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THE OPERATIONAL EFFECTIVENESS OF THE EUROPEAN OMBUDSMAN

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Abstract

The European Ombudsman, which constitutes one of the building blocks of the democratic governance structure of the European Union, was created with a view to protect fundamental rights and freedoms and ensure the settlement of good administration in the Union institutions and bodies. Established as an institution bearing the role of a mediator, the European Ombudsman has been expected to promote the relationship between the Union and its citizens. In case of any dispute between the citizens and the institutions and bodies of the Union, its primary concern is to resolve it. This paper investigates how effective the European Ombudsman operates in practice in dispute resolution. The operational effectiveness of the institution in question will be evaluated in the light of data included in thelast five-year annual reports of the institution. Based on the findings, this study will also seek an answer to the question how the European Ombudsman plays a role in achieving those aforesaid goals in the administrative domain of the Union.

Keywords: European Union, European Ombudsman, Good Administration, Operational Effectiveness , Dispute Resolution.

Introduction

The European Union (EU) integration process is sustained based on the values of democracy, the rule of law, and respect for fundamental rights and freedoms. In order to safeguard and ensure the continuity of all these values, the EU has been equipped with various institutions and bodies. One of those institutions, which was created for the purpose of strengthening the institutionalization of the idea of democratic and human rights-oriented Europe, is European Ombudsman (EO).

The EO intends to enhance the principle of democracy in the Union (Perillo, 2005: 55; Peters, 2005: 732). It also targets at ensuring the Union institutions[2] to lead transparent, open and good administration, which are themselves a vital part of democratic culture, as well (Gradin and Jacobsson, 2005:163). Thus, by the creation of the EO, it is aimed to make the Union institutions more democratic and transparent. In addition, it endeavours to contribute to citizen-oriented Europe by protecting the individuals against the administrative bodies and

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[2] For brevity, the term ‘institution’ will be usedin this study to refer to all the EU institutions, bodies, offices, and agencies, which fall within the jurisdiction of EO.

building trust between the institutions of the Union and its citizens. When viewed from this aspect, the EO was created to bridge the gap between the Union citizens and institutions, as well (Vogiatzis, 2014: 106). It, in a sense, serves as a communicative tool between the Union citizens and institutions, which is considered of paramount importance for those two actors in reaching a more democratic and human rights-oriented atmosphere across Europe.

The EO is not only an important part of the democratic framework of the EU, but is also crucial to ensuring all institutions are reminded of their democratic obligations (Perry, 2005: 185). It urges those institutions to operate within the framework of good administration. In cases where the Union institutions do not respect the citizens' "right to good administration", the EO serves as a complaint mechanism for those citizens who claimed to be wronged. Acting as a dispute resolution mechanism, the EO mediates between the EU citizens and institutions by receiving and dealing with the complaints concerning the institutions in question and assists those citizens in the defence of their rights before the administrative authorities of the Union.

The EO acts as a non-judicial and external control of the EU institutions in relation to poor administrative practices (Maria and Pino, 2011: 423). It is authorized to monitor the activities carried out by the Union institutions, including the legislation. As an independent and impartial body that can keep the EU administration responsible, it exposes the Union institutions to standard sets of rules and procedures, or scrutiny by agents who are dedicated to a single task but responsible for applying it across the entire EU institutional system (Peterson and Shackleton, 2002: 366).

The task of the EO is most commonly considered as the non-judicial review of disputes between the citizens and institutions of the Union (Heede, 1997: 587). In this regard, to what extent the EO will be effective in averting maladministration and promoting good administration, contributing to the democratic culture of the Union, narrowing the gap between the Union institutions and its citizens and implementing the international human rights standards at the supranational level is dependent on how successful it operates in practice by, resolving the disputes between the citizens and institutions of the Union.

Within this context, this paper examines the operational effectiveness of the EO based on its success in relation to dispute resolution through, for instance, the proportion of cases settled, and friendly solution proposals and recommendations followed by the related institutions. It will begin by a brief presentation on the appearance and inclusion of EO into the Union's institutional structure. Then it will evaluate the performance of the EO relying on the aforementioned indicators through its last five-year annual reports.[3] Thus, the scope of this study is restricted to the performance of the EO based on the last five year reports. The reason why the last five year reports are selected as the baseline rests on two grounds. On the one hand, the statute of the EO was undergone revision in 2008. This revision strengthened the EO’s powers of investigation, which likely caused differences in terms of the operational effectiveness of the EO between the years before and after 2008. On the other hand, the reports, since 2008, have been displaying more illustrative and comprehensive account of the EO’s core bussiness of complaint-handling. By means of the findings explored in this study, this paper will also be expected to shed light on the role the EO plays in achieving its targets noted above.

