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DRAFT REPORT

on the activities of the European Ombudsman - annual report 2018
(2019/xxxx(INI))

Committee on Petitions

Rapporteur: Peter Jahr

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the activities of the European Ombudsman - annual report 2018 (2019/xxxx(INI))

The European Parliament,

- having regard to the annual report on the European Ombudsman’s activities in 2018,
 - having regard to Articles 15, 24, third paragraph, and 228 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Articles 11, 41, 42 and 43 of the Charter of Fundamental Rights of the European Union,
 - having regard to the UN Convention on the Rights of Persons with Disabilities (UNCPRD),
 - having regard to 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 duties¹,
 - having regard to the European Code of Good Administrative Behaviour, as adopted by Parliament on 6 September 2001,
 - having regard to the Framework Agreement on Cooperation concluded between Parliament and the European Ombudsman on 15 March 2006, which entered into force on 1 April 2006,
 - having regard to its resolution of 17 January 2019 on Ombudsman’s strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU²,
 - having regard to its resolution of 13 February 2019 on the outcome of the Committee on Petitions’ deliberations during 2018³,
 - having regard to its previous resolutions on the European Ombudsman’s activities,
 - having regard to Rules 54 and 232(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions (A9-0000/2019),
- A. whereas the annual report on the activities of the European Ombudsman in 2018 was formally submitted to the President of Parliament on **xxx** 2019 and the Ombudsman, Emily O’Reilly, presented it to the Committee on Petitions in Brussels on 4 September 2019;

¹ OJ L 113, 4.5.1994, p. 15.

² Texts adopted, P8_TA(2019)0045.

³ Texts adopted, P8_TA(2019)0114.

- B. whereas Articles 24 and 228 of the TFEU empower the European Ombudsman to receive complaints concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role;
- C. whereas in 2018 the Ombudsman opened 490 inquiries, of which 482 were complaint-based and 8 own-initiative, while closing 545 inquiries (534 complaint-based and 11 own-initiative); whereas the greater part of the inquiries concerned the Commission (285 inquiries or 58.2 %), the next largest number concerned the EU agencies (43 inquiries or 8.8 %), and the rest were distributed as follows: Parliament (30 inquiries or 6.1 %), the European Personnel Selection Office (EPSO) (23 inquiries or 4.7 %), the European External Action Service (EEAS) (23 inquiries or 4.7 %), the European Investment Bank (16 inquiries or 3.3 %), the European Anti-Fraud Office (OLAF) (14 inquiries or 2.8 %), and other institutions (56 inquiries or 11.4 %);
- D. whereas the top three concerns in the inquiries closed by the Ombudsman in 2018 were: transparency, accountability and public access to information and documents (24.6 %), culture of service (19.8 %), and proper use of discretion (16.1 %); whereas other concerns included respect of procedural rights such as the right to be heard, respect of fundamental rights, recruitment, ethical issues, public participation in EU decision-making, including in infringement procedures, sound financial management of EU tenders, grants and contracts, recruitment, and good management of EU personnel issues;
- E. whereas in its strategic work in 2018, the Ombudsman's office opened five new strategic inquiries, respectively on treatment of persons with disabilities under the Joint Sickness Insurance Scheme, on accessibility of Commission websites for persons with disabilities, on pre-submission activities of the European Medicines Agency, on the Commission's management of 'revolving door' situations concerning EU staff, and on the accountability of the Council's legislative work; whereas in 2018 the Ombudsman opened ten strategic initiatives on, among other subjects, the use of languages in the EU civil service, anti-harassment policies in the EU civil service, and the protection of children in migration;
- F. whereas in 2018 the Ombudsman launched a new website, which includes a revised and user-friendly interface for potential complainants; whereas the Ombudsman's 'fast-track' procedure for dealing with complaints about public access to documents reflects the Ombudsman's commitment to provide assistance and to take decisions within 40 days for those seeking assistance, in all 24 official languages of the EU; whereas this new initiative is part of a strategy to improve the effectiveness of her office;
- G. whereas following her inquiry the Ombudsman found that the Council's lack of transparency regarding public access to its legislative documents and its current practices with regard to transparency of its decision-making process – specifically during the preparatory stage at Coreper and working group level – constitute maladministration;
- H. whereas in 2018 the Ombudsman launched an anti-harassment strategy checking the anti-harassment policies the EU administration has in place; whereas the Ombudsman decided to write in 2018 to 26 EU institutions and agencies asking for details of the

policies and how they are implemented;

- I. whereas the Ombudsman is part of the EU framework under the UNCPRD tasked with protecting, promoting and monitoring the implementation of that convention at the level of the EU institutions;
1. Welcomes the annual report for 2018 presented by the European Ombudsman;
2. Congratulates Emily O'Reilly for her work and her constructive efforts to improve the quality of the EU's administration and the accessibility and quality of the services it offers to citizens;
3. Emphasises the importance of transparency and public access to the documents held by the Council; highlights the Ombudsman's work in making the EU legislative process more accountable to the public;
4. Demands that the Council, as one of the two components of the European legislature, align its working methods with the standards of a parliamentary democracy as required under the Treaties, rather than acting like a diplomatic forum, which is not its intended function;
5. Urges the Ombudsman to continue to monitor the implementation of the Commission's revised rules on 'revolving doors' that came into place in September 2018;
6. Recognises the need for transparency in the EU decision-making process; supports the development between the services of the three institutions of the Joint Legislative Portal, which will provide a user-friendly channel enabling non-specialists to access information about ongoing legislative procedures;
7. Supports the publication of final trilogue documents; notes that the ruling in the De Capitani case (T-540/15) in March 2018 states that the institutions' views reflected in the 'four-column' documents did not fall under a general presumption of non-disclosure; notes that the sensitive nature of the subject-matter reflected in the trilogue documents was not in itself considered to constitute sufficient grounds for refusing access to the public;
8. Reiterates that the independence of the ECB gives the members of its Executive Board the freedom to decide, responsibly and on the basis of respect for appropriate accountability, whether to participate in fora, including those not open to the wider public, where they consider it necessary in order to ensure the best conduct of the ECB's monetary policy; notes the opinion of the Ombudsman of 5 July 2018;
9. Calls on the Commission, in the phase of informal dialogue between itself and the Member States, to ensure transparency and access to documents and information with regard to the EU Pilot procedures in relation to petitions received; calls on the Commission to take a different approach with regard to investigations of breaches of EU law and to launch infringement procedures that do not rely solely on the EU Pilot mechanism;
10. Stresses the importance of the measures taken to enhance the transparency of decisions

taken in infringement procedures; recalls that in 2014 the Commission set up a centralised platform with comprehensive information on infringements, on the Europa website; highlights that the Commission provides the European Parliament and the public with information on EU Pilot and infringements files in its annual reports on monitoring the application of EU law;

11. Supports the Ombudsman's commitment to improving the transparency of EU lobbying; supports the Commission's commitment to implementing the revised horizontal rules on expert groups, including as regards transparency and conflict of interests; stresses the importance of registering individuals and organisations representing private interests in the Transparency Register so that appointments can be made in accordance with the horizontal rules;
12. Stresses the importance of the practice existing as of October 2018 of displaying in the Transparency Register the list of meetings that registrants have had with Commissioners, their cabinet members and Directors-General;
13. Highlights the need for an interinstitutional agreement on a transparency register covering the European Parliament, the Commission and the Council; supports the work done in the first orientation meetings and negotiations which began in January 2018;
14. Notes with concern that the current Commission did not put in place a specific appointment procedure for the Secretary-General, and asks the new Commission to do so;
15. Supports the proposal adopted by the Commission on 31 January 2018 for a new Code of Conduct for the Members of the European Commission; supports the reinforcements established under the new Code, namely extension of the period for mandatory notification of post-mandate activities and a prohibition on former Commissioners lobbying the Commission;
16. Reiterates and strongly believes that strict moral and ethical rules and standards need to be applied throughout the EU institutions with a view to securing respect for the duty of integrity and discretion;
17. Urges the Ombudsman to monitor the compliance of the Joint Sickness Insurance Scheme (JSIS) with the UNCPRD; urges the Commission to update the text of the General Implementing Provisions (GIPs), which govern the operation of the JSIS as regards medical expenses of persons with disabilities or serious illness;
18. Welcomes the Ombudsman's Award for Good Administration, which recognises the efforts of the EU civil service to find innovative ways of implementing citizen-friendly policies;
19. Encourages the Ombudsman to continue her collaboration with national ombudsmen through the European Network of Ombudsmen;
20. Expresses its appreciation of the excellent cooperation of the Ombudsman and her team with the Committee on Petitions;
21. Instructs its President to forward this resolution and the report of the Committee on

Petitions to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, and the Member States' Ombudsmen or similar competent authorities.

EXPLANATORY STATEMENT

The annual report on the activities of the European Ombudsman in 2018⁴ was formally submitted to the President of the European Parliament on xxx 2019 and the Ombudsman, Emily O'Reilly, presented the report to the Committee on Petitions in Brussels on 4 September 2019.

The Ombudsman's mandate is enshrined in Art. 24 and 228 of the Treaty of the Functioning of the European Union (TFEU).

