



Plenary sitting

A9-0010/2023

26.1.2023

REPORT

on the draft implementing provisions for the Statute of the European
Ombudsman
(N9-0065/2022 – C9-0338/2022 – 2022/0903(NLE))

Committee on Constitutional Affairs

Rapporteur: Paulo Rangel

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft implementing provisions.)

Amendments to the draft implementing provisions

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft implementing provisions for the Statute of the European Ombudsman
(N9-0065/2022 – C9-0338/2022 – 2022/0903(NLE))

(Consultation)

The European Parliament,

- having regard to the draft implementing provisions for the Statute of the European Ombudsman (N9-0065/2022),
 - having regard to Article 18 of Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 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, Euratom¹, pursuant to which the European Ombudsman consulted Parliament (C9-0338/2022),
 - having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A9-0010/2023),
1. Approves the draft implementing provisions as amended;
 2. Calls on the Ombudsman to notify Parliament if she intends to depart from the text approved by Parliament;
 3. Asks the Ombudsman to consult Parliament again if she intends to substantially amend her draft;
 4. Instructs its President to forward its position to the European Ombudsman, the Council and the Commission.

Amendment 1

Draft implementing provisions

Article 2 – paragraph 3

*Text proposed by the European
Ombudsman*

Amendment

2.3. The Ombudsman shall treat a petition falling within the Ombudsman's duties as defined in Article 1(3) of the *deleted*

¹ OJ L 253, 16.7.2021, p. 1.

Statute, which is transferred by the European Parliament with the consent of the petitioner, as a complaint.

Amendment 2
Draft implementing provisions

Article 3 – paragraph 1

Text proposed by the European Ombudsman

3.1. The Ombudsman shall handle complaints in any official and working language of the institutions of the Union. The Ombudsman shall communicate with the complainant in ***that*** language, unless the complainant accepts to receive communications in another official and working language of the Union.

Amendment

3.1. The Ombudsman shall handle complaints in any official and working language of the institutions of the Union. The Ombudsman shall communicate with the complainant in ***the language of the complaint***, unless the complainant accepts to receive communications in another official and working language of the Union.

Amendment 3
Draft implementing provisions

Article 3 – paragraph 6

Text proposed by the European Ombudsman

3.6. If the Ombudsman considers it appropriate to do so, the Ombudsman may take steps to ensure that a complaint is dealt with as a matter of priority, taking into account strategic ***objectives*** or the particular nature of a complaint, including in areas such as whistleblowing and harassment.

Amendment

3.6. ***In accordance with Article 2 of the Statute***, if the Ombudsman considers it appropriate to do so, the Ombudsman may take steps to ensure that a complaint is dealt with as a matter of priority, taking into account ***the strategic work topics defined by the Ombudsman in the annual report*** or the particular nature of a complaint, including in areas such as whistleblowing and harassment.

Amendment 4
Draft implementing provisions

Article 3 – paragraph 7

*Text proposed by the European
Ombudsman*

3.7. The Ombudsman shall deal with abusive communications and with complaints that amount to an abuse of process in accordance with guidelines adopted for *this* purpose.

Amendment

3.7. The Ombudsman shall deal with abusive communications and with complaints that amount to an abuse of process in accordance with guidelines adopted for *that* purpose. ***Those guidelines shall be published on the website of the Ombudsman.***

Amendment 5
Draft implementing provisions

Article 4 – paragraph 3

*Text proposed by the European
Ombudsman*

4.3. At the Ombudsman request, institutions shall provide the Ombudsman with information *or* documents for the purposes of an inquiry. The Ombudsman inquiry team may ***inspect documents***, either at the premises of the institution concerned or by electronic means. EU classified ***documents*** shall be provided at the premises of the institution concerned, unless otherwise agreed with the Ombudsman.

Amendment

4.3. At the Ombudsman request ***and subject to the conditions laid down in Article 5 of the Statute***, institutions shall provide the Ombudsman with information, ***including in the form of*** documents, for the purposes of an inquiry. The Ombudsman inquiry team may ***examine the information***, either at the premises of the institution concerned or by electronic means. EU classified ***information*** shall be provided at the premises of the institution concerned, unless otherwise agreed with the Ombudsman.