[3]For the annual reports in question, the reader is referred to EO Annual Reports (2008-2012). Retrieved From http://www.ombudsman.europa.eu/activities/annualreports.faces

European Ombudsman

The idea of creating an ombudsman at the European level was first mooted in the mid-1970s. A number of the European Parliament members from Denmark, which joined the EU in 1973 as a result of the first enlargement and which had a long tradition of national ombudsman system *vis-a-vis* the other member states in that period, requested comments on this issue from the European Commission and the Council. The basic idea behind such an initiative was to complement the European Parliament's powers of scrutiny in relation to the other Union institutions (Biering, 2005: 38). However, both the Council and Commission regarded the establishment of such an institution redundant mainly on the grounds that the citizens of the EU had already had the opportunity to submit their complaints in relation to the Union's activities to the European Parliament through the Committee on Petitions. Nevertheless, the issue was taken up by the Council and discussed at a meeting in Paris from 18 to 24 April 1974, but no result was achieved.

The attempts to establish a European Ombudsman reappeared in 1979, when the European Parliament adopted a resolution,[4] which contained a concrete proposal for establishing it. But, the Parliament failed to follow up on the resolution and once again the process resulted in failure (Biering, 2005: 39). Following this unsuccessful initiative, the issue was raised again in 1985 by the Adonnino Committee, which was appointed to explore ways of creating a "Citizens' Europe" (Magnette, 2005: 107). The idea was briefly touched upon in the Committee's Report *On a People's Europe*on 28 to 29 June 1985. However, the issue had not been resolved till the intergovernmental negotiations held in 1990-1991, which led to the Treaty of Maastricht.

It was indeed the Maastricht Treaty, (Treaty on European Union, 1992) which paved the way for the creation of a European Ombudsman as part of the European citizenship project. After nearly 20 years, when the idea to create it was first evoked, the institution was eventually established by the Treaty in question signed on 7 February 1992 and entered into force on 1 November 1993. The first incumbent was elected by the European Parliament on 12 July 1995 and commenced work in September of the same year.

The Article 8d of the Maastricht Treaty (Article 24 of new Lisbon Treaty), which regulates the European Citizenship, inserts the right to apply to the EO into the rights of the citizens of the Union in addition to the right to petition the European Parliament. The Article 138e (Article 228 of new Lisbon Treaty) further sets out the competences and duties of the EO. Pursuant to this provision, the EO is empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions,[5] with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.[6] Thus, the EO, serving as an agent of the Parliament, hears complaints from European citizens who believe that they have been the victims of unfair treatment or maladministration by a Union institution (McNaughton, 2003: 231).

[4] Resolution on the appointment of a Community Ombudsman by the European Parliament, 11 May 1979.

[5] The Treaty on the Functioning of the European Union (TFEU) extends the Ombudsman's mandate from complaints concerning maladministration in the activities of "Community institutions or bodies" to "Union institutions, bodies, offices, or agencies" (Art 228).

[6] The Lisbon Treaty changed the names of the Court of Justice of the European Communities and the Court of First Instance. They are now referred to, collectively, as the Court of Justice of the European Union and separately as the Court of Justice and the General Court respectively. (Horizantal Amendments, 2/n)

In addition to the Maastricht Treaty, which marks the origin of the EO, further details regarding the institution were laid down in the *Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties*[7] (henceforth the Statute) and *Decision of the European Ombudsman Adopting Implementing Provisions*[8] (henceforth the Decision).

The control criterion for the EO is good administration (Kofler, 2008: 173). He is supposed to promote good administration[9] and prevent maladministration.[10] In general, what he practically deals with are misuse of power, procedural incorrectness, prolixity of proceedings, denial of giving information, discrimination and inactivity (Mokra, 2008: 215). To protect human rights and freedoms is also included within the boundary of his mandate. He is thus considered to be the guard of these rights within the EU, as well (Serzhanova, 2011: 83).

