THE EUROPEAN OMBUDSMAN

The European Ombudsman conducts inquiries into cases of maladministration by European Union institutions, bodies, offices and agencies, acting on their own initiative or on the basis of complaints from EU citizens, or any natural or legal person residing or having their registered office in a Member State. The Ombudsman is elected by the European Parliament for the duration of the parliamentary term.

LEGAL BASIS

Articles 20, 24 and 228 of the Treaty on the Functioning of the European Union (TFEU) and Article 43 of the Charter of Fundamental Rights of the European Union.

The Ombudsman's status and duties were spelt out by Parliament in a decision of 9 March 1994 taken after consulting the Commission and with the approval of the Council[1]. The Ombudsman then adopted provisions implementing that decision. The procedures for electing and dismissing the Ombudsman are laid down in Rules 231 to 233 of Parliament's Rules of Procedure.

OBJECTIVES

Established by the Maastricht Treaty (1992), the European Ombudsman is a body that aims to:

— Improve the protection of citizens or any natural or legal person residing or having their registered office in a Member State in connection with cases of maladministration by European Union institutions, bodies, offices or agencies; and

— Thereby enhance openness and democratic accountability in the decision-making and administration of the EU’s institutions.

A. Status

1. Election

a. Requirements

The Ombudsman:

— Must meet the conditions required for the exercise of the highest judicial office in their country or have the necessary expertise and experience to properly fulfil the duties of the Ombudsman;

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Must provide assurance of being entirely independent.

b. Procedure

At the start of each parliamentary term or in the event of the death, resignation or dismissal of the Ombudsman, the President of the European Parliament calls for nominations for the office of Ombudsman and sets a time limit for their submission. Nominations must have the support of at least 40 Members of the European Parliament from at least two Member States. Nominations are submitted to Parliament’s Committee on Petitions, which considers their admissibility. The committee may ask to hear the nominees. A list of admissible candidates is then put to the vote in Parliament. The Ombudsman is elected by a majority of the votes cast.

2. Term of office

a. Length

The Ombudsman is elected by Parliament after each European election for the duration of its legislature. They may be re-elected.

b. Obligations

The Ombudsman:

— Must be entirely independent in the exercise of their duties in the interests of the EU and its citizens and natural or legal residents;

— Must not seek or take instructions from any government, institution, body, office or entity;

— Must refrain from any act incompatible with their office;

— Must not engage in any other political, administrative or professional occupation, whether gainful or not.

3. Dismissal

The Ombudsman may be dismissed by the Court of Justice of the European Union (CJEU) at the request of Parliament if they no longer fulfil the conditions required for the exercise of their duties or are guilty of serious misconduct.

B. Role

1. Scope

The Ombudsman deals with cases of maladministration by European Union institutions, bodies, offices or agencies.

a. The Ombudsman may find maladministration if an institution fails to respect:

— Fundamental rights;

— Legal rules or principles;

— The principles of good administration.

The Ombudsman’s inquiries mainly concern:

— Transparency/accountability;

— Culture of service;
— Respect for procedural rights;
— Proper use of discretion;
— Respect for fundamental rights;
— Recruitment;
— Good management of EU personnel issues;
— Sound financial management;
— Ethics;
— Public participation in EU decision-making.

Around one third of the inquiries the Ombudsman carries out every year concern the lack of or refusal to provide information.

b. Exceptions
The following matters are cannot be investigated:
— Action by the CJEU acting in its judicial role. The Ombudsman’s inquiries concerning the CJEU relate only to its non-judicial activities, for example tenders, contracts and staff cases;
— Complaints against local, regional or national authorities, even when these complaints refer to matters connected to the European Union;
— Actions by national courts or ombudsmen: the Ombudsman does not serve as a court of appeal against decisions taken by these bodies;
— Any cases which have not previously been through the appropriate administrative procedures within the organisations concerned;
— Complaints against individual EU officials in relation to their conduct.

2. Referrals
The Ombudsman conducts inquiries for which they find grounds either on their own initiative or on the basis of complaints submitted by EU citizens or any natural or legal person residing or having their registered office in a Member State, either directly or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings.

