



Secretary-General

Note to the attention of Mr Benedek Javor,
Rapporteur for the Committee on Budgetary
Control of the European Parliament

Report on the follow-up to the discharge for the financial year 2015

In accordance with Article 319(3) of the TFEU and Article 166 of the Financial Regulation, the European Ombudsman has taken steps to act on the observations accompanying the European Parliament's discharge decision for the financial year 2015.

The present follow up report seeks to provide information and summarise the actions taken by the European Ombudsman in response to the European Parliament's discharge resolution.

The requests and observations made in the resolution are set out below and the responses in the text boxes.

Point 3. Stresses that the Ombudsman's budget is purely administrative and amounted in 2015 to EUR 10 346 105 (EUR 9 857 002 in 2014); stresses, however, that introducing PBB should not apply only to the Ombudsman's budget as a whole but should also include the setting of specific, measurable, attainable, realistic and time-based (SMART) targets to individual departments, units and staffs' annual plans; in this respect, calls on the Ombudsman to introduce the PBB principle more widely in its daily operations;

The European Ombudsman acknowledges the request of the CONT Committee and will endeavour to allocate resources to introduce PBB more widely in the coming years.

Point 4: Notes that of the total appropriations, 92,32 % were committed (compared to 97,87 % in 2014) and 86,19 % paid (compared to 93,96 % in 2014), with a utilisation rate of 92,32 % (compared to 97,87 % in 2014); notes that the utilisation rate continued to decrease in 2015;



In 2016, the implementation rate increased to 95.40%.

The Ombudsman would like to underline that the salaries of the staff represent a prominent part in the institution's budget. Variations which are not within the Ombudsman's remit, such as the yearly adjustments of salaries and weightings can have a disproportionate impact on the overall utilisation rate.

Point 6. Acknowledges that the Ombudsman is a frontrunner in transparency among the Union institutions; calls, nevertheless, for further improvement of the transparency of recruitment conditions and processes; asks the Ombudsman to indicate the principal adviser's tasks and to clarify his or her position in the organisational chart; in light of the changes before adoption of the organisational structure of the institution in November 2015, asks the Ombudsman to ensure that an updated version of its organisational chart is available on its website;

The Ombudsman systematically publishes notices of vacancies or calls for expression of interest in selection procedures. During the selection process, candidates are regularly informed and, whenever they apply for it, candidates are provided with detailed reasons for the decisions taken during the selection process regarding their application.

The organisational chart of the Ombudsman's office is available in the following section of the website:

<http://www.ombudsman.europa.eu/en/atyourservice/team.faces>

This section is kept up-to-date.

In November 2015, the Ombudsman decided to create a flatter structure in her office, by reducing the top management from three posts to one post, namely the Secretary-General. The two remaining Director posts were used for different, non-managerial assignments, one of which included highly specialised legal advice to the Secretary-General. Hence the transformation of the post of Director into the post of a Principal Legal Advisor. The Principle Legal Advisor to the Secretary-General is, since 2016, seconded in the interest of the service to the Court of Justice of the European Union, which pays his salary. The position is therefore not available in the Ombudsman's organisation chart.

Point 7: ... is concerned about the "internal revolving door" between the Ombudsman and the other institutions which might be under scrutiny of the Ombudsman or between the other institutions which might scrutinising each other's work; calls on the Ombudsman to analyse the situation and to work out rules in order to avoid conflicts of interests if it considers it to be necessary;

The Ombudsman has been constantly aware of this issue, and in addition, has adopted a further guide on ethics and good conduct on 5/07/2017, which, deals, among other things with the issue of internal 'revolving doors'. Its section on conflicts of interest provides the following:

As a rule, staff members may not, during the performance of their duties, deal



with any matter in which they have a direct or indirect personal interest that may compromise their independence and, by extension, the Ombudsman's interests.

In addition, staff members should take the initiative of informing their hierarchy immediately of any potential issue giving rise to a conflict of interest. A staff member should thus communicate to the administration any situation where they believe that a conflict of interest, or an appearance of a conflict of interest, has arisen and take measures to avoid such situation occurring in the first place. To implement this proactive approach, for example, a staff member needs to declare all interests when joining the Ombudsman's Office, so as to allow the hierarchy to allocate to the staff member tasks which have no connection with those interests.

In case of doubt, staff members may obtain the advice of someone not directly involved and/or contact the Ethics Officer(s).