To achieve its aims, he is vested with the powers of investigation, recommendation and reporting. First of all, he is empowered to conduct an enquiry on his own initiative or following a complaint for any possible instances of maladministration originating from the Union institutions. His investigatory power encompasses having access to the information and documents which have relevance for the case investigated, pursueing his inquiries on the spot and commissioning studies or expert reports, as he considers necessary to the success of an inquiry. Community officials and other servants are obligated to testify and give evidence at the request of the EO. Next, in cases where the EO finds maladministration, he is authorized to submit recommendations to the related institutions for the resolution of the dispute between the complainant and the complained institution. Finally, the EO is also entitled to submit both special reports to the European Parliament and to the institution concerned, which may involve his recommendations, and also annual reports to the European Parliament on his activities as a whole, including the outcome of his inquiries (Statute art. 3, Decision art. 5).

On the other hand, it should be borne in mind that the EO is not empowered to give binding decisions to the institutions in question. His decisions are advisory and have no suspensive effect on the administrative procedures concerned (Harden, 2000: 236). But even though his decisions, recommendations and reports are not binding for the EU institutions concerned, they are employed as a means to create public pressure on them by displaying their

[7] Adopted by Parliament on 9 March 1994 and amended by its decisions of 14 March 2002 and 18 June 2008.

[8] Adopted on 8 July 2002 and amended by decisions of the Ombudsman of 5 April 2004 and 3 December 2008.

[9] Following the establishment of EO, the notion of "good administration" was then guranteed as a fundamental right in the "European Charter of Fundamental Rights", which was adopted in 2000 and then became part of the binding primary law with the entry into force of the Lisbon Treaty in 2009. Article 41 of the Chart sheds light on what is meant by good administration by providing 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." Furthermore, in 2001 the European Parliament adopted the "European Code of Good Administrative Behaviour", proposed by the EO in his draft recommendations and Special Report. The Code serves as a guide informing European institutions and bodies, as well as officials, of principles that must be complied with during their activities.

[10] Although the legal texts concerning the establishment and working of the EO lack what is meant by maladministration, the first EO Jacob Söderman gave the following definition in the EO Annual Report 1995, which was subsequently approved by the European Parliament: "there is clearly maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and the Court of First Instance."

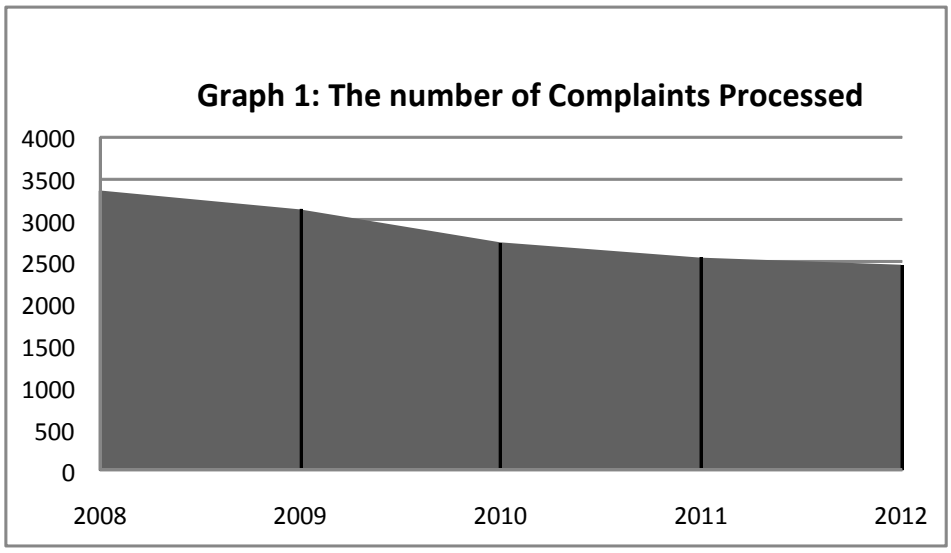
maladministration practices. They, thus, urge those institutions which do not want to incur loss of image and trust in the eyes of EU citizensto adapt themselves to better administration.

Operational Effectiveness of the EO

As noted previously, to what extent the EO will be effective in building good governance and protecting human rights is dependent on how successful he is in resolving the disputes between the citizens and institutions of the Union. His success at this point specifically and closely concerns the rate of cases either settled by the institutions themselves complained against or resolved by a friendly solution through the intervention by the EO; and the rate of cases to which positive reactions are given by the institutions as a reply to the EO's critical remarks and draft recommendations.

