REPORT

on a draft regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (2018/2080(INL) – 2019/0900(APP))

Committee on Constitutional Affairs

Rapporteur: Paulo Rangel

(Initiative – Rule 45 of the Rules of Procedure)
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on a draft regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Eurat (2018/2080(INL) – 2019/0900(APP))

The European Parliament,

– having regard to Article 228(4) of the Treaty on the Functioning of the European Union,
– having regard to Article 106a(1) of the Treaty establishing the European Atomic Energy Community,
– having regard to Articles 41 and 43 of the Charter of Fundamental Rights of the European Union,
– having regard to Rules 45 and 52 of its Rules of Procedure,
– having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Petitions (A8-0050/2019),

1. Adopts the annexed draft Regulation;
2. Instructs its President to forward the annexed draft Regulation to the Council and Commission under the procedure laid down in Article 228(4) of the Treaty on the Functioning of the European Union;
3. Instructs its President to arrange, once the Commission has delivered its opinion and the Council has given its approval to the annexed draft Regulation, for publication of the Regulation in the Official Journal of the European Union.
Annex to the motion for a resolution

Draft regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom

The European Parliament,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 228(4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the Council,

Having regard to the opinion of the Commission,

Acting in accordance with a special legislative procedure

Whereas:

(1) The regulations and general conditions governing the performance of the Ombudsman’s duties should be laid down in compliance with the provisions of the Treaty on the Functioning of the European Union, particularly Article 20(2), point (d), and Article 228, the Treaty establishing the European Atomic Energy Community and the Charter of Fundamental Rights of the European Union.

(2) In particular, Article 41 of the Charter of the Fundamental Rights of the European Union recognises the right to good administration as a fundamental right of European citizens. In its turn, Article 43 of the Charter recognises the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices and agencies of the Union. In order for those rights to be effective and in order to enhance the capacity of the Ombudsman to conduct thorough and impartial inquiries, the Ombudsman should be provided with all the tools that are necessary to perform the duties referred to in the Treaties and in this Regulation successfully.

(3) Decision 94/262/ECSC, EC, Euratom of the European Parliament¹ was lastly amended in 2008. With the entry into force of the Treaty of Lisbon on 1 December 2009, a new legal framework was established for the Union. In particular, Article 228(4) TFEU enables the European Parliament, after seeking an opinion from the Commission and with the consent of the Council, to adopt regulations laying down the regulations and general conditions governing the performance of the Ombudsman’s duties. It is therefore desirable to repeal Decision 94/262/ECSC, EC, Euratom and replace it by a Regulation in accordance with the legal basis currently applicable.

(4) The establishment of the conditions under which a complaint may be referred to the Ombudsman should comply with the principle of full, free and easy access, notwithstanding specific restrictions pertaining to the concurrence of new or pending legal and administrative proceedings.

(5) It is necessary to lay down the procedures to be followed where the Ombudsman’s inquiries reveal cases of maladministration. A provision should also be made for the submission of a comprehensive report by the Ombudsman to the European Parliament at the end of each annual session.

(6) In order to strengthen the Ombudsman’s role, it is desirable to allow the Ombudsman, without prejudice to the primary duty of the Ombudsman, which is to handle complaints, to conduct own-initiative inquiries with a view to identifying repeated instances of maladministration and promoting best administrative practices within the Union institutions, bodies, offices and agencies.

(7) In order to increase the effectiveness of the action of the Ombudsman, the Ombudsman should be entitled, on the Ombudsman’s own initiative or following a complaint, to conduct inquiries following up previous inquiries so as to ascertain whether and to what extent the institution, body, office or agency concerned has complied with the recommendations put forward. The Ombudsman should also be entitled to include, in the Ombudsman’s annual report to the European Parliament, an assessment of the rate of compliance with recommendations made, and an assessment of the adequacy of the resources made available to the Ombudsman to perform the duties referred to in the Treaties and in this Regulation.

(8) The Ombudsman should have access to all the elements required for the performance of the Ombudsman’s duties. To that end, Union institutions, bodies, offices and agencies are to be obliged to supply the Ombudsman with any information that the Ombudsman requests of them, without prejudice to the Ombudsman’s obligations under Regulation (EU) No 1049/2001 of the European Parliament of the Council1. Access to classified information or documents should be subject to compliance with the rules on the processing of confidential information by the Union institution, body, office or agency concerned. The institutions, bodies, offices or agencies supplying classified information or documents should inform the Ombudsman of such classification. For the implementation of the rules on the processing of confidential information by the Union institution, body, office or agency concerned, the Ombudsman should have agreed in advance with the institution, body, office or agency concerned the conditions for treatment of classified information or documents and of other information covered by the obligation of professional secrecy. If the Ombudsman finds that the assistance requested is not forthcoming, the Ombudsman should inform the European Parliament, which should make appropriate representations.

(9) The Ombudsman and the Ombudsman’s staff are to be obliged to treat in confidence any information which they have acquired in the course of their duties. However, the Ombudsman should inform the competent authorities of facts that the Ombudsman considers might relate to criminal law and which have come to the Ombudsman’s

attention in the course of an inquiry. The Ombudsman should also be able to inform the Union institution, body, office or agency concerned of the facts calling into question the conduct of a member of their staff.

(10) Account should be taken of the recent changes concerning the protection of the Union’s financial interests against criminal offences, notably the establishment of the European Public Prosecutor’s Office by Council Regulation (EU) 2017/1939, so as to allow the Ombudsman to notify it of any information falling within the latter’s remit. Likewise, in order to fully respect the presumption of innocence and the rights of the defence enshrined in Article 48 of the Charter of the Fundamental Rights of the European Union, it is desirable that, where the Ombudsman notifies the European Public Prosecutor’s Office of information falling within the latter’s remit, the Ombudsman reports that notification to the person concerned and to the complainant.

(11) A provision should be made for the possibility of cooperation between the Ombudsman and authorities of the same type in the Member States, in compliance with the national laws applicable. It is also desirable to take steps so as to enable the Ombudsman to cooperate with the European Union Agency for Fundamental Rights, since such cooperation may render the performance of the Ombudsman’s duties more effective.

(12) It is for the European Parliament to appoint the Ombudsman at the beginning of the parliamentary term and for the duration thereof, choosing the Ombudsman from among persons who are Union citizens and who offer every requisite guarantee of independence and competence. Conditions should also be laid down for the cessation of the Ombudsman’s duties as well as for the replacement of the Ombudsman.

(13) The Ombudsman’s duties should be performed with complete independence. The Ombudsman should give a solemn undertaking before the Court of Justice when taking office. The incompatibilities, the remuneration, the privileges and the immunities of the Ombudsman should be laid down.

(14) Provisions should be adopted regarding the seat of the Ombudsman, which should be that of the European Parliament. Provisions should also be made regarding not only the officials and other servants of the secretariat of the Ombudsman which will assist the latter, but also the budget thereof.

