



THE EUROPEAN OMBUDSMAN

The European Ombudsman conducts inquiries into cases of maladministration by European Union institutions, bodies, offices and agencies, acting on his or her own initiative or on the basis of complaints from EU citizens. The Ombudsman is elected by the European Parliament for the duration of the parliamentary term.

LEGAL BASIS

Articles 20, 24 and 228 of the Treaty on the Functioning of the European Union (TFEU) and Article 43 of the Charter of Fundamental Rights of the European Union.

The Ombudsman's status and duties were spelt out by Parliament in a decision of 9 March 1994 taken after consulting the Commission and with the approval of the Council (OJ L 113, 4.5.1994, p. 15 — amended by European Parliament decisions of 14 March 2002, OJ L 92, 9.4.2002, p. 13 and of 18 June 2008, OJ L 189, 17.7.2008, p. 25). The Ombudsman then adopted provisions implementing that decision. The procedures for electing and dismissing the Ombudsman are laid down in Rules 219 to 221 of Parliament's Rules of Procedure.

OBJECTIVES

Established by the Maastricht Treaty (1992), the institution of the European Ombudsman aims to:

- Improve the protection of citizens in connection with cases of maladministration by European Union institutions, bodies, offices or agencies; and
- Thereby enhance openness and democratic accountability in the decision-making and administration of the EU's institutions.

A. Status

1. Election

a. Requirements

The Ombudsman

- Must meet the conditions required for the exercise of the highest judicial office in his or her country or have the necessary expertise and experience to properly fulfil the duties of the Ombudsman;
- Must provide assurance of being entirely independent.



b. Procedure

At the start of each parliamentary term or in the case of death, resignation or dismissal of the Ombudsman, the President of the European Parliament calls for nominations for the office of Ombudsman and sets a time limit for their submission. Nominations must have the support of at least 40 Members of the European Parliament who are nationals of at least two Member States. Nominations are submitted to Parliament's Committee on Petitions, which considers their admissibility. The Committee may ask to hear the nominees. A list of admissible candidates is then put to the vote in Parliament. The Ombudsman is elected by a majority of the votes cast.

2. Term of office

a. Length

The Ombudsman is elected by Parliament after each European election for the duration of its legislature. He or she may be re-elected.

b. Obligations

The Ombudsman

- Must be entirely independent in the exercise of his or her duties in the interests of the Union and its citizens;
- Must not seek or take instructions from any government, institution, body, office or entity;
- Must refrain from any act incompatible with his or her office;
- Must not engage in any other political, administrative or professional occupation, whether gainful or not.

3. Dismissal

The Ombudsman may be dismissed by the Court of Justice of the European Union (CJEU) at the request of Parliament if he or she no longer fulfils the conditions required for the exercise of his or her duties or is guilty of serious misconduct.

B. Role

1. Scope

The Ombudsman deals with cases of maladministration by European Union institutions, bodies, offices or agencies.

a. The Ombudsman may find maladministration if an institution fails to respect:

- Fundamental rights;
- Legal rules or principles;
- The principles of good administration.

The European Ombudsman's inquiries mainly concern:

- Transparency/accountability;
- Culture of service;



- Respect for procedural rights;
- Proper use of discretion;
- Respect for fundamental rights;
- Recruitment;
- Good management of EU personnel issues;
- Sound financial management;
- Ethics;
- Public participation in EU decision-making.

Around one third of the inquiries the Ombudsman carries out every year concern the lack of or refusal to provide information.

b. Exceptions

The following matters are not included:

- Action by the CJEU and the General Court acting in their judicial role. The Ombudsman's inquiries concerning the CJEU relate only to its non-judicial activities, for example, tenders, contracts and staff cases;
- Complaints against local, regional or national authorities, even when these complaints refer to matters connected to the European Union;
- Actions by national courts or ombudsmen: the European Ombudsman does not serve as a court of appeal against decisions taken by these bodies;
- Any cases which have not previously been through the appropriate administrative procedures within the organisations concerned;
- Complaints against individual EU officials in relation to their conduct.

2. Referrals

The Ombudsman conducts inquiries for which he or she finds grounds either on his or her own initiative or on the basis of complaints submitted by EU citizens or any natural or legal person residing or having their registered office in a Member State, either directly or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings.