Furthermore, in addition to the general obligation under the Staff Regulations, staff members may not, for a period of one year following their recruitment, deal with a complaint or inquiry, or a tender or other procedure, in which they were involved or had a direct or indirect interest in their previous employment. Again, in addition to the general obligation under the Staff Regulations, any incoming staff from other EU institutions, bodies, offices or agencies who draft, or are part of the approval circuit for inquiries, must not, for one year, deal with cases involving their former DG, department, division or equivalent. This 'cooling off period' on cases is two years for senior staff (i.e. Directors, Secretary-General, and Head of Cabinet).

Point 9. Acknowledges the key role that the Ombudsman played in the process of introducing internal rules for the protection of whistleblowers under Article 22(a) to (c) of the Staff Regulations in the Union institutions by the end of 2015; asks the Ombudsman to monitor the implementation of those rules on an ongoing basis and to evaluate whether they provide appropriate protection for Parliament's accredited parliamentary assistants;

By its very nature as a complaint-handling body, the Ombudsman can monitor the implementation of the institutions' internal rules on whistleblowing by inquiring into relevant complaints that she receives. The Ombudsman is one of the bodies mentioned in Article 22b of the Staff Regulations to whom a whistleblower may choose to disclose information.

The importance of the new provisions introduced in Article 22(c) of the Staff Regulations is evidenced by the Ombudsman's experience in dealing with complaints from whistleblowers. Most cases dealt with by our office in this area come from individuals who allege that they have not been taken seriously enough, that their administration has not adequately followed up on their reports, that they have not been kept informed of any follow up action (in other words, they have no feedback as to whether they were right to blow the whistle in the first place or not) and that they have faced retaliation.



With the rules and policies on whistleblowing now in place in the EU administration, the Ombudsman continues to reflect on whether more proactive work is required on her side.

Point 10. Encourages the Ombudsman in its preparation of rules on the prevention and fight against harassment;

The Ombudsman's internal rules on the prevention and fight against harassment are currently being drafted and internal consultations are ongoing. Adoption by the Ombudsman is expected before the end of 2017.

Point 11. Acknowledges the importance of the Ombudsman's strategic and own initiatives and invites the Ombudsman to inform the discharge authority regularly about the impact of its inquiries; reiterates that the Ombudsman's first priority should be to address complaints from citizens within a reasonable time frame; asks the Ombudsman to interpret maladministration as widely as possible when performing its duties and to develop closer cooperation with Parliament's Committee on budgetary control in its strategic work;

As regards informing the discharge authority regularly about the impact of its inquiries, the Ombudsman's Annual Report and the 'Putting it Right' report (how the institutions complied with the Ombudsman's recommendations) together provide a comprehensive account and analysis of the Ombudsman's work and impact. Both reports are sent to the EP and published on line. They were also attached to the Annual Activity Report for 2016. The Ombudsman also regularly circulates her 'MEP newsletter' to all Members with up-to-date news of her activities, and her staff regularly keep Members informed of the outcome of her work.

In terms of developing closer cooperation with Parliament's Committee on budgetary control in its strategic work, the Ombudsman welcomed the opportunity to address the Committee several times already, for example to present the outcome of her inquiry into Commission Special Advisors. She would be happy to do so on a more regular basis in future.

Dealing with complaints from citizens in a timely manner remains the Ombudsman's first priority. The Ombudsman has, in this context, made significant progress in continuously reducing the time needed to process complaints and to complete complaint-based inquiries. The Ombudsman is examining ways to make further progress, with limited resources available, including by way of speeding up the processing in time-sensitive cases, such as access to documents complaints from citizens, where the timely resolution of cases is important.

Point 12. Acknowledges the new definitions of public and non-public interest introduced by the implementing provisions for sorting the incoming complaints; asks



the Ombudsman to inform the discharge authority as to how those definitions affected its performance;

The effect of considering that a case is in the public interest implies that:

- the Ombudsman may ask an institution to deal with the inquiry steps more quickly (requests for replies);
- the Ombudsman may ask the institution to reply to a proposal for a solution more quickly;
- the Ombudsman can make greater efforts to inform the public about the case;
- the Ombudsman will make greater efforts to keep Parliament informed about the case;
- the Ombudsman may ask more senior staff to dedicate more time to such cases so as to ensure that the outcome of the case is optimal.

The process is made possible by the overall enhancement of the efficiency and effectiveness of all case handling, which frees up enough resources for reinforcing the handling of cases that affect the wider public the most. Thus, the increased focus on inquiries which are “in the public interest” does not give rise to any reduction in the efficiency and effectiveness of other inquiries.