(15) It is for the Ombudsman to adopt the implementing provisions for this Regulation. In order to guarantee legal certainty and the highest standards in performing the Ombudsman’s duties, the minimum content of the implementing provisions to be adopted should be established in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman).

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2. The Ombudsman shall act independently of the Union institutions, bodies, offices and agencies, in accordance with the powers conferred on the Ombudsman by the Treaties, and with due regard to Article 20(2), point (d), and Article 228 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union on the right to good administration.

3. In the performance of the duties referred to in the Treaties and in this Regulation, the Ombudsman may not intervene in cases before courts nor may the Ombudsman question the soundness of a court's ruling or a court’s competence to issue a ruling.

Article 2

1. The Ombudsman shall help to uncover maladministration in the activities of the Union institutions, bodies, offices and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role, and, where appropriate, shall make recommendations with a view to putting an end to it. No action by any other authority or person may be the subject of a complaint to the Ombudsman.

2. Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union may, directly or through a Member of the European Parliament, refer a complaint to the Ombudsman in respect of an instance of maladministration in the activities of Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. The Ombudsman shall inform the institution, body, office or agency concerned as soon as a complaint is referred.

3. The complaint shall make clear reference to its object and to the identity of the complainant. The complainant may request that the complaint, or parts thereof, remain confidential.

4. A complaint shall be made within three years of the date on which the facts on which it is based came to the attention of the complainant and shall be preceded by the appropriate administrative approaches to the institutions, bodies, offices and agencies concerned.

5. The Ombudsman shall determine whether a complaint is within the mandate of the Ombudsman, and, if so, whether it is admissible. Where a complaint is outside the mandate or inadmissible, the Ombudsman, before closing the file, may advise the complainant to address it to another authority.

6. Complaints submitted to the Ombudsman shall not affect time-limits for appeals in administrative or judicial proceedings.

7. When the Ombudsman, because of legal proceedings in progress or concluded concerning the facts which have been put forward, has to declare a complaint inadmissible or terminate consideration of it, the outcome of any inquiries the Ombudsman has carried out up to that point shall be filed definitively.

8. No complaint may be made to the Ombudsman that concerns work relationships between the Union institutions, bodies, offices and agencies and their officials and other...
servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 \(^1\) ("the Staff Regulations"), have been exhausted by the person concerned and the time-limits for replies by the institution, body, office or agency concerned have expired.

9. The Ombudsman shall inform as soon as possible the complainant of the action taken on the complaint.

Article 3

1. The Ombudsman shall, on the Ombudsman’s own initiative or following a complaint, conduct all the inquiries, including those following up previous ones, which the Ombudsman considers justified to clarify any suspected maladministration in the activities of Union institutions, bodies, offices and agencies. The Ombudsman shall act without requiring any prior authorisation and shall inform the institution, body, office or agency concerned in due time of such action. That institution, body, office or agency concerned may submit any useful comment or evidence to the Ombudsman. The Ombudsman may also request that institution, body, office or agency concerned to submit such comments or evidence.

2. Without prejudice to the primary duty of the Ombudsman, which is to handle complaints, the Ombudsman may conduct own-initiative inquiries of a more strategic nature in order to identify repeated or particularly serious instances of maladministration, to promote best administrative practices within the Union institutions, bodies, offices and agencies and to proactively address structural issues of public interest falling within the Ombudsman’s remit.

3. The Union institutions, bodies, offices and agencies shall supply the Ombudsman with any information the Ombudsman has requested from them and provide the Ombudsman with access to the files concerned. Access to classified information or documents shall be subject to compliance with the rules on the processing of confidential information by the Union institution, body, office or agency concerned.

The institutions, bodies, offices or agencies supplying classified information or documents in accordance with the first subparagraph shall inform the Ombudsman of such classification in advance.

For the implementation of the rules provided for in the first subparagraph, the Ombudsman shall have agreed in advance with the institution, body, office or agency concerned the conditions for treatment of classified information or documents.

The institutions, bodies, offices or agencies concerned shall give access to documents originating in a Member State and classified as secret by law only after the Ombudsman’s services have put in place appropriate measures and safeguards for handling the documents that ensure an equivalent level of confidentiality, in line with

\(^1\) OJ L 56, 4.3.1968, p. 1.
Article 9 of Regulation (EU) No 1049/2001 and in compliance with the rules on security of the Union institution, body, office or agency concerned.

Officials and other servants of Union institutions, bodies, offices and agencies shall, at the request of the Ombudsman, testify to facts which relate to an ongoing inquiry by the Ombudsman. They shall speak on behalf of their institution, body, office or agency. They shall continue to be bound by the obligations arising from the rules to which they are subject.

4. In so far as their national law allows, the competent authorities of the Member States shall, at the request of the Ombudsman or on their own initiative, urgently transmit to the Ombudsman any information or document that may help to clarify instances of maladministration by Union institutions, bodies, offices or agencies. Where such information or document is covered by national law on the processing of confidential information or by provisions preventing its being communicated, the Member State concerned may allow the Ombudsman to have access to this information or document provided that the Ombudsman undertakes to handle it in agreement with the originating competent authority. A description of the document shall be provided in any event.

5. If the assistance requested by the Ombudsman is not forthcoming, the Ombudsman shall inform the European Parliament, which shall make appropriate representations.

6. Where instances of maladministration have been found following an inquiry, the Ombudsman shall inform the institution, body, office or agency concerned, where appropriate making recommendations. The institution, body, office or agency so informed shall send the Ombudsman a detailed opinion within three months. The Ombudsman may, upon request of the institution, body, office or agency concerned, grant an extension, which shall not exceed two months. When no opinion is delivered by the institution, body, office or agency concerned within the three month deadline or within the extended deadline, the Ombudsman may close the inquiry without such an opinion.

7. The Ombudsman shall then send a report to the institution, body, office or agency concerned and, notably where the nature or the scale of the instance of maladministration uncovered so requires, to the European Parliament. The Ombudsman may make recommendations in the report. The complainant shall be informed by the Ombudsman of the outcome of the inquiry, of the opinion expressed by the institution, body, office or agency concerned and of any recommendations made in the report by the Ombudsman.

8. Where appropriate in relation to an inquiry into the activities of a Union institution, body, office or agency, the Ombudsman may appear before the European Parliament, on the Ombudsman's own initiative or at the request of the European Parliament, at the most appropriate level.

9. As far as possible, the Ombudsman shall seek a solution with the institution, body, office or agency concerned to eliminate the instance of maladministration and satisfy the complaint. The Ombudsman shall inform the complainant of the solution proposed along with the comments, if any, of the institution, body, office or agency concerned. If the complainant so wishes, the complainant shall be entitled to submit comments to the
Ombudsman.