The EO, serving as a dispute resolution mechanism, is tasked with seeking a solution for the disputes with the institution concerned to eliminate the instance of maladministration and satisfy the complainant (Statute, art. 3(5), Decision, art. 6). During this resolution process, the EO engages in continuous dialogue with the institution in question, making draft recommendations, receiving detailed opinions and generally seeking, in co-operation with that institution, to satisfy the complainant (Baviera, 2005: 138).

Any citizen of the EU or any natural or legal person residing or having his registered office in a member state of the EU has the right to refer a complaint to the EO in respect of an instance of maladministration in the activities of EU institutions with the exception of the Court of Justice acting in its judicial capacity (Statute, art 2(2)). Any aforementined person, after having first contacted the EU institution concerned to try to resolve the matter, can lodge a complaint to the EO via the online complaint form on the EO's website, which can be submitted electronically or printed out and sent by post. Even though the number of annual complaints processed vary from year to year, it is expressed by thousands. The graph below, for instance, illustrates the number of yearly complaints processed from 2008 to 2012.



As clearly seen in the graph above, the number of annual complaints processed between 2008 and 2012 range from nearly 3400 to 2500.What is noteworthy at this point is that the number in question exhibits a downward trend throughout the years reaching a peak in 2008 and its lowest point in 2012.While the number of complaints processed in 2008 was almost 3400, this number gradually decreased to below 2500 in 2012, which signifies a 30 % fall. The biggest decline is noted to be between the years 2009 and 2010 by 13 % while the smallest decline is noted to be between the years 2011 and 2012 by 3 %. Regarding the number of complaints processed in 2010 and 2011, the rate of decline is7 %. This indicates that the fall in the number of complaints processed particularly from 2009 to 2012 continues though by a decreasing rate per year. The number in question seems to be on course to stabilize by levelling off at about 2500 in the last two years.

The significant sustained reduction throughout the years in question, particularly from 2009 to 2012, can be explained through the success of the "interactive guide", which has been available on the website of EO since the start of January 2009. This interactive guide helps the individuals identify the appropriate body (European Ombudsman or National Ombudsman or other relavant bodies) to turn to with a complaint or request for information. It both enables the individuals to obtain information and helps them to find the right means of redress for themselves. Thus, by means of the effective use of the EO's internet site with the guidance of aforesaid interactive tool, the individuals could lodge their complaints to the right authorities. This avoids the EO to deal with unnecessary workload by eliminating the application of individuals who just seek for information, who are not legally entitled to lodge a complaint and also who are about to apply to EO as an unauthorized body thus consistently yielding fewer complaints processed in the past years.

The EO initially evaluates the processed complaints based on the criterion whether they fall within his mandate or not. For the complaints which are inside his mandate, the next step for the EO is to decide whether they satisfy admissibility conditions or not. If a complaint is outside his mandate, or inadmissible, the EO closes the file on the complaint (Decision, art. 3). In other cases, where the complaints are inside his mandate and also admissible, the EO may open an inquiry, if he finds sufficient grounds to justify making it (Decision, art. 4).The following table provides an insight as to the exact number of complaints processed and also falling within the mandate of the EO as well as the number of inquiries opened and closed by the EO on the basis of those complaints and his own initiative in the last five years.

Table 1: Details Concerning the Complaints Processed

	2008	2009	2010	2011	2012
Complaints Processed	3346	3119	2727	2544	2460
Complaints Inside the Mandate of EO	802	727	744	698	740
Inquiries Opened	296	339	335	396	465
Inquiries Closed	355[11]	318	326	318	390

Table 1 elaborates on the Graph 1 above in many respects. It, first of all, demonstrates the exact number of the complaints processed from 2008 to 2012. Secondly, it shows the numbers of complaints which are inside the EO's mandate. Looking at the numbers in question, one can note that the complaints falling within the EO's mandate constitutea small part of the complaints processed each year following a fluctuating course between 700 and 800 throughout the years. The yearly rate in question ranges from 23 % to 30 %. Considering the total number of complaints over the years, one out of every four complaints (26%) fell within the EO's mandate. However, what is remarkably significant is the gradual increase over the years in the rate of complaints falling within the EO's mandate. It is noted that the given rate shows a consistent increase, albeit slight, throughout the years with the lowest rate in the years 2008 and 2009 (23 %) and the highest rate in the year 2012 (30 %). Nevertheless, as it is clear from the table, this upward trend does not result from the increase in the number of complaints falling within the EO's mandate but from the decrease in the number of complaints processed. This is in fact an indirect reflection of the contribution of theaforesaid interactive guide to the increase in the rate of complaints inside the EO's mandate. This upward trend is also a clear indicative of the fact that the aforementioned informative guide will be more effective in the long term.