Point 14. Notes the results achieved in the complaints handling in 2015 and welcomes the fact that the Union institutions complied with the Ombudsman’s proposals at a rate of 90 %; calls on the Ombudsman to provide a breakdown of compliance of the Union institutions with its proposals in its annual activity reports; asks the Ombudsman to provide an analysis of the possible reasons of non-compliance and asks the Union institutions to improve their compliance rate further;

The “Putting it Right” report, which provides an analysis of how institutions complied with the Ombudsman’s recommendations and a breakdown per institution, was attached to the 2016 AAR.

In terms of the reasons for non-compliance, these are included in the detailed analysis of the responses to the Ombudsman’s remarks, recommendations and proposals annexed to the “Putting it Right” report. By way of example, the 2015 report contains examples of cases in which the institutions (i) continued to contest the Ombudsman’s finding of maladministration, (ii) reiterated the same unconvincing arguments submitted in the course of the Ombudsman’s inquiry, (iii) disagreed with the Ombudsman’s legal analysis, (iv) refused to acknowledge wrongdoing.

Point 16. Regrets, however, the clear geographic imbalance at middle and senior management level, and, in particular, the overrepresentation of managers emanating from the Member State of which the Ombudsman is a national; calls on the Ombudsman to ensure a sustained correction of this situation;

The number of managers from the Ombudsman’s Member State is three from ten managers in the Office. Two of the three occupied managerial positions in the Office for many years before the election of the present Ombudsman and



are officials. The third manager is her head of Cabinet and joined at the beginning of her mandate. It is difficult therefore to envisage this situation changing in the near term.

Point 17. Notes the Ombudsman's plan to comply with the inter-institutional agreement to reduce staff by 5 % over a period of five years and asks to be informed on how that reduction matches the 2016 estimates to create five new posts;

The Ombudsman has achieved the required 5% reduction.

The estimates referred to were amended in the consolidated version of the estimates formally presented by the European Commission to the budgetary authority for 2016. The final version, which was the one discussed by Council and Parliament and ultimately adopted, foresaw the reduction of the establishment plan by one AST (assistant) post and the replacement of a Seconded National Expert in charge of disability by a more permanent Disability and Fundamental Rights Officer on a newly created AD (administrator) post. Although the overall number of staff in the establishment plan remained unchanged, the aforementioned operation resulted in the net decrease of one member of staff.

Point 18. Is concerned about the two complaints made to the European Data Protection Supervisor against the Ombudsman in 2015 and asks for details of those complaints to be provided to Parliament's Committee on Budgetary Control;

The first complaint to the EDPS concerned the EO's refusal to give access to personal data concerning the complainant contained in a complaint to the EO. The EO re-evaluated her position on the basis of the EDPS' request and released the data. The EDPS then closed the case.

The second EDPS complaint concerned own-initiative inquiry OI/2/2014/PD. In its decision, the EDPS held that when publishing her decision in the inquiry, the Ombudsman should omit personal data such as the name and surname of the person concerned by the inquiry. The Ombudsman complied with this view in her decision.

The Ombudsman's Office is, in close cooperation with the EDPS, reviewing the Office's procedures for handling personal data of third parties in complaints and inquiries.

Point 19: Welcomes the consistent application of the Eco-Management and Audit Scheme (EMAS) rules, the dematerialisation of documents, the creation of a permanent green mobility scheme and the use of video conferencing for meetings; encourages further application of the principles of green public procurement and calls on the Ombudsman to establish rules and a budget for carbon offsetting;

The Ombudsman takes note of the request and will explore how best to implement it.



Point 20: Welcomes the Ombudsman's clarification for the absence of a building policy, as its services are hosted by Parliament, and asks to be informed of any developments or changes with regard to the current situation;

The Ombudsman's cooperation with the European Parliament as far as the institution's premises are concerned have proven to be very effective since 1995. The Ombudsman does not consider it necessary to radically change the long lasting cooperation in this field and is pleased to report about a recent consolidation of the modalities agreed by Parliament and the Ombudsman as far as the allocation of office space is concerned. A copy of the new Memorandum of Understanding, which provides for clearer and updated provisions, is enclosed.

Point 22: Expects the Ombudsman to continue to strive for consistent quality in its annual activity report and asks the Ombudsman to provide a comprehensive annual impact report, which is an important tool for the assessment of its work;

The Ombudsman's Annual Report and the 'Putting it Right' report (how the institutions complied with the Ombudsman's recommendations) together provide a comprehensive account and analysis of the Ombudsman's work and impact. Both reports are sent to the EP and published on line. They were also attached to the Annual Activity Report for 2016.

Date: 29/09/2017

Beate Gminder

Enclosure: Memorandum of Understanding Ares(2017)4686910