Amendment 6
Draft implementing provisions

Article 4 – paragraph 4

*Text proposed by the European
Ombudsman*

4.4. The institution's replies on the

Amendment

4.4. The institution's replies on the

matters referred to in paragraphs 4.2 and 4.3 shall be made within the timeframe specified by the Ombudsman, which shall normally not exceed three months. The precise timeframe for providing a reply shall be reasonable, taking into account the complexity and urgency of the inquiry. If the Ombudsman considers that the inquiry is of public **importance**, the timeframe for responding shall be as short as is reasonably possible. If the institution concerned is not in a position to provide a reply within the set timeframe, it shall make a reasoned request for an extension.

matters referred to in paragraphs 4.2 and 4.3 shall be made within the timeframe specified by the Ombudsman, which shall normally not exceed three months. The precise timeframe for providing a reply shall be reasonable, taking into account the complexity and urgency of the inquiry. If the Ombudsman considers that the inquiry is of public **interest**, the timeframe for responding shall be as short as is reasonably possible. If the institution concerned is not in a position to provide a reply within the set timeframe, it shall make a reasoned request for an extension.

Amendment 7

Draft implementing provisions

Article 4 – paragraph 10

Text proposed by the European Ombudsman

4.10. The Ombudsman shall retain possession of documents or information ***obtained from an institution or a Member State during an inquiry, and identified by that institution or Member State as confidential***, only for so long as the inquiry is ongoing and the period of time for dealing with any request for review has not expired. Such documents or information ***will*** be destroyed after the inquiry is closed and the period of time for dealing with any request for review has expired. The Ombudsman may request an institution or Member State to retain such documents or information for a period of at least five years following a notification to them that the Ombudsman no longer retains the documents or information.

Amendment

4.10. The Ombudsman shall retain possession of documents or information ***referred to in Article 5(8) of the Statute*** only for so long as the inquiry is ongoing and the period of time for dealing with any request for review ***made pursuant to Article 9.3 of this Decision*** has not expired. Such documents or information ***shall*** be destroyed after the inquiry is closed and the period of time for dealing with any request for review has expired. The Ombudsman may request an institution or Member State to retain such documents or information for a period of at least five years following a notification to them that the Ombudsman no longer retains the documents or information.

Amendment 8
Draft implementing provisions

Article 5 – paragraph 1

*Text proposed by the European
Ombudsman*

5.1. If the Ombudsman considers that a complaint can be resolved, the Ombudsman shall seek a solution with the institution concerned and the complainant.

Amendment

5.1. If the Ombudsman considers that a complaint can be resolved, the Ombudsman shall seek a solution with the institution concerned **to eliminate the instance of maladministration and thereby resolve the complaint.**

Amendment 9

Draft implementing provisions
Article 6 – paragraph 2

*Text proposed by the European
Ombudsman*

6.2. Where the Ombudsman finds no maladministration, a solution has been found or no further inquiries are justified, the inquiry shall be closed with a decision setting out findings. In the decision closing the inquiry, the Ombudsman may **make suggestions for improvement** regarding issues identified in the course of the inquiry. The Ombudsman shall send the decision to the complainant and to the institution concerned.

Amendment

6.2. Where the Ombudsman finds no maladministration, a solution has been found or no further inquiries are justified, the inquiry shall be closed with a decision setting out findings. In the decision closing the inquiry, the Ombudsman may **suggest improvements** regarding issues identified in the course of the inquiry. The Ombudsman shall send the decision to the complainant and to the institution concerned.

Amendment 10
Draft implementing provisions

Article 7 – paragraph 2

*Text proposed by the European
Ombudsman*

7.2. The Ombudsman may submit a Special Report to the European Parliament on any inquiry in which the Ombudsman finds maladministration and which the

Amendment

7.2. The Ombudsman may submit a Special Report to the European Parliament on any inquiry in which the Ombudsman finds maladministration and which the

Ombudsman considers to be of public *importance*.

Ombudsman considers to be of *particular* public *interest*.

Amendment 11
Draft implementing provisions

Article 8 – title

*Text proposed by the European
Ombudsman*

Amendment

Own-initiative inquiries

Own-initiative inquiries *and follow-up
inquiries*

Amendment 12

Draft implementing provisions
Article 8 – paragraph 1

*Text proposed by the European
Ombudsman*

Amendment

8.1. In accordance with the Ombudsman's duties as defined in Article 1(3) of the Statute, the Ombudsman shall conduct own-initiative inquiries for which the Ombudsman finds grounds.

8.1. In accordance with the Ombudsman's duties as defined in Article 1(3) *and in Article 3(3)* of the Statute, the Ombudsman shall conduct own-initiative inquiries for which the Ombudsman finds grounds.