Article 24 of the TFEU, as well as Article 43 of the EU Charter of Fundamental Rights, establishes the right to complain to the European Ombudsman.

According to Art. 228 TFEU, the European Ombudsman elected by the European Parliament, is empowered to receive complaints from any citizen of the Union, or any natural or legal person residing or having its registered office in a Member State, concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

Maladministration means poor or failed administration. This occurs if an institution fails to act in accordance with the law, fails to respect the principles of good administration or violates human rights.

A key aspect of the current version of the Treaties, strictly related to the Ombudsman's activities, is included in Article 15 of the TFEU. Indeed, Art. 15 TFEU establishes that the Union's institutions, bodies, offices and agencies must conduct their work as openly as possible in order to promote good governance and ensure the participation of civil society. Furthermore it also foresees that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, must have a right of access to documents of the Union's institutions, bodies, offices and agencies.

An additional cornerstone, particularly bound to the Ombudsman's role, is Article 41(1) of the EU Charter of Fundamental Rights where it is underlined that 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union'.

In 2018, 17996 citizens called on the Ombudsman's services for help, of whom 14596 were given advice through the Interactive Guide on the Ombudsman's website, while 1220 remaining requests for information were replied to by the Ombudsman's services and 2 180 were handled by the Ombudsman as complaints.

Out of the total number of 2180 complaints processed by the Ombudsman in 2018, 880 fell within the Ombudsman's mandate and 1300 fell outside the scope of the Ombudsman's mandate.

In 2018, the Ombudsman opened 490 inquiries, of which 482 were complaint-based and eight were own-initiative inquiries, while closing 545 inquiries (534 complaint-based and 11 own-initiative inquiries). Most of the inquiries concerned the Commission (285 inquiries or 58.2

⁴ <https://europa.eu/!hh96tm>

%), followed by the EU agencies (43 inquiries or 8.8 %), the Parliament (30 inquiries or 6.1 %), the European Personnel Selection Office (EPSO) (23 inquiries or 4.7 %), the European External Action Service (EEAS) (23 inquiries or 4.7 %), the European Investment Bank (16 inquiries or 3.3 %), the European Anti-Fraud Office (OLAF) (14 inquiries or 2.8 %) and other institutions (56 inquiries or 11.4 %);

The Ombudsman's top three concerns in the inquiries closed in 2018 were: transparency, accountability and public access to information and documents (20.6 %), culture of service (16.8 %) and respect for procedural rights (16.5 %). Other concerns include ethical issues, public participation in EU decision-making, respect for fundamental rights, proper use of discretion including in infringement procedures, sound financial management of EU tenders, grants and contracts, recruitment and good management of EU personnel issues.

In its strategic work in 2018, the Ombudsman's office opened five new strategic inquiries on treatment of persons with disabilities under the Joint Sickness Insurance Scheme, on accessibility of Commission websites for persons with disabilities, on pre-submission activities of the European Medicines Agency, on Commission's management of 'revolving doors', on situations concerning EU staff and on accountability of Council's legislative work.

The Ombudsman opened also 10 strategic initiatives on, among other subjects, the use of languages in the EU civil service, anti-harassment policies in the EU civil service, the protection of children in migration and returns and 'revolving doors' rules at various EU institutions and bodies.

The Rapporteur underlines that transparency and accountability related inquiries, including inquiries related to access to information and documents, continue to account for the greatest proportion of cases handled by the Ombudsman in 2018 (20.6%).

This year was also notable for the use of one of the Ombudsman's infrequently used powers: submitting a Special Report to the European Parliament concerning the accountability of the Council of the European Union.

The public perception of the EU has been partly shaped by the 'blaming Brussels' culture. The Rapporteur thinks that it is important for EU democracy and for informed public debates that this public perception is challenged, and the public has a right to know how their governments contribute to the making of EU legislation. Therefore, the Rapporteur supports the proposal to improve legislative transparency in the Council. The Ombudsman made a number of recommendations to the Council of the European Union to allow the public to follow the EU legislative process more easily:

- a) to systematically record the identity of Member State governments when they express positions in Council preparatory bodies;
- b) to develop clear and publicly available criteria for how it designates documents as 'LIMITE', in line with EU law;
- c) to systematically review the 'LIMITE' status of documents at an early stage, before the final adoption of a legislative act, including before informal negotiations in trilogues, at which point the Council will have reached an initial position on the proposal;

The Rapporteur is pleased with the essential and fruitful dialogue between the Ombudsman and the Committee on Petitions, which is an effective system of addressing the concerns of the public for guidance and help: whereas the Ombudsman deals with complaints against EU institutions, bodies, agencies and the Committee on Petitions deals with petitions concerning the EU's areas of activity across Europe.