10. At the end of each annual session the Ombudsman shall submit to the European Parliament a report on the outcome the inquiries that the Ombudsman carried out. The report shall include an assessment of the compliance with the Ombudsman’s recommendations and an assessment of the adequacy of the resources available to perform the Ombudsman’s duties. These assessments may also be the subject of separate reports.

Article 4

1. The Ombudsman and the Ombudsman’s staff, to whom Article 339 TFEU and Article 194 of the Euratom Treaty shall apply, shall be required not to divulge information or documents which they obtain in the course of their inquiries. Without prejudice to paragraph 2, they shall, in particular, be required not to divulge any classified information or document supplied to the Ombudsman or documents falling within the scope of Union law regarding the protection of personal data, as well as any information which could harm the complainant or any other person involved.

2. If the Ombudsman considers that facts learnt in the course of an inquiry might relate to criminal law, the Ombudsman shall notify the competent national authorities and, in so far as the case falls within their powers, the European Anti-fraud Office and the European Public Prosecutor’s Office. If appropriate, the Ombudsman shall also notify the Union institution, body, office or agency with authority over the official or servant concerned, which may apply the second paragraph of Article 17 of Protocol No 7 on the Privileges and Immunities of the European Union.

The Ombudsman may also notify the Union institution, body, office or agency concerned of the facts calling into question the conduct of a member of their staff, as well as any persistent activity that has the effect of hampering the ongoing inquiry.

The Ombudsman shall report such notifications to the complainant and to the other persons concerned whose identity is known.

Article 5

The Ombudsman and the staff thereof shall deal with requests for public access to documents, other than those referred to in Article 4(1), in accordance with the conditions and limits provided for in Regulation (EC) No 1049/2001.

Article 6

1. The Ombudsman may cooperate with authorities of the same type in the Member States provided that the Ombudsman complies with the national law applicable.

2. Within the scope of the Ombudsman’s duties, the Ombudsman shall cooperate with the European Union Agency for Fundamental Rights and with other institutions and bodies, while avoiding any duplication with their activities.
Article 7

1. The Ombudsman shall be elected, and eligible for reappointment, in accordance with Article 228(2) of the TFEU.

2. The Ombudsman shall be chosen from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence, have not been Members of national governments or Members of Union's institutions within the past three years, meet conditions of impartiality equivalent to those required for a judicial office in their country and have the acknowledged competence and experience to undertake the duties of the Ombudsman.

Article 8

1. The Ombudsman shall cease to exercise the duties referred to in the Treaties and in this Regulation either at the end of the term of office or upon resignation or dismissal.

2. Save in the event of dismissal, the Ombudsman shall remain in office until a new Ombudsman has been elected.

3. In the event of early cessation of duties, a new Ombudsman shall be appointed within three months of the office's falling vacant for the remainder of the term of office of the European Parliament. Until such time as a new Ombudsman has been elected, the principal officer referred to in Article 12(2) shall be responsible for urgent matters falling within the Ombudsman’s remit.

Article 9

Where the European Parliament intends to request the dismissal of the Ombudsman in accordance with Article 228(2) of the TFEU, it shall hear the Ombudsman before making such a request.

Article 10

1. In the performance of the duties referred to in the Treaties and in this Regulation, the Ombudsman shall act in accordance with Article 228(3) TFEU. The Ombudsman shall refrain from any act incompatible with the nature of the said duties.

2. When taking up office, the Ombudsman shall give a solemn undertaking before the Court of Justice sitting as a full Court that the duties referred to in the Treaties and in this Regulation will be performed with complete independence and impartiality and that the obligations arising during and after the term of office will be fully respected. The solemn undertaking shall in particular include the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits after the end of the term of office.
Article 11

1. During the Ombudsman’s term of office, the Ombudsman may not engage in any political or administrative duties, or any other occupation, whether gainful or not.

2. The Ombudsman shall have the same rank in terms of remuneration, allowances and pension as a judge at the Court of Justice.

3. Articles 11 to 14 and Article 17 of Protocol No 7 shall apply to the Ombudsman and to the officials and other servants of the Ombudman’s secretariat.

Article 12

1. The Ombudsman shall be awarded an adequate budget, sufficient to ensure the Ombudsman’s independence and to provide for the performance of the duties referred to in the Treaties and in this Regulation.

2. The Ombudsman shall be assisted by a secretariat, the principal officer of which the Ombudsman shall appoint.

3. The officials and servants of the Ombudsman's secretariat shall be subject to the rules and regulations applicable to officials and other servants of the Union. Their number shall be adopted each year as part of the budgetary procedure and be adequate for the proper performance of the Ombudsman's duties and workload.

4. Officials and servants of the Union and of the Member States appointed to the Ombudsman's secretariat shall be seconded in the interests of the service and guaranteed automatic reinstatement in their institution, body, office or agency of origin.

5. In matters concerning the Ombudsman's staff, the Ombudsman shall have the same status as the institutions within the meaning of Article 1a of the Staff Regulations.

Article 13

The seat of the Ombudsman shall be that of the European Parliament.

Article 14

Any communication addressed to the national authorities of the Member States for the purposes of applying this Regulation shall be made through their Permanent Representations to the Union.

Article 15

The Ombudsman shall adopt the implementing provisions for this Regulation. These shall be in accordance with this Regulation and include at least provisions on:

(a) procedural rights of the complainant and the institution, body, office or agency concerned and on ensuring the protection of officials reporting cases of breaches of
Union law (‘whistleblowing’) within the institutions, bodies, offices or agencies of the Union, in accordance with Article 22a of the Staff Regulations;
(b) receipt, processing and closure of a complaint;
(c) own-initiative inquiries;
(d) follow-up inquiries;
(e) information gathering actions.

Article 16

Decision 94/262/ECSC, EC, Euratom is repealed.

Article 17

This Regulation shall enter into force on the first day of the month following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done in …

For the European Parliament
The President
EXPLANATORY STATEMENT

I. Ratio essendi

The first European Ombudsman took his office in 1995, after the Treaty of Maastricht had set up this body in 1992. After more than 20 years of activity, the Ombudsman has established a reputation and working methods that have contributed to the growing prestige, as well as to the moral and social recognition of this body’s role.

The Statute was not updated during the last decade. In fact, the Decision now repealed precedes the entry into force of the Treaty of Lisbon. It is thus of paramount importance to adapt its provisions to the applicable Treaties, whilst guaranteeing that this body continues to play a specific and decisive role in the constitutional framework of the European Union.

II. Independence and soft power: the two pillars of the European Ombudsman’s constitutional status

The 19th century Scandinavian institution of the Ombudsman has been endorsed by the national and regional legal orders of almost every Member State. In this regard, nowadays, the Union Law is no exception. Despite all the differences between these authorities, from Berlin’s Petitionsausschuss to Spain’s Defensor del Pueblo, they invariably share some features. These features correspond to the constitutional functions of the Ombudsman.