3. Powers of enquiry

The Ombudsman can request information from:

- Institutions and bodies, which must comply and provide access to the files concerned, unless they are unable to do so on duly substantiated grounds of secrecy;
- Officials and other staff of said institutions and bodies, who are required to testify at the request of the Ombudsman, although continuing to be bound by their duty of professional secrecy;



- The Member States' authorities, which must comply unless such disclosure is prohibited by law or regulation; even in such cases, however, the Ombudsman can obtain the information on the understanding that it will not be passed on.

If the Ombudsman does not obtain the assistance requested, he or she informs Parliament, which takes appropriate action. The Ombudsman can also cooperate with his or her counterparts in the Member States, subject to the provisions of the national law concerned. If the information appears to relate to a matter of criminal law, however, the Ombudsman immediately notifies the competent national authorities and the European Anti-Fraud Office (OLAF). If appropriate, the Ombudsman may also inform the EU institution to which the official or member of staff is answerable.

4. Outcome of inquiries

Wherever possible, the Ombudsman acts in concert with the institution or body concerned to find a solution satisfactory to the complainant. Where the Ombudsman establishes that maladministration has occurred, his or her recommendations are referred to the institution or body concerned, which then has three months in which to inform the Ombudsman of its views. If the institution does not accept the proposed recommendations, the Ombudsman can draw up a special report for submission to the European Parliament. The European Parliament may in turn draw up a report on the special report submitted by the Ombudsman. Finally, the Ombudsman informs the complainant of the result of the inquiry, the opinion delivered by the institution or body concerned and any personal recommendations.

C. Administration

The Ombudsman is assisted by a secretariat, whose staff is subject to the rules of the European civil service. The Ombudsman appoints the head of the secretariat.

D. Activities

The first Ombudsman, Jacob Söderman, served two terms of office, from July 1995 to 31 March 2003. During his term, the Code of Good Administrative Behaviour was approved by Parliament (in 2001). The code is a procedural code which takes account of the principles of European administrative law contained in the case law of the CJEU and also draws inspiration from national laws. The Ombudsman uses this code when investigating whether there has been maladministration, drawing on its provisions in his or her inquiries. In addition, the Code acts as a guide and a resource for EU officials, encouraging the highest standards of administration.

Nikiforos Diamandouros was European Ombudsman from April 2003 to 14 March 2013, when he resigned with effect from 1 October 2013. On 11 July 2006, the Ombudsman submitted a proposal on adjustments to the Ombudsman's Statute, which was supported by the Committee on Petitions, by Parliament and by the Council. The Statute was amended to strengthen and clarify the role of the Ombudsman, for instance in terms of access to documents and notification of information to OLAF when it might fall within its remit.

The former Irish Ombudsman, Emily O'Reilly, following her election by the European Parliament during the July 2013 part-session, took up office as European Ombudsman on 1 October 2013. She enhanced the visibility of the Ombudsman's role by focusing



on issues that are at the centre of citizens' attention, such as ensuring more transparency in lobbying, expert groups, EU agencies (the European Border and Coast Guard Agency, Frontex) and international negotiations (the Transatlantic Trade and Investment Partnership, TTIP), as well as improving the rules on whistleblowing and on the European Citizens' Initiative. Following the 2014 European Parliament elections, she was reconfirmed for a further five-year term, and committed herself to continuing the implementation of her strategy 'Towards 2019', focusing on 'Impact, Relevance and Visibility'.

ROLE OF THE EUROPEAN PARLIAMENT

Although entirely independent in the exercise of his or her duties, the Ombudsman is a parliamentary ombudsman. This is why Article 228 TFEU is cited in Chapter 1, which deals with the European Parliament. The Ombudsman has very close relations with Parliament, which has sole power to elect and ask the CJEU to dismiss him or her, lays down rules governing the exercise of his or her duties, assists with investigations and receives his or her reports. The Committee on Petitions, on the basis of the Rules of Procedure (Rule 220), draws up a report every year on the Annual Report on the Ombudsman's activities. In these reports, it has repeatedly emphasised that the EU institutions should fully cooperate with the European Ombudsman to increase the Union's transparency and accountability, notably by implementing his or her recommendations.

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