



2018/2080(INL)

10.01.2019

DRAFT 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))

Committee on Constitutional Affairs

Rapporteur: Paulo Rangel

(Initiative – Rule 45 of the Rules of Procedure)

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
ANNEX TO THE MOTION FOR A RESOLUTION	4
EXPLANATORY STATEMENT.....	13

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, Euratom (2018/2080(INL))

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 the 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 (A8-0000/2018),
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,

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, 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 these rights to be effective and to enhance his or her capacity to conduct thorough and impartial inquiries, the Ombudsman should be provided with all the tools that are necessary to perform his or her duties successfully.
- (3) Decision 94/262/ECSC, EC, Euratom of the European Parliament ¹was lastly amended in 2008. With the entry into force of the Treaty of Lisbon on 1 December 2009, a 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.
- (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,

¹ Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ L 113, 4.5.1994, p. 15).

notwithstanding specific restrictions pertaining 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 his or her primary duty of handling complaints, to conduct own-initiative inquiries with a view to identifying repeated instances of maladministration and promoting good administrative practices within the Union institutions, bodies, offices and agencies.
- (7) In order to increase the effectiveness of his or her action, the Ombudsman should be entitled, on his or her own initiative or by virtue of 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 his or her recommendations. The Ombudsman should also be entitled to include in his or her annual report to the European Parliament an assessment of the compliance rate of his or her recommendations and an assessment of the adequacy of the resources made available to perform his or her duties.
- (8) The Ombudsman should have access to all the elements required for the performance of his or her duties. To that end, Union institutions, bodies, offices and agencies are to be obliged to supply the Ombudsman with any information which he or she requests 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 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. If the Ombudsman finds that the assistance requested is not forthcoming, he or she should inform the European Parliament, which should make appropriate representations.
- (9) The Ombudsman and his or her 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 which he or she considers might relate to criminal law and which have come to his or her attention in the course of his or her inquiries. 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) 2017/1939¹, 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 he or she 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) It is desirable to take steps so as to allow the Ombudsman to develop his or her cooperation with the European Union Agency for Fundamental Rights, since such cooperation may render the performance of the Ombudsman's duties more effective. A provision 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.
- (12) It is for the European Parliament to appoint the Ombudsman at the beginning of its term and for the duration thereof, choosing him or her from among persons who are Union citizens and 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 its replacement.
- (13) The Ombudsman should perform his or her duties with complete independence and give a solemn undertaking before the Court of Justice that he or she will do so when taking up his or her duties. 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 Ombudsman's secretariat which will assist him or her, 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 compliance with 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").
- 2. The Ombudsman shall perform his or her duties with independence from the Union institutions, bodies, offices and agencies, in accordance with the powers conferred on them by the Treaties, and with due regard to Article 41 of the Charter of Fundamental Rights of the European Union on the right to good administration.

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

3. In the performance of his or her duties, 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 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 to him or her.
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 two 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 his or her mandate 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 259/68¹ ("the Staff Regulations"), have been exhausted by the person concerned and

¹ OJ L 56, 4.3.1968, p. 1.

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 he or she has taken on it.

Article 3

1. The Ombudsman shall, on his or her 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 inform the institution, body, office or agency concerned of such action, which may submit any useful comment to the Ombudsman.
2. Without prejudice to his or her primary duty of handling complaints, the Ombudsman may conduct own-initiative inquiries in order to identify repeated instances of maladministration and promote good administrative practices within the Union institutions, bodies, offices and agencies.
3. The Union institutions, bodies, offices and agencies shall supply the Ombudsman with any information the Ombudsman has requested from them and give the Ombudsman 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 where that Member State has given its prior agreement.

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. The officials or servants in question shall speak on behalf of and as instructed by their institution, body, office or agency. They shall 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 shall state the reasons to the Ombudsman and, where possible, propose alternative modalities of information-sharing.

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, 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 provided that he or she undertakes not to divulge it.

5. If the assistance which he or she requests is not forthcoming, the Ombudsman shall inform the European Parliament, which shall make appropriate representations.
6. If the Ombudsman finds there has been maladministration, he or she shall inform the institution, body, office or agency concerned, where appropriate making draft recommendations. The institution, body, office or agency so informed shall send the Ombudsman a detailed opinion within three months.
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 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 request to appear before 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 envisaged solution 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 of his or her inquiries. 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 his or her staff, to whom Article 339 of the Treaty on the functioning of the European Union 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. 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, in the course of inquiries, the Ombudsman learns of facts which he or she considers 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.

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

Article 5

The Ombudsman and his or her staff 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. The Ombudsman may not by this means demand to see documents to which he or she would not have access under Article 3.
2. Within the scope of his or her duties, the Ombudsman shall cooperate with the European Union Agency for Fundamental Rights. The Ombudsman may, under the same conditions, cooperate with institutions and bodies of Member States in charge of the promotion and protection of fundamental rights. The Ombudsman shall avoid any duplication with the activities of the European Union Agency for Fundamental Rights or the relevant institutions or bodies of the Member States.

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, 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.

Article 8

1. The Ombudsman shall cease to exercise his or her duties either at the end of his or her term of office or on his or her resignation or dismissal.
2. Save in the event of his or her 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(1) 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 may hear the Ombudsman before making such a request.

Article 10

1. In the performance of his or her duties, the Ombudsman shall act in accordance with Article 228(3) of the TFEU. The Ombudsman shall refrain from any act incompatible with the nature of his or her duties.
2. When taking up his or her duties, the Ombudsman gives a solemn undertaking before the Court of Justice sitting as a full Court that he or she will perform his or her duties with complete independence and impartiality and that during and after his or her term of office he or she will respect the obligations arising therefrom, in particular his or her duty to behave with integrity and discretion as regards the acceptance, after he or she has ceased to hold office, of certain appointments or benefits.

Article 11

1. During his or her 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 Ombudsman's secretariat.

Article 12

1. The Ombudsman shall be assisted by a secretariat, the principal officer of which the Ombudsman shall appoint.
2. 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 European Union. Their number shall be adopted each year as part of the budgetary procedure.
3. Officials and servants of the European 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.
4. In matters concerning his or her 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;
- (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.