The Ombudsman is a médiateur, a defensor, a provedor. The performance of this body’s duties should not depend on other institutions, bodies, offices or agencies, whether from a political or a fiscal perspective. Hence, the new Statute aims at reinforcing the independence and impartiality of this authority.

Actually, without real power of enforcement, the Ombudsman's institutional strength lies in the exercise of soft powers. These are pivotal to the performance of the Ombudsman’s duties, not only since they favour compliance with the body’s requests and openness to remedying them by the EU Administration, but also and mostly because they maintain this authority simultaneously within and above the system, within and beyond complaints, correcting without condemning, improving without harnessing.

Therefore, the full development of the role of the Ombudsman in the constitutional architecture of the Union lies in its independence and in the exercise of soft powers.
III. Modifications and adjustments envisaged by the new Statute

a) Legal basis

Decision 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman’s duties was lastly amended in 2008. With the entry into force of the Treaty of Lisbon on 1 December 2009, a completely new legal framework has been established for the European Union. In particular, Article 228(4) TFEU enables the European Parliament, after seeking an opinion from the Commission and with the consent of the Council, to adopt regulations laying down the regulations and general conditions governing the performance of the Ombudsman’s duties.

It is therefore desirable to repeal Decision 94/262/ECSC, EC, Euratom and replace it by a regulation in accordance with the legal basis currently applicable. The repealing act and the new Statute depend on the European Parliament’s right of legislative initiative, directly related to the democratic legitimacy of this institution and therefore of the Ombudsman. This is thus a special procedure, namely from an institutional perspective, with Parliament at its core.

It should also be borne in mind that Article 41 of the Charter of the Fundamental Rights of the European Union recognises the right to good administration as a fundamental right of European citizens. In its turn, Article 43 of the Charter recognises the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices and agencies of the Union. In order for these rights to be effective and to enhance the body’s capacity to conduct thorough and impartial inquiries, the Ombudsman should be provided with all the necessary tools for a successful performance of the duties established in the Treaties.

b) Access to information and confidentiality

The Ombudsman must have access to all the elements required for the performance of the body’s duties. To that end, Union institutions, bodies, offices and agencies should supply the Ombudsman with any information requested of them, without prejudice to the Ombudsman's obligation not to divulge such information. Access to classified information or documents should be subject to compliance with the rules on security of the Union institution, body, office or agency concerned. The institutions, bodies, offices or agencies supplying classified information or documents should inform the Ombudsman of such classification. The Ombudsman should have agreed in advance with the institution, body, office or agency concerned the conditions for treatment of classified information or documents. If the Ombudsman finds that the assistance requested is not forthcoming, the Ombudsman should inform the European Parliament, which can make appropriate representations. The Ombudsman and the staff thereof are obliged to treat in confidence any information which they have acquired in the course of their duties.

c) Own-initiative and follow-up inquiries

In order to strengthen this body’s role, it is desirable to allow the Ombudsman, without prejudice to the primary duty of handling complaints, to conduct own-initiative inquiries with
a view to identifying repeated or particularly serious instances of maladministration and promoting good administrative practices within the Union institutions, bodies, offices and agencies. It is also desirable to entitle the Ombudsman, whether or not following a complaint, to conduct inquiries following up previous inquiries so as to ascertain whether and to what extent the institution, body, office or agency concerned has complied with the Ombudsman’s recommendations.

d) Testimony of Union staff members

The work of the European Ombudsman is mostly conducted informally and with the consent of all the parties involved, particularly of the officials and other servants of Union institutions, bodies, offices and agencies. These should, at the request of the Ombudsman, testify to facts which relate to an ongoing inquiry by the Ombudsman. The officials or servants in question must speak on behalf of their institution, body, office or agency. They must continue to be bound by the obligations arising from the rules to which they are subject. Where the institution, body, office or agency concerned withholds permission from its officials or other servants to testify to specific matters, it must state the reasons to the Ombudsman and, where possible, propose alternative modalities of information-sharing.

e) European Ombudsman and facts potentially amounting to criminal offences

Account should be taken of the recent changes concerning the protection of the Union’s financial interests against criminal offences, notably the establishment of the European Public Prosecutor’s Office, so as to allow the Ombudsman to notify it of any information falling within the latter’s remit. Likewise, in order fully to respect the presumption of innocence and the rights of the defence enshrined in Article 48 of the Charter, it is desirable that, where the Ombudsman notifies the European Public Prosecutor’s Office of information falling within the latter’s remit, the Ombudsman should inform the person concerned. The person lodging a complaint should also be informed.

f) Appearance before the European Parliament and annual reports

Where appropriate in relation to an inquiry into the activities of a Union institution, body, office or agency, the Ombudsman may request to appear before the European Parliament at the most appropriate level.

At the end of each annual session the Ombudsman should submit to the European Parliament a report on the outcome of the inquiries conducted in the reference period. The report must include an assessment of the compliance with the Ombudsman’s proposals and an assessment of the adequacy of the resources available to perform the Ombudsman’s duties. These assessments may also be the subject of separate reports.

g) Cooperation with other authorities

It is desirable to take steps so as to allow the Ombudsman to cooperate with the European Union Agency for Fundamental Rights and with other institutions and bodies of Member States in charge of the promotion and protection of fundamental rights. Such cooperation may render the performance of the Ombudsman’s duties more effective. Provisions should also be made for the possibility of cooperation between the Ombudsman and authorities of the same
type in the Member States, in compliance with the national laws applicable.

h) Minimum content of implementing provisions

It is for the Ombudsman to adopt the implementing provisions for this Regulation. In order to guarantee legal certainty and the highest efficiency standards in performing the Ombudsman’s duties, the minimum content of the implementing provisions should be clarified. Such minimum content should include at least provisions on: i) procedural rights of the person lodging a complaint and the institution, body, office or agency concerned; ii) receipt, processing and closure of a complaint; iii) own-initiative inquiries; iv) follow-up inquiries; and v) information gathering actions.
OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Constitutional Affairs


Rapporteur for opinion: Margrete Auken

SHORT JUSTIFICATION

The European Parliament has repeatedly called for the Ombudsman’s Statute to be updated before the end of the legislative term, with a view to ensuring that the new mandate, due to commence immediately following the elections to the European Parliament in 2019, would encompass any new or modified duties already from the start.

It has been 10 years since the last revision of the Statute (in 2008) and in the meantime the Lisbon Treaty has entered into force. Over the last 10 years, the Ombudsman’s role has been consolidated and enhanced, thanks especially to the tireless work done by its respective office holders. We are currently faced with new realities and challenges, and new expectations from citizens and from the Parliament in a number of key areas which require improvement.

When it comes to the implementation of the fundamental right of access to documents, Parliament has noted that, while citizens have the right to appeal denials or partial denials before the European Court of Justice, this procedure is costly and time consuming, and requires formal legal representation. The European Parliament has therefore recommended in various resolutions that the Ombudsman should be in a position to take binding decisions on access to documents cases in order to give the fullest possible effect to the right of public access to European Union documents.

Clarifications are also required in order to highlight that the Ombudsman’s office is bound by Regulation (EC) 1049/2001 of the European Parliament and of the Council on public access to EU institution documents, and hence additional presumptions of secrecy for certain categories of information are removed.

Amendments are proposed to ensure that information which is classed as sensitive in
accordance with Article 9 of Regulation (EC) 1049/2001 is to be shared with the Ombudsman in line with the applicable security rules. In order to promote the efficiency of Ombudsman inquiries, when testimonies are provided by EU staff this should be done in a climate that is free from obligations of professional secrecy.

Clarifications are proposed to ensure that the failure or excessive delay by the Union institutions to comply with rulings of the CJEU can also be considered a source of maladministration\(^1\). The division of competences and compatibility of procedures between the Ombudsman and the judiciary is also clarified, and changes to the Statutes are made to ensure that the Ombudsman can have the possibility to intervene in legal cases before the European Court of Justice in the same way as other EU institutions.

Changes are also made to ensure that the Ombudsman has the right to appear before the European Parliament where appropriate, including alongside other institutions that might be the subject of specific or strategic inquiries.

Finally, in sensitive areas such as whistleblower protection or harassment in the workplace, which can become a source of maladministration if not handled adequately by EU institutions, agencies and bodies, proposals are made to ensure that the Ombudsman has an advisory role in these cases, with the corresponding increase in resources that might be required as a result.

In the case of workplace harassment, changes are proposed to ensure that the Ombudsman is able to undertake inquiries to look into how anti-harassment policies are applied in practice and to make recommendations as appropriate. Advice could also be provided to EU staff who believe they are experiencing harassment. A fast-track procedure for sexual harassment cases specifically could also be envisaged - again, this service would be contingent on having the appropriate resources.

When it comes to the protection of whistleblowers, the Ombudsman has already conducted inquiries into the whistleblower protection policies of nine key EU institutions. It is important to ensure that she is able to continue doing this but also able to provide advice to potential whistleblowers on how and to what extent they may be protected for public interest disclosures. Should an EU regulation on whistleblowing come into force, it would be expected from the Ombudsman to also be able to provide an advice service to EU citizens who are unsure whether the EU whistleblower protection regulation would apply to them or not.

A specific mention is made to the need to proactively monitor possible conflicts of interest. Impartiality needs to be ensured, and this is a task that falls within the Ombudsman’s remit.

**AMENDMENTS**

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to take into account the following amendments:

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\(^1\) Definition of maladministration by Jacob Söderman, first European Ombudsman: ‘*Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it*’. 

RR\1175465EN.docx 19/43 PE631.819v03-00
Amendment 1

Ombudsman Statute
Title

Current text

Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties(1).

Amendment

Regulation of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties(1).

Justification

This is a new binding legislative act in form of a regulation, according to the Lisbon Treaty provisions.

Amendment 2

Ombudsman Statute
Citation 1

Current text

Having regard to the Treaties establishing the European Communities, and in particular Article 195(4) of the Treaty establishing the European Community and Article 107d(4) of the Treaty establishing the European Atomic Energy Community,

Amendment

Having regard to the Treaties establishing the European Union, and in particular Article 228(4) of the Treaty establishing the European Union and Article 106a(1) of the Treaty establishing the European Atomic Energy Community,

Justification

Change “Community” to “Union” throughout the text, adapting it to the current Treaties nomenclature.

Amendment 3

Ombudsman Statute
Recital 1 a (new)

PE631.819v03-00 20/43 RR\1175465EN.docx
Whereas the constitutional treaties provide for the institution of the Ombudsman, is it imperative to ensure gender neutral language across all institutions and therefore considers the Ombudsperson as a more fitting title for the institution;

Justification
The European Institute for Gender Equality defined gender-neutral language as language that is not gender-specific and which considers people in general, with no reference to women and men. Gender-neutral language is a generic term covering the use of non-sexist language, inclusive language or gender-fair language. The purpose of gender-neutral language is to avoid word choices which may be interpreted as biased, discriminatory or demeaning by implying that one sex or social gender is the norm. Using gender-fair and inclusive language also helps reduce gender stereotyping, promotes social change and contributes to achieving gender equality. Having the first woman serve at the post, bear the title Ombudsman is derogative.

Amendment 4
Ombudsman Statute
Recital 3

Whereas the Ombudsman, who may also act on his own initiative, must have access to all the elements required for the performance of his duties; whereas to that end Community institutions and bodies are obliged to supply the Ombudsman, at his request, with any information which he requests of them and without prejudice to the Ombudsman's obligation not to divulge such information; whereas access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, should be subject to compliance with the rules on security of the Community institution or body

Whereas the Ombudsman, who may also act on his or her own initiative, must have access to all the elements required for the performance of his or her duties; whereas to that end Union institutions and bodies are obliged to supply the Ombudsman, upon request, with any information requested of them and without prejudice to the Ombudsman's obligations under regulation 1049/2001; whereas access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, should be subject to compliance with the rules on security of the Union institution or body concerned;
concerned; whereas the institutions or bodies supplying classified information or documents as mentioned in the first subparagraph of Article 3(2) should inform the Ombudsman of such classification; whereas for the implementation of the rules provided for in the first subparagraph of Article 3(2), the Ombudsman should have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy; whereas if the Ombudsman finds that the assistance requested is not forthcoming, he shall inform the European Parliament, which shall make appropriate representations;

whereas the institutions or bodies supplying classified information or documents as mentioned in the first subparagraph of Article 3(2) should inform the Ombudsman of such classification; whereas for the implementation of the rules provided for in the first subparagraph of Article 3(2), the Ombudsman should have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents; whereas if the Ombudsman finds that the assistance requested is not forthcoming, he shall inform the European Parliament, which shall make appropriate representations;

Justification

Linguistic changes are made to provide a more gender-neutral text, which should apply throughout the whole text. Secondly, amendments are necessary to clarify that the Ombudsman is bound by Regulation 1049/2001, and to avoid professional secrecy being treated as a specific category of information that is presumed to be withheld.

Amendment 5

Ombudsman Statute
Recital 7

Current text

Whereas it is for the European Parliament to appoint the Ombudsman at the beginning of its mandate and for the duration thereof, choosing him from among persons who are Union citizens and offer every requisite guarantee of independence and competence;

Amendment

Whereas it is for the European Parliament to appoint the Ombudsman at the beginning of its mandate and for the duration thereof, choosing him from among persons who are Union citizens and offer every requisite guarantee of independence and competence and shall not have held a political function at national ministerial level or within the European institutions;
Amendment 6  
Ombudsman Statute  
Recital 10  

**Current text**

Whereas provisions should be laid down regarding the officials and servants of the Ombudsman’s secretariat which will assist him and the budget thereof; whereas the seat of the Ombudsman should be that of the European Parliament;

**Amendment**

Whereas provisions should be laid down regarding the officials and servants of the Ombudsman’s secretariat which will assist him and the budget thereof; whereas the seat of the Ombudsman should be that of **the seat of** the European Parliament;

**Justification**

*The current seat has enabled the European Ombudsman to conduct his duties efficiently and independently.*

Amendment 7  
Ombudsman Statute  
Recital 11  

**Current text**

Whereas it is for the Ombudsman to adopt the implementing provisions for this Decision; *whereas furthermore certain transitional provisions should be laid down for the first Ombudsman to be appointed after the entry into force of the EU Treaty;*

**Amendment**

Whereas it is for the Ombudsman to adopt the implementing provisions for this Decision;

**Justification**

*There is no longer a need for this transitional provision, since the Lisbon Treaty is already into force.*

Amendment 8  
Ombudsman Statute  
Article 1 – paragraph 2
2. The Ombudsman shall perform his duties in accordance with the powers conferred on the Community institutions and bodies by the Treaties.

Amendment 9

Ombudsman Statute
Article 1 – paragraph 3

Current text

3. The Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling.

Amendment

3. The Ombudsman may not intervene in cases before national courts and cannot question the soundness of a court's ruling. The Ombudsman may intervene in cases before the Court of Justice of the European Union (CJEU), in accordance with article 40 of the statute of the CJEU.

Amendment 10

Ombudsman Statute
Article 2 – paragraph 2

Current text

2. Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union may, directly or through a

Amendment

2. Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union may, directly or through a
Member of the European Parliament, refer a complaint to the Ombudsman in respect of an instance of maladministration in the activities of Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. The Ombudsman shall inform the institution or body concerned as soon as a complaint is referred to him.

Amendment 11

Ombudsman Statute
Article 2 – paragraph 4

Current text
4. A complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint and must be preceded by the appropriate administrative approaches to the institutions and bodies concerned.

Amendment
4. A complaint shall be made within three years of the date on which the facts on which it is based came to the attention of the person lodging the complaint and must be preceded by the appropriate administrative approaches to the institutions and bodies concerned.

Justification
To allow complainants to have more time to make a complaint, considering the current cumulative time span in the interaction with institutions

Amendment 12

Ombudsman Statute
Article 2 – paragraph 7

Current text
7. When the Ombudsman, because of legal proceedings in progress or concluded concerning the facts which have been put forward, has to declare a complaint inadmissible or terminate

Amendment
7. The Ombudsman shall suspend consideration of a complaint while the alleged facts are subject to legal proceedings. The Ombudsman may make recommendations if findings suggest that
consideration of it, the outcome of any enquiries he has carried out up to that point shall be filed without further action.

failure of a Union institution, body, office or agency to correctly enforce a judgment of the Court of Justice of the European Union can constitute maladministration.

Amendment 13

Ombudsman Statute
Article 2 – paragraph 8

Current text

8. No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90(1) and (2) of the Staff Regulations, have been exhausted by the person concerned and the time limits for replies by the authority thus petitioned have expired.

Amendment

8. No complaint may be made to the Ombudsman that concerns work relationships between the Union institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular, where applicable, the procedures referred to in Article 90(1) and (2) of the Staff Regulations, have been exhausted by the person concerned, or the time limits for replies by the authority thus petitioned have expired or unless any other person working for the Union institutions cannot avail themselves of those procedures due to status. Specific exceptions may be also provided for in harassment cases, in particular sexual harassment cases.

Amendment 14

Ombudsman Statute
Article 2 – paragraph 9

Current text

9. The Ombudsman shall as soon as possible inform the person lodging the complaint of the action he has taken on it.

Amendment

9. The Ombudsman shall as soon as possible, and no later than two months, inform the person lodging the complaint of the action taken on it.
Amendment 15

Ombudsman Statute
Article 2 – paragraph 9 a (new)

Current text

9a. The Ombudsman may be subject to an action for failure to act in accordance with Article 265 of the Treaty on the Functioning of the EU.

Amendment

Amendment 16

Ombudsman Statute
Article 3 – paragraph 1

Current text

1. The Ombudsman shall, on his own initiative or following a complaint, conduct all the enquiries which he considers justified to clarify any suspected maladministration in the activities of Community institutions and bodies. He shall inform the institution or body concerned of such action, which may submit any useful comment to him.

Amendment

1. The Ombudsman shall be empowered, on his or her own initiative or following a complaint, to conduct all the enquiries which he or she considers justified to clarify any suspected maladministration in the activities of Union institutions and bodies without requiring prior authorization. Any institution or body concerned may be informed in due time and be requested to submit any useful comment or evidentiary materials.

Amendment 17

Ombudsman Statute
Article 3 – paragraph 1 a (new)

Current text

1a. The Ombudsman may conduct, without prejudice to his or her regular duties of handling complaints, own initiative enquiries of a more strategic nature to identify and combat systemic
maladministration and promote the best administrative practices in the Union institutions, offices, bodies and agencies, and in order to proactively address structural issues of public interest which may affect good administration, transparency, and a democratic decision-making process.

The Ombudsman may engage in structured and regular dialogue with the institutions and organize public consultations gathering inputs and evidences before providing recommendations or at any stage thereafter, as well as systematically analyse and assess progress of the institution affected.

Amendment 18

Ombudsman Statute
Article 3 – paragraph 2

Current text

2. The Community institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested from them and give him access to the files concerned. Access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, shall be subject to compliance with the rules on security of the Community institution or body concerned.

The institutions or bodies supplying classified information or documents as mentioned in the previous subparagraph shall inform the Ombudsman of such classification.

For the implementation of the rules provided for in the first subparagraph, the Ombudsman shall have agreed in advance with the institution or body concerned the

Amendment

2. The Union institutions and bodies shall be obliged to supply the Ombudsman with any information requested from them and provide access to the files concerned. Access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, shall be subject to compliance with the rules on security of the Union institution or body concerned.

The institutions or bodies supplying classified information or documents as mentioned in the previous subparagraph shall inform the Ombudsman of such classification in advance.

For the implementation of the rules provided for in the first subparagraph, the Ombudsman shall have agreed in advance with the institution or body concerned the
conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy.

The institutions or bodies concerned shall give access to documents originating in a Member State and classed as secret by law or regulation only where that Member State has given its prior agreement.

They shall give access to other documents originating in a Member State after having informed the Member State concerned.

In both cases, in accordance with Article 4, the Ombudsman may not divulge the content of such documents.

 Officials and other servants of Community institutions and bodies must testify at the request of the Ombudsman; they shall continue to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy.

Amendment 19

Ombudsman Statute
Article 3 – paragraph 3

Current text

3. The Member States' authorities shall be obliged to provide the Ombudsman, whenever he may so request, via the Permanent Representations of the Member States to the European Communities, with any information that may help to clarify instances of maladministration by Community institutions or bodies unless such information is covered by laws or

Amendment

3. The Member States' authorities shall be obliged to provide the Ombudsman, whenever it may be requested, via the Permanent Representations of the Member States to the European Union, with any information that may help to clarify instances of maladministration by Union institutions or bodies. The Member State concerned may allow the Ombudsman to have information
regulations on secrecy or by provisions preventing its being communicated. Nonetheless, in the latter case, the Member State concerned may allow the Ombudsman to have this information provided that he undertakes not to divulge it.

covered by laws or regulations on secrecy, following an agreement on the adequate handling of the sensitive information. A detailed description of the document shall be provided in any event.

Amendment 20
Ombudsman Statute
Article 3 – paragraph 4

Current text

4. If the assistance \textit{which he requests} is not forthcoming, the Ombudsman shall inform the European Parliament, which shall make appropriate representations.

Amendment

4. If the assistance \textit{requested} is not forthcoming, the Ombudsman shall inform the European Parliament, which shall make appropriate representations, \textit{including the ensuring of the Ombudsman’s presence in committee meetings and other meetings or hearings.}

Justification

Allow for more presence of the Ombudsman in the Parliament, which is already foreseen under Article 220 of Parliament’s Rules of Procedure\textsuperscript{1}

Amendment 21
Ombudsman Statute
Article 3 – paragraph 4 a (new)

Current text

4a. Where appropriate the Ombudsman may request or be requested to appear before the responsible committee of the Parliament in relation to

Amendment

4a. Where appropriate the Ombudsman may request or be requested to appear before the responsible committee of the Parliament in relation to

\textsuperscript{1} Rule 220 : Activities of the Ombudsman

2. The Ombudsman may also provide the committee responsible with information at its request, or be heard by it on his or her own initiative.
the Ombudsman’s duties. When this request concerns an on-going inquiry, the institution concerned may request or be requested to appear together with the Ombudsman.

Amendment 22

Ombudsman Statute
Article 3 – paragraph 6

Current text

6. If the Ombudsman finds there has been maladministration, he shall inform the institution or body concerned, where appropriate making draft recommendations. The institution or body so informed shall send the Ombudsman a detailed opinion within three months.

Amendment

6. If the Ombudsman finds there has been maladministration, he or she shall inform the institution or body concerned, making draft recommendations. The institution or body so informed shall send the Ombudsman a detailed opinion within three months.

Amendment 23

Ombudsman Statute
Article 3 – paragraph 7

Current text

7. The Ombudsman shall then send a report to the European Parliament and to the institution or body concerned. He may make recommendations in his report. The person lodging the complaint shall be informed by the Ombudsman of the outcome of the inquiries, of the opinion expressed by the institution or body concerned and of any recommendations made by the Ombudsman.

Amendment

7. The Ombudsman may then send a report to the European Parliament and to the institution or body concerned. The Ombudsman may make recommendations in the report. The person lodging the complaint shall be informed by the Ombudsman of the outcome of the inquiries, of the opinion expressed by the institution or body concerned and of any recommendations made by the Ombudsman. When appropriate the Ombudsman may request or be requested to appear before the plenary of the Parliament.
Amendment 24

Ombudsman Statute
Article 3 – paragraph 8

Current text
8. At the end of each annual session the Ombudsman shall submit to the European Parliament a report on the outcome of his inquiries.

Amendment
8. At the end of each annual session the Ombudsman shall submit to the European Parliament a report on the outcome of their inquiries, including an assessment of the adequacy of resources available for the Ombudsman to perform their duties.

Justification
Attempt to ensure that there is an adequate level of resources, with regard to the procedure foreseen in article 11(2) of the current Statute on the number of personnel working for the Ombudsman.

Amendment 25

Ombudsman Statute
Article 3 – paragraph 8 a (new)

Current text

Amendment
8a. The Ombudsman shall be capable to report corroborating evidence on mishandling of EU budget to the European Anti-Fraud Office (OLAF) for further investigation and the European Public Prosecutor’s Office and develop strategic partnerships thereof;

Amendment 26

Ombudsman Statute
Article 4 – paragraph 1
1. The Ombudsman and his staff, to whom Article 287 of the Treaty establishing the European Community and Article 194 of the Treaty establishing the European Atomic Energy Community shall apply, shall be required not to divulge information or documents which they obtain in the course of their inquiries. They shall, in particular, be required not to divulge any classified information or any document supplied to the Ombudsman, in particular sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, or documents falling within the scope of Community legislation regarding the protection of personal data, as well as any information which could harm the person lodging the complaint or any other person involved, without prejudice to paragraph 2.

Justification

The Ombudsman is bound by Regulation 1049/2001 just like all the other institutions and therefore this should be amended accordingly, rather than carving out a separate exception specifically for the Ombudsman’s investigations.

Amendment 27

Ombudsman Statute
Article 4a (new)

Current text

Amendment

Article 4a

1. The Ombudsman and his or her staff shall deal with requests for public access to documents in accordance with the conditions and limits provided for in Regulation (EC) No 1049/2001. With regard to complaints on the right of public access to official documents, the
Ombudsman shall issue, following due analysis and all necessary consideration, a recommendation concerning the release of the said documents, to which the concerned institutions, agency or body shall respond within the time frames provided by Regulation 1049/2001.

2. If the concerned institution does not follow the recommendation to divulge the said documents, it must duly motivate its refusal. The Ombudsman may refer an eventual refusal to the Court of Justice of the European Union, as well as demand the application of the accelerated procedure provided in its rules of procedure.

Amendment 28

Ombudsman Statute
Article 5 – paragraph 1

Current text
1. In so far as it may help to make his enquiries more efficient and better safeguard the rights and interests of persons who make complaints to him, the Ombudsman may cooperate with authorities of the same type in certain Member States provided he complies with the national law applicable. The Ombudsman may not by this means demand to see documents to which he would not have access under Article 3.

Amendment
1. In so far as it may help to make enquiries more efficient and better safeguard the rights and interests of persons who make complaints, the Ombudsman may cooperate with authorities of the same type in certain Member States provided they comply with the national law applicable. The Ombudsman may exceptionally request to see documents otherwise not accessible under Article 3.

Amendment 29

Ombudsman Statute
Article 5 a (new)

Current text

Amendment

Article 5a
1. The Ombudsman shall conduct regular assessments of the policies and reviews of procedures in place in the relevant EU institutions, bodies and agencies in accordance with Article 22 of the Staff Regulations and shall, where appropriate, formulate concrete recommendations for improvement with a view to ensuring full protection for whistle-blowers.

2. The Ombudsman may be contacted to confidentially provide information, impartial advice and expert guidance to potential whistle-blowers concerning the scope of application of the relevant provisions in the Union’s legislation. The Ombudsman may also open inquiries based on the information provided, in case the practices described could be constitutive of maladministration in the Union. In order to enable this purpose, applicable staff regulations regarding secrecy may be waived.