Table 1 further illustrates the number of inquiries opened by the EO each year under discussion on the basis of complaints as well as on its own motion. Apart from the slight decline in 2010, the number in question displays an upward trend, from 296 to 465, throughout the years, which indicates a spectacular rise by nearly 60 %. What is worth to consider at this point is that while the number of complaints inside the EO's mandate displays 8 % fall in 2012 by comparison with 2008, the number of inquiries opened within the same time period exhibits almost 60 % increase. This naturally influences the rate of inquiries the EO opened among the complaints falling within his mandate signifying the regular rising rate towards the year 2012. To exemplify, in 2008, out of 802 complaints falling inside the mandate of EO, 296 inquries were opened by the EO, which corresponds to 37 %, whereas, in 2012, out of 740 complaints, 465 inquiries were opened by the EO, which corresponds to 63 %. The steady rise in the rate of inquiries opened among the complaints inside the EO's mandate is notable in the other years as well, being 46 % in 2009, 47 % in 2010 and 56 % in 2011. The increase in the number of inquiries opened indicates that the caseload of the EO has been climbing for the last five years.

[11]The reason why the number of inquiries closed in 2008 is more than the number of inquiries opened in the same year is due to the fact that it also involves the number of inquiries opened in the year 2007 but closed in 2008.

Table 1 finally reveals the number of annual inquiries closed by the EO. Whereas the number of inquiries opened displays a rising tendency as noted before, the number of inquiries closed follows ups and downs having its lowest number (318) in 2009 and 2011 and its highest number (390) in 2012. When the inquiries opened and closed in each year considered together, it is noted that the discrepancy between the number of inquries opened and closed in the years 2011 and 2012 is more distinguished. When the rate of closed cases against the opened cases is taken into consideration,while it is beyond 90 % in 2009 (94 %) and 2010 (97 %), it is below 85 % in 2011 (80 %) and 2012 (84 %). As for the year 2008, it is clear that the EO closed all the cases it opened in the same year plus the other cases opened in the preceding year 2007. The fall in the abovesaid rate in the last years is due to the fact that the rate of increase in the number of inquiries closed lags behind the rate of increase in the number of inquiries opened throughout the years. In other words, the EO's rate of finalizing the inquiries could not keep pace with the rate of increase in the number of inquiries opened. This leads us to suggest that the EO should reduce the length of his inquiries by finalizing them in a shorter span of time. The need for this becomes more evident if we take a look at the average length of inquiries of cases closed over the years. While the average length of inquiry is 9 months in 2009 and 2010, it is 10 months in 2011 and 11 months in 2012, which is considered as a long time. Another solution to get through the heavy caseload and thus narrow the gap noted in the last years could be to increase the number of employees making inquiries.

Upon an inquiry opened, the initial instrument that the EO uses for dispute resolution is amicable settlement. During his inquiries, if the EO identifies a preliminary finding of maladministration for which the complainant should receive redress, he, in the first place, makes a proposal for a friendly solution with a view to achieving agreement between the institution complained and the individual complainant (Decision, art. 6).The institution’s acceptance of a friendly solution proposal may lead to closure of the case in question. In other cases, the complained institution itself takes steps to settle the case to the satisfaction of the complainant as a result of the EO's intervention. Those cases are then closed as "settled by the institution".

In some other cases, the EO may close the case with the thought that no further inquiries into the case are justified, if the complainant rejects the proposal for a friendly solution without a good reason (EO, 2013b: 7-8).The other case where the EO closes the cases with no further inquiries justified is where the EO considers the information that the complainant supplies to be insufficient or unconvincing. Finally, the EO may also close the case with a finding of no maladministration, if he cannot find any sign or evidence supporting the existence of any kind of maladministration.The table below provides a framework concerning the EO's performance for dispute resolution in relation to cases which are either settled by the institution or resolved through a friendly solution. The table also presents data on the cases in which maladministration is found, no maladministration is found and no further inquiries are justified.