Amendment 13
Draft implementing provisions

Article 8 – paragraph 2

*Text proposed by the European
Ombudsman*

Amendment

8.2. *The procedures applicable to inquiries opened following a complaint shall apply, to the extent that they are relevant, to own initiative inquiries.*

8.2. *The Ombudsman may also contact the institutions in writing, in order to raise awareness, share observations or gather information on administrative practices. Within the limits of the Ombudsman's duties as defined in Article 1(3) of the Statute and in accordance with Article 3(3) thereof, the Ombudsman may*

decide to conduct own-initiative inquiries also following such contacts with the institutions.

Amendment 14
Draft implementing provisions

Article 8 – paragraph 3

*Text proposed by the European
Ombudsman*

8.3. *The Ombudsman may, outside the scope of inquiries, contact the institutions in writing, in order to raise awareness, share observations or gather information on administrative practices. Within the limits of the duties defined in Article 1(3) of the Statute, the Ombudsman may decide to conduct own-initiative inquiries also following such contacts with the institutions, in accordance with paragraphs 8.1 and 8.2.*

Amendment

8.3. *The procedures applicable to inquiries opened following a complaint shall apply to own-initiative inquiries under paragraph 8.1 and 8.2 to the extent that they are relevant to those inquiries.*

Amendment 15
Draft implementing provisions

Article 9 – paragraph 3

*Text proposed by the European
Ombudsman*

9.3. The complainant shall be entitled to request a review of a decision taken pursuant to Articles 3.3 and 3.4 of this Decision, and of any finding in a decision closing an inquiry with the exception of a finding of maladministration. The detailed rules on how the Ombudsman deals with requests for review shall be set out in a decision of the Ombudsman.

Amendment

9.3. The complainant shall be entitled to request a review of a decision taken pursuant to Articles 3.3 and 3.4 of this Decision, and of any finding in a decision closing an inquiry with the exception of a finding of maladministration. The detailed rules on how the Ombudsman deals with requests for review shall be set out in a decision of the Ombudsman **and published on the website of the Ombudsman.**

Amendment 16
Draft implementing provisions

Article 9 – paragraph 4

*Text proposed by the European
Ombudsman*

9.4. When making a request for review pursuant to *Article* 9.3 of this Decision, the complainant shall be entitled to request access to the Ombudsman’s file on the complaint, ***in accordance with the rules set out in the Statute, with the exception of documents declared confidential by an institution, a Member State or the Ombudsman, or any other confidential information in the file.*** Disclosure of information in the file to the complainant shall ***be subject to*** the conditions laid down in Article 5(8) of the Statute.

Amendment

9.4. When making a request for review pursuant to ***paragraph*** 9.3 of this Decision, the complainant shall be entitled to request access to the Ombudsman’s file on the complaint. Disclosure of information in the file to the complainant shall ***comply with the rules laid down in the Statute and in particular,*** the conditions laid down in Article 5(8) of the Statute.

Amendment 17

Draft implementing provisions
Article 9 – paragraph 5

*Text proposed by the European
Ombudsman*

9.5. To protect the legitimate interests of the complainant or of a third party, the Ombudsman may classify as confidential information in a complaint or in other documents, and inform the institution accordingly. In exceptional circumstances, such as in complaints that concern whistleblowing, the Ombudsman may decide not to communicate the identity of the complainant to the institution concerned.

Amendment

9.5. To protect the legitimate interests of the complainant or of a third party, the Ombudsman may classify as confidential information in a complaint or in other documents, and inform the institution accordingly. In exceptional circumstances, such as in complaints that concern whistleblowing, the Ombudsman may decide not to communicate the identity of the complainant to the institution concerned ***or to other external actors.***

Amendment 18

Draft implementing provisions

Article 9 – paragraph 7 (new)

*Text proposed by the European
Ombudsman*

Amendment

9.7. In cases where the Ombudsman is asked to verify whether the measures adopted by the competent authority of the Union institution, body, office or agency concerned ensure the protection of alleged victims of harassment and restore a healthy and safe working environment, respecting the dignity of the persons concerned while an administrative inquiry is ongoing, the Ombudsman may consult external experts in the field for their assistance in the verification and for possible recommendations.

Amendment 19

Draft implementing provisions

Article 10

*Text proposed by the European
Ombudsman*

Amendment

The Ombudsman shall ensure that institutions are kept informed of the Ombudsman's inquiries and their outcomes and, **where appropriate**, are given the possibility to submit comments and evidence as provided for in this Decision and in the Statute.

