

Reform of the European Ombudsman's Statute

During the June I plenary session, the European Parliament is set to discuss a new European Parliament regulation governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) to replace the existing statute, adopted in 2008.

The function of the European Ombudsman

The European Ombudsman, [elected](#) by the European Parliament for the duration of the parliamentary term, plays an important role, set out in [Article 228 of the Treaty on the Functioning of the European Union](#) (TFEU), as independent guardian of accountability and transparency, ensuring the EU institutions adhere to the principle of good administration, and respect EU citizens' rights following the [EU Charter of Fundamental Rights](#). The Ombudsman deals with citizens', NGOs' and businesses' [complaints](#) about maladministration by EU institutions, bodies, offices and agencies, through inquiries and reports containing recommendations to the respective institution and Parliament, and can also conduct [own-initiative inquiries](#). In terms of resolving conflicts, the Ombudsman can mediate between parties, by proposing an amicable solution, or make critical remarks on the case when such a solution is no longer possible. However, the Ombudsman cannot intervene once legal proceedings have been initiated, cannot put into question the soundness of a legal judgment, and any complaint to the Ombudsman does not interrupt judicial time limits. The current Ombudsman is [Emily O'Reilly](#), former Irish Ombudsman, first elected to the post in July 2013 to see out the remainder of Nikiforos Diamandouros's term, following his early [retirement](#) after two terms in 2013. She has been re-elected twice, in 2014, and again in 2019, to serve for the 2019-2024 parliamentary term.

Overall impact of the Ombudsman's work and evolution of the role

While the recommendations contained in the Ombudsman's decisions have no binding effects, the office's functional independence has had a strong impact, particularly given its powers of inquiry – such as to inspect documents and call EU officials to testify. Beyond the role of mediator set out in the Ombudsman's Statute, the Ombudsman's tasks also include the wider role of providing best practices. It has thus also contributed to broad adherence by the EU institutions and bodies to the Ombudsman's solutions or recommendations. The great majority of inquiries and complaints concern the European Commission, which complies in [75 % of cases](#) (2019).

Over 27 years in existence, the Ombudsman has [evolved](#) considerably as an institution, with each post-holder focusing on different issues related to maladministration. Jacob Söderman (1995-2003), the first EU Ombudsman, concentrated on the legal aspect of complaints in his scrutiny, and introduced the European Code of Good Administrative Behaviour as a 'soft law' instrument. His successor, Nikiforos Diamandouros (2003-2013) broadened the maladministration concept by including areas not strictly related to illegality and transparency issues. The incumbent Ombudsman has also sought to play a more active political role through high-level, politically sensitive inquiries (e.g. on Council transparency, trilogues, and the appointment of the Secretary-General of the Commission), with the stated aim of improving the visibility and openness of decision-making in the EU.

Proposed changes in the Ombudsman's Statute from 2019

Considering the need to replace the existing [Ombudsman's Statute](#), last amended in 2008 (prior to the Lisbon Treaty coming into force) and with the aim to further strengthen and improve the Ombudsman's role and effectiveness, in February 2019, the European Parliament adopted a [resolution](#) proposing the amendment of the Statute. Amendments to the Ombudsman's Statute follow a special legislative procedure set out in [Article 228\(4\) TFEU](#).

Under the proposed modifications tabled in 2019, the deadline for filing a complaint would have been extended from two to three years, and the Ombudsman would have been responsible for examining whether EU institutions and bodies have put in place efficient procedures to prevent harassment, including

sexual harassment cases. The amendments would also have provided the Ombudsman with an enhanced role in assessing and making recommendations on legislation to protect whistle-blowers. The institution concerned would have had to give the Ombudsman access to information requested for an inquiry, subject to the rules on processing confidential information. The Ombudsman would also have periodically examined EU institutions' administrative procedures, to assess whether these prevent conflicts of interest and guarantee impartiality. The deadline for a reply by affected institutions, agencies or bodies to an Ombudsman inquiry would have been extended by two months. The Ombudsman would have been able to make recommendations when an EU institution was not applying a court ruling, and, in case of large-scale maladministration, send special reports to Parliament, and appear on their own initiative or at Parliament's request, when appropriate in an inquiry. The Ombudsman would also have had the right to conduct strategic own-initiative inquiries to identify maladministration. Finally, the Ombudsman should cooperate with the European Union Agency for Fundamental Rights (FRA) and other institutions and bodies, while still avoiding duplication.

While [welcoming](#) some of these proposed changes in October 2019, the European Commission disagreed with some others, such as the extended (three-year) deadline for filing complaints, and the Ombudsman's right to make recommendations when an EU institution fails to apply a court ruling. It also rejected proposals on harassment, pointing to the role of the Ombudsman and Staff Regulations and the risk of duplication. The Commission also objected to the enhanced role for the Ombudsman on overseeing procedures protecting whistle-blowers; provisions on access to documents, due to the need for safeguards on handling classified documents; and the widened scope for EU officials' testimony, because of the lack of a clear legal framework for information disclosure to the Ombudsman and maintaining professional secrecy. Finally, the Commission opposed the proposed provisions on conflicts of interest, and stressed that the Ombudsman's powers to investigate complaints and launch own-initiative inquiries should remain limited only to instances of maladministration.

European Parliament position

On 25 May 2021, the Parliament's Committee on Constitutional Affairs (AFCO) adopted a [motion for a resolution](#) to which is annexed the amended text of the European Ombudsman's statute, which is expected to be [voted](#) during the June 2021 plenary session. This new text follows informal consultations with the Council, since which the latter [indicated](#) it would be in a position to give consent to the regulation once formally requested by the Parliament.

A number of the modifications proposed in 2019 have been retained. These include the possible extension by two months of the deadline for institutions or bodies concerned to reply to the Ombudsman's findings or recommendations in case of assessed maladministration; and the Ombudsman's cooperation with the EU Agency for Fundamental Rights and other institutions and bodies, provided duplication is avoided. The Ombudsman would also have the right to conduct strategic own-initiative inquiries. However, a number of other earlier proposals have been dropped or their scope limited. In particular, the two-year deadline for filing a complaint to the European Ombudsman would be retained. Proposed provisions on the treatment of harassment cases are less detailed and do not contain any express reference to cases of sexual harassment. The scope of the Ombudsman's action in cases of whistle-blowers is also somewhat reduced, with the regular assessment of policies and review of procedures in this area, and the possibility to make related recommendations, as well as offering impartial advice and expert guidance to whistle-blowers all having been dropped. Provisions on the Ombudsman's possibility to periodically examine EU institutions' administrative procedures, assess their effectiveness in preventing conflicts of interest and guaranteeing impartiality and draw up conclusions do not feature explicitly in the 2021 motion for a resolution, which provides instead for the inclusion of cases of conflicts of interest in the Ombudsman's annual reports to the European Parliament.

If adopted in plenary, the Council's consent as well as the opinion of the Commission will be required before the new statute can be formally adopted by Parliament at a subsequent plenary session.

Motion for a resolution: [2021/2053\(INL\)](#); Committee responsible: AFCO; Rapporteur: Paulo Rangel (EPP, Portugal).