Table 2:The Result of Inquiries Closed

	2008	2009	2010	2011	2012
Settled by the Institution	125	166	171	74	71
Friendly Solution Agreed	4	13	8	10	9
No Further Inquiries Justified	101	55	57	128	197
No Maladministration Found	110	58	55	64	76
Maladministration Found	53	37	40	47	56
Other	6	6	23	18	15

Table 2 exhibits a two-way framework. On the one hand, it demonstrates the number of inquiries in which no maladministration is found, no further inquiries are justified and the others, all of which do not require the EO to find a solution. On the other hand, it also reveals the number of inquiries, which somehow encompasses maladministration and thus enjoins the EO to find a solution. The findings related tothe EO's performance at this point will actually give us a clue on his success in dispute resolution.

To start with the first group, the EO, first of all, found no maladministration in 363 cases in total. The annual numbers exhibit a falling tendency in the initial years but a rising tendency in the last two years. On average, the EO found no maladministration in almost 75 cases each year. Bearing the top number, in 2008 the EO closed 110 cases in which he found no maladministration, pointing out that in 31 % of the inquiries closed in 2008 the institutions concerned acted in conformity with the principles of good administration contrary to the complainants' allegations.Table 2 also illustrates that the EO found no grounds to continue his inquiry in 538 cases in total. Looking on an annual basis, while there is a rapid decline in the years 2009 and 2010, there is a rapid increase in the years 2011 and 2012. No further inquiries are justified for almost 110 cases on an average each year. Finally, there are also 68 cases, which constitute the lowest rate in the table by 4 %, closed by other grounds.

As for the latter group, the table ilustrates that a positive outcome was attained in 651 cases in total, when the institution concerned either accepted a friendly solution proposal (44) or settled the matter (607). When the two instruments considered together, the rate of the positive outcome attained among the total number of inquiries closed (1707) corresponds to 38 %, which is regarded as a successful performance for the initial stage of EO's efforts to resolve the dispute. The EO's performance even reached a peak in 2009 and 2010 by 55 % success rate. Thus, when the total number of positive outcomes in question deemed together, almost four out of ten cases closed is resolved at the very initial stage of dispute resolution process through either the settlement of the cases or acceptance of friendly solution proposals by the institutions. That is a tangible indication of the fact that a significant number of cases have resulted in the complainant's satisfaction through the successful intervention of the EO. It also demonstrates the success of the EO in his cooperation and negotiation with the EU institutions. This naturally renders the enhancement of the relations between the EU institutions and the citizens possible, which constitutes one of the primary purposes of the establishment of the institution. The table finally shows EO concluded that there was

maladministration in 233 cases in total where an institution, for example, fails to respect fundamental rights, legal rules or principles, or the principles of good administration. Such cases are noted to cover administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, and unnecessary delay. On average, almost 50 cases resulted in diagnosis of maladminstration by the EO each year. Even though the number went down a certain amount in 2009, it then started to went up in the following years culminating in 56 in the last year, 2012.

When the institution refuses to submit adequate justification during the inquiry or the EO finally diagnoses maladministration at the end of his inquiry, the next instrument is either a critical remark to the institution or a draft recommendation. The EO normally makes a critical remark if the instance of maladministration can no longer be eliminated and it has no general implications (Decision, art. 7).

A critical remark, which serves as an educative tool, informs the institution of what it has done wrong, so that it can avoid similar maladministration in the future (EO, 2013a: 32). It also identifies the rule or principle that was violated and explains what the institution should have done in the particular circumstances of the case. If nothing can be done to put the maladministration right, a critical remark provides a fair and efficient way of closing the case (EO, 2013b: 7-8). The EO also makes a critical remark if he considers that a draft recommendation would serve no useful purpose or when the institution concerned fails to accept a draft recommendation, and he does not deem it appropriate to submit a special report to the Parliament (EO, 2013a: 32).

The EO may also resort to issueing a draft recommendation to the institution concerned either when the instance of maladministration can still be eliminated or when the question has general implications. The institution that received the draft recommendation is required to send the EO a detailed opinion within three months (Statute, art. 3(6); Decision, art. 8). If the institution accepts the draft recommendation or the EO considers that the detailed opinion constitutes a satisfactory response, he closes the case with a decision accordingly (EO, 2013b: 7).

If the institution does not accept the draft recommendation or fails to respond satisfactorily to it, the EO may send a special report to the European Parliament, which may include recommendations (Statute, art 3(7); Decision, art 8). A special report to the European Parliament constitutes the EO's last resort in dealing with a case as the adoption of a resolution. By referring the dispute to the European Parliament, the EO tries to draw political attention to the case (EO, 2013b: 6). The following table demonstrates the performance of EO based on the aforementioned instruments in resolving the cases in which maladministration was found.

Table 3: Inquiries Where Maladministration was Found[12]

	2008	2009	2010	2011	2012
Critical Remarks Addressed to the Institution	44	35	33	35	47
Draft Recommendations Issued	23	15	16	25	17
Special Reports to Parliament	1	-	1	-	1

As it can be remembered from the preceding table, Table 2, out of 1707 cases closed by the EO in the last five years, the EO concluded that there was maladministration in 233 of them, which is equivalent to 14%. As shown in detail in Table 3 above, in an attempt to come up with a solution for those cases, the EO addressed 194 critical remarks, issued 96 draft recommendations to the institutions involved and sent 3 special reports to the European Parliament. While the number of the critical remarks addressed to the institutions exhibits a slightly falling trend in 2009 and 2010, it shows a slightly rising trend in the last two years. The annual statistics for critical remarks indicate that the number fluctuates around 40. Concerning the draft recommendations issued by the EO, it also fluctuates between 15 and 25. The EO submits almost 20 draft recommendations to the relevant institutions per year. Finally, as evident from the Table 3, the EO biennially submits a report to the Parliament as his last resort instrument.

The major determining factor regarding the success of the EO's performance at this point is closely related to the quality of replies given to the critical remarks and draft recommendations by the institutions concerned. The following tables, Table 4 and Table 5, thus shed light on to what extent the EO's mentioned instruments yielded positive outcomes in relation to dispute resolution.

Table 4: Replies of the Institutions where Critical Remarks were Given

	2008	2009	2010	2011	2012
Critical Remarks	44	35	33	35	47
Positive Replies	28	24	23	28	-
Negative Replies	16	11	10	7	-

[12]In some cases, the EO uses more than one instrument for a single case at different times. The total number of three instruments in a specific year in Table 3 therefore may total more than the numbers in Table 2 showing the cases in which maladministration was found.

Table 4 mirrors the number of replies of the institutions where critical remarks were given. Out of 147 critical remarks in total,[13] the EO received 103 positive replies and 44 negative replies. That means the vast majority of the replies given to critical remarks (70 %) brought satisfactory results. This in turn signifies that in two out of every three remarks given by the EO, the institutions seemed to comply with his suggestions. As can be noted from the table, the EO received more than 20 positive replies from the institutions complained against per year. Although the number of positive replies given by the institutions decreased at some years (2009 and 2010), the success rate for such replies is noted to continually increase from 2008 to 2011 (63 % in 2008; 68 % in 2009; 69 % in 2010 and 80 % in 2011). As for the number of negative replies given by the institutions throughout the years in question, it is observed that there is an explicit and consistent fall from 2008 to 2011, which serves as another indication for the success of the EO's performance in regard to his obligation for dispute resolution. The quality of overall replies points out that the compliance rate of the EU institutions towards the EO's critical remarks shows a steady increase, signifying the EO's success in his intervention to resolve the disputes between the individuals and EU institutions. The final table below illustrates to what extent the EO's other instrument, draft recommendations, yielded positive outcomes in relation to dispute resolution.

	2008	**2009**	**2010**	**2011**	**2012**
Draft Recommendations Issued	23	15	16	25	17
Draft Recommendations Accepted by the Institutions	8	2	7	13	9
Draft Recommendations not Accepted by the Institutions	15	13	9	12	8

Table 5: Acceptance of Draft Recommendations by the Institutions

Table 5 exhibits the reactions of the related institutions towards the draft recommendations issued by the EO. As can be noted from the table, the EO closed 96 cases with draft recommendations in the last five years, which corresponds to an average of 20 cases each year. Out of those 96 draft recommendations, 39 of them were accepted while the rest 57 were not accepted by the institutions complained against. This demonstrates that out of all draft recommendations issued by the EO, 40 % of them resulted in acceptance by the relevant institutions, which reflects the EO's moderate success rate in relation to dispute resolution through the instrument in question. Furthermore, it is also noted that the performance of EO has catched an explicitlyhigh level of success for the last three years. As can be seen from the