The Ombudsman shall ensure that institutions are kept informed of the Ombudsman's inquiries and their outcomes and are given the possibility to submit comments and evidence as provided for in this Decision and in the Statute.

Amendment 20

Draft implementing provisions

Article 13

*Text proposed by the European
Ombudsman*

Amendment

The Ombudsman may make public non-confidential information about the progress of an inquiry. In particular, in inquiries of public **importance**, the Ombudsman may

Without prejudice to Article 6 and Article 9(1) of the Statute, the Ombudsman may make public non-confidential information about the progress of an inquiry. In

make public exchanges with the institutions or Member States, subject to the conditions laid down in Article 5(8) of the Statute.

particular, in inquiries of public *interest*, the Ombudsman may make public exchanges with the institutions or Member States, subject to the conditions laid down in Article 5(8) of the Statute.

EXPLANATORY STATEMENT

Article 18 of Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 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, stipulates that the Ombudsman shall adopt the implementing provisions for this Regulation, after consultation of the European Parliament, the Council and the European Commission.

Article 18 of the Statute of the European Ombudsman also stipulates that those implementing rules shall, as a minimum, include provisions on (a) procedural rights of the complainant and the Union institution, body, office or agency concerned; (b) receipt, processing and closure of complaints; (c) own-initiative inquiries; and (d) follow-up inquiries.

The implementing provisions currently in force date back to 2016 and are based on the previous Statute of the European Ombudsman. Those provisions were adopted by the European Ombudsman alone, without consultation of the three institutions.

The draft implementing provisions submitted to the three institutions are based on the implementing provisions currently in force, with some modifications to adapt them to the provisions of the new Statute.

Your rapporteur proposes some amendments to better align a number of provisions to the provisions of the Statute.

Furthermore, your rapporteur proposes to add some references that aim at ensuring transparency. These concern some well-established practices of the Ombudsman, such as the publication of 'Topics of strategic work' in the Ombudsman's annual reports and the publication of its 'Decision establishing guidelines on how to deal with abusive communications and complaints which amount to an abuse of process' on the Ombudsman's website.

Finally, your rapporteur also notes that Article 2.3, which deals with the transfer of petitions by the European Parliament, is at odds with the 'Guidelines of the Committee of Petitions'² on this matter:

² <https://www.europarl.europa.eu/committees/en/peti/home/publications>

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Consultation on European Ombudsman Implementing Provisions	
References	N9-0065/2022 – C9-0338/2022 – 2022/0903(NLE)	
Date of consultation or request for consent	5.7.2022	
Committee responsible Date announced in plenary	AFCO 20.10.2022	
Committees asked for opinions Date announced in plenary	PETI 20.10.2022	
Not delivering opinions Date of decision	PETI 24.11.2022	
Rapporteurs Date appointed	Paulo Rangel 17.10.2022	
Discussed in committee	8.11.2022	5.12.2022
Date adopted	25.1.2023	
Result of final vote	+: –: 0:	23 0 0
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Gwendoline Delbos-Corfield, Salvatore De Meo, Daniel Freund, Charles Goerens, Esteban González Pons, Laura Huhtasaari, Victor Negrescu, Max Orville, Domènec Ruiz Devesa, Helmut Scholz, Pedro Silva Pereira, Sven Simon, Guy Verhofstadt, Loránt Vincze	
Substitutes present for the final vote	Nathalie Colin-Oesterlé, Pascal Durand, Seán Kelly, Jaak Madison, Maite Pagazaurtundúa	
Substitutes under Rule 209(7) present for the final vote	Leszek Miller	
Date tabled	26.1.2023	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

23	+
ID	Gerolf Annemans, Laura Huhtasaari, Jaak Madison
PPE	Nathalie Colin Oesterlé, Salvatore De Meo, Esteban González Pons, Seán Kelly, Sven Simon, Loránt Vincze
RENEW	Charles Goerens, Max Orville, Maite Pagazaurtundúa, Guy Verhofstadt
S&D	Gabriele Bischoff, Pascal Durand, Leszek Miller, Victor Negrescu, Domènec Ruiz Devesa, Pedro Silva Pereira
THE LEFT	Helmut Scholz
VERTS/ALE	Damian Boeselager, Gwendoline Delbos Corfield, Daniel Freund

0	-

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention