to be adopted by the European institutions; commits to following up on the outcomes of the consultation on TTIP transparency, inter alia by considering petitions received on this issue, in particular in view of the potential impact of TTIP and other trade negotiations on the lives of European citizens;
  26. Instructs its President to forward this resolution and the report of the Committee on Petitions to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, and the Member States' Ombudsmen or similar competent bodies.
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