[13] Since the EO Annual Report 2013, which is expected to include the related statistics on the possible replies from the related institutions belonging to 2012, has not been published yet, the number of critical remarks given by the EO in the year 2012 are not incorporated into the total number.

table, particularly the years 2011 and 2012 stand out among the others since the number of accepted draft recommendations exceeds the number of rejected draft recommendations yielding the success rate above 50 %. This clearly indicates that the success rate of the EO's performance on the adoption of his draft recommendations by the complained institutions tend to increase in the recent years, which is deemed as a promising progress for the performance of the EO for the following years.

Conclusion

The EO, which was established as one the EU institutions with a view to ensuring the respect for the principle of rule of law and the EU citizens' fundamental rights of freedoms, was vested with the authority to monitor the EU institutions with regard to administration practices. Within this framework, acting on its own motion, as well as based on the complaints, the EO can investigate a case and endeavour to resolve it via various instruments like friendly solution proposals, critical remarks and draft recommendations.

Concerning the data on the complaints, it is first of all noted that the EO receives thousands of applications each year. However, the number follows a downward trend over the years in question. This could be regarded as an indication of the achievement of the interactive guide brought into use on the institution's website at the outset of 2009. This guide helps both the applicants in directing them to the appropriate authority to submit their applications and also the institution in preventing itself to be engaged with unnecessary workload.

As an institution holding a mediatory position, the EO is noted to make an effort to initially resolve the disputes by friendly settlement. A significant part of the cases in which the EO detects signs of maladministration are succesfully closed either by the settlement of the cases by the complained institution or friendly solution proposals given by the EO. Thus, in the framework of his effort in question, the EO is found to be successful in achieving a positive outcome that satisfies both the complainant and the institution complained against. The findings on his effort show us that almost 40 % of all inquiries closed over the years in question are resolved at the initial stage of inquiries through the two instruments mentioned above. This also implies the successful performance of the EO in carrying out an effective communication and cooperation with the EU institutions.The successful performance of his initial intervention finally denotes that the EO has a respectable position in the eyes of EU institutions.

Some of the other cases the inquiries of which are resulted in finding of maladministration are accomplishedly closed either by the positive replies of the complained institutions in reply to EO's critical remarks or by the acceptance of draft recommendations submitted by the EO to the complained institutions. In his effort to resolve the cases through critical remarks, the rate of positive replies constitutes 70 % of them, which indicates that the majority of the replies given by the complained institutions yielded satisfactory results. Concerning his effort to resolve the cases through draft recommendations, the rate of positive replies constitutes 40 %. Furthermore, the two rates above are on the rise in the last years, which is considered promotive for the EO's performance in the future.

The EO, on the other hand, cannot exhibit the same performance concerning the length of his inquiries and closure of annual cases. The data belonging to the last five years demonstrates that the EO, on an average, spends 10 months for a single inquiry. This is regarded as a long time, which may influence the applicants in a negative way in access to justice. This may

even restrain them from applying to the EO as a means to seek their rights. Also, his performance for closing the inquiries cannot catch up with the rate of increase in the number of yearly inquiries opened, which is particularly more evident in the last two years. Thus, the EO should improve its performance by taking less time to close the cases and increase the number of staff making inquiries to overcome the heavy caseload so that the applicants can access to justice more quickly. In this way, the EU citizens could be encouraged to primarily seek their rights through a non-judicial authority, the EO, rather than through time consuming litigations in judicial authorities.

In conclusion, apart from the length of his investigations, the EO is considered to be an effective institution, which investigates maladministration practices relying on the EU citizens' complaints.The findings obtained in this study suggests that the EO occupy an active position in the fight against maladministration. It plays an important role in the improvement of good administration, democracy and human rights within the administrative domain of the EU. It also contributes to the institutionalization of trust relationship between the EU citizens and institutions. His efforts and intervention for dispute resolution is finally deemed substantially significant since on the one hand it increases the prestige of the EO in the eyes of EU citizens, on the other hand, it contributes to the satisfaction of the EU citizens who complained against the EU institutions when they are exposed to unjust treatment.

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