Amendment 30

Ombudsman Statute
Article 5b (new)

Current text

Amendment

Article 5b

1. The Ombudsman shall periodically examine the procedures linked to the administrative action of Union institutions, bodies, offices and agencies and shall assess whether they are able effectively to prevent conflicts of interest, to guarantee impartiality and to ensure full respect for the right to good administration.

2. The Ombudsman may identify and assess possible instances of conflicts of interest at all levels which could constitute a source of maladministration, in which...
case specific conclusions shall be drawn up and the Parliament shall be informed of the findings on the subject.

Amendment 31
Ombudsman Statute
Article 6 – paragraph 2

Current text

2. The Ombudsman shall be chosen from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence, and meet the conditions required for the exercise of the highest judicial office in their country or have the acknowledged competence and experience to undertake the duties of Ombudsman.

Amendment

2. The Ombudsman shall be chosen from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence, have not been Members of national governments or Members of Union’s institutions within the past three years and meet the conditions of impartiality required for high judicial positions in their country or have the acknowledgement competence and experience to undertake the duties of the Ombudsman.

Amendment 32
Ombudsman Statute
Article 8

Current text

Article 8
An Ombudsman who no longer fulfils the conditions required for the performance of his duties or is guilty of serious misconduct may be dismissed by the Court of Justice of the European Communities at the request of the European Parliament.

Amendment

Article 8
An Ombudsman who no longer fulfils the conditions required for the performance of his or her duties or is guilty of serious misconduct may be dismissed by the Court of Justice of the European Union at the request of the European Parliament, after having been heard by the competent committees.

Justification

Addition of one more step to the procedure. In order to guarantee a debate in the public eye
given the nature of the institution and the crucial role it plays vis-à-vis the EU citizens. This should be done before the institution primarily responsible for the appointment of the Ombudsman, namely the Parliament.

Amendment 33

Ombudsman Statute
Article 11 – paragraph 1 a (new)

Current text

Amendment

1a. The Ombudsman should aim to achieve gender parity within the composition of the Secretariat and staff.

Justification

Codification in order to ensure gender neutrality at the Ombudsman's office, which is normally already a policy in place.

Amendment 34

Ombudsman Statute
Article 12 a (new)

Current text

Amendment

1. The Ombudsman shall examine in a timely manner whether the institutions, bodies, offices and agencies of the Union adequately handle harassment cases of any kind and nature by correctly applying the procedures provided for in connection with complaints. The Ombudsman shall draw up appropriate conclusions on the subject.

2. The Ombudsman shall appoint within the secretariat a person or structure with expertise in the field of harassment that is able where appropriate to provide advice to EU Staff and other workers. The Ombudsman shall assess the
procedures in place to prevent harassment of any kind within the institutions, bodies, offices and agencies of the Union, as well as the mechanisms to penalise those responsible and draw up appropriate conclusions on whether those procedures are consistent with the principles of proportionality, adequacy and energetic action, and whether they provide victims with effective protection and support.

Amendment 35
Ombudsman Statute
Article 13

Current text
Article 13
The seat of the Ombudsman shall be that of the European Parliament.

Amendment
Article 13
The seat of the Ombudsman shall be that of the seat of the European Parliament

Justification
The current seat has enabled the European Ombudsman to conduct his duties efficiently and independently.

Amendment 36
Ombudsman Statute
Article 15

Current text
Article 15
The first Ombudsman to be appointed after the entry into force of the EU Treaty shall be appointed for the remainder of the parliamentary term.

Amendment
deleted
Justification

Obsolete provision.

Amendment 37

Ombudsman Statute
Article 17

<table>
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<th>Current text</th>
<th>Amendment</th>
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<td>Article 17</td>
<td>Article 17</td>
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<td>This Decision shall be published in the Official Journal of the European Communities. It shall enter into force on the date of its publication.</td>
<td>This Regulation shall be published in the Official Journal of the European Union. It shall enter into force on the date of its publication.</td>
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Justification

See am 1 and am 2. This is a new binding legislative act in form of a regulation, according to the Lisbon Treaty provisions, where the nomenclature “Community” and its legality is replaced by that of the “Union”.
## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
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<th>21.11.2018</th>
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| Result of final vote | +: 16  
                          --: 0  
                          0: 8  |
| Members present for the final vote | Margrete Auken, Beatriz Becerra Basterrechea, Andrea Cozzolino, Pál Csáky, Miriam Dalli, Eleonora Evi, Peter Jahr, Rikke-Louise Karlsson, Svetoslav Hristov Malinov, Lukas Mandl, Notis Marias, Ana Miranda, Miroslavs Mitrofanovs, Marlene Mizzi, Gabriele Preuß, Eleni Theocharous, Cecilia Wikström |
| Substitutes present for the final vote | Urszula Krupa, Kostadinka Kuneva, Julia Pitera, Ángela Vallina |
| Substitutes under Rule 200(2) present for the final vote | Asim Ademov, Adam Szejnfeld, Mihai Țurcanu |
# FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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<td>Rikke-Louise Karlsson</td>
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<td>VERTS/ALE</td>
<td>Margrete Auken, Ana Miranda, Miroslavs Mitrofanovs</td>
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<td>PPE</td>
<td>Asim Ademov, Pál Csáky, Peter Jahr, Svatoslav Hristov Malinov, Lukas Mandl, Julia Pitera, Adam Szejnfeld, Mihai Țurcanu</td>
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Key to symbols:
+ : in favour
- : against
0 : abstention
### INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<table>
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<th>Date adopted</th>
<th>22.1.2019</th>
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| Result of final vote | +: 20  
| | –: 1  
| | 0: 0 |
| Members present for the final vote | Gerolf Annemans, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Jo Leinen, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Kazimierz Michał Ujazdowski |
| Substitutes present for the final vote | Max Andersson, Sylvia-Yvonne Kaufmann, JasenKK Selimovic, Gabriele Zimmer |
| Substitutes under Rule 200(2) present for the final vote | José Blanco López, Michael Gahler, Stefan Gehrold, Theresa Griffin, Fernando Ruas |
### FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

<table>
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<tr>
<th>Party</th>
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<tr>
<td>ALDE</td>
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<td>Maite Pagazaurtundúa Ruiz, Jasenko Selimovic</td>
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<td>Michael Gahler, Stefan Gehrold, Esteban González Pons, Danuta Maria Hübner, Markus Pieper, Paulo Rangel, Fernando Ruas, György Schöpflin</td>
</tr>
<tr>
<td>S&amp;D</td>
<td>-</td>
<td>José Blanco López, Theresa Griffin, Sylvia Yvonne Kaufmann, Jo Leinen, Pedro Silva Pereira</td>
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<tr>
<td>VERTS/ALE</td>
<td>0</td>
<td>Max Andersson, Pascal Durand</td>
</tr>
</tbody>
</table>

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+ : in favour  
- : against  
0 : abstention