3. Powers of enquiry
The Ombudsman can request information from:
— Institutions and bodies, which must comply and provide access to the files concerned, unless they are unable to do so on duly substantiated grounds of secrecy;
— Officials and other staff of said institutions and bodies, who are required to testify at the request of the Ombudsman, although continuing to be bound by their duty of professional secrecy;
— The Member States’ authorities, which must comply unless such disclosure is prohibited by law or regulation. Even in such cases, however, the Ombudsman can obtain the information on the understanding that it will not be passed on.

If the Ombudsman does not obtain the assistance requested, they inform Parliament, which takes appropriate action. The Ombudsman can also cooperate with their counterparts in the Member States, subject to the provisions of the national law concerned. If the information appears to relate to a matter of criminal law, however, the Ombudsman immediately notifies the competent national authorities and the European Anti-Fraud Office (OLAF). If appropriate, the Ombudsman may also inform the EU institution to which the official or member of staff is answerable.

4. Outcome of inquiries

Wherever possible, the Ombudsman acts in concert with the institution or body concerned to find a solution satisfactory to the complainant. Where the Ombudsman establishes that maladministration has occurred, their recommendations are referred to the institution or body concerned, which then has three months in which to inform the Ombudsman of its views. If the institution does not accept the proposed recommendations, the Ombudsman can draw up a special report for submission to Parliament. Parliament may in turn draw up a report on the special report submitted by the Ombudsman. Finally, the Ombudsman informs the complainant of the result of the inquiry, the opinion delivered by the institution or body concerned and any personal recommendations.

C. Administration

The Ombudsman is assisted by a secretariat, whose staff are subject to the rules of the European civil service. The Ombudsman appoints the head of the secretariat.

D. Activities

The first Ombudsman, Jacob Söderman, served two terms of office, from July 1995 to 31 March 2003. During his term, the Code of Good Administrative Behaviour was approved by Parliament (in 2001). This is a procedural code which takes account of the principles of EU administrative law contained in the case law of the CJEU and draws inspiration from national laws. The Ombudsman uses this code when investigating whether there has been maladministration, drawing on its provisions in their inquiries. In addition, the code acts as a guide and a resource for EU officials, encouraging the highest standards of administration.

Nikiforos Diamandouros was Ombudsman from April 2003 to 14 March 2013, when he resigned with effect from 1 October 2013. On 11 July 2006, he submitted a proposal on adjustments to the Ombudsman’s Statute, which was supported by the Committee on Petitions, by Parliament and by the Council. The statute was amended to strengthen and clarify the role of the Ombudsman, for instance in terms of access to documents and notification of information to OLAF when it might fall within its remit.

The former Irish Ombudsman, Emily O’Reilly, following her election by the European Parliament at the July 2013 part-session, took up office as European Ombudsman on 1 October 2013 and has been reconfirmed twice, following the 2014 and 2019 European Parliament elections. She has enhanced the visibility of the Ombudsman’s
role by focusing on the most relevant issues for EU citizens, by ensuring that the EU delivers the highest standards of administration, transparency and ethics. She has promoted transparency in the EU decision-making process and notably in trilogues and in the Council, as well as in relation to lobbying, expert groups, conflicts of interest, revolving doors, EU agencies (such as the European Border and Coast Guard Agency, Frontex), and international negotiations (such as the Transatlantic Trade and Investment Partnership, TTIP). She has worked to improve the rules on whistleblowing, on the European Citizens’ Initiative and on disabilities. She has also examined instances of maladministration in relation to the appointment of a former Commission Secretary-General. The European Ombudsman also coordinates the European Network of Ombudsmen and since 2017 has handed out the ‘Award for Good Administration’ once every two years.

ROLE OF THE EUROPEAN PARLIAMENT

Although entirely independent in the exercise of their duties, the Ombudsman is a parliamentary ombudsman. This is why Article 228 of the TFEU is cited in Chapter 1, which deals with the European Parliament. The Ombudsman has very close relations with Parliament, which has sole power to elect and ask the Court of Justice to dismiss them, lays down rules governing the exercise of their duties, assists with investigations and receives their reports. The Committee on Petitions, on the basis of the Rules of Procedure (Rule 232), draws up a report every year on the annual report on the activities of the Ombudsman. In these reports, it has repeatedly expressed full support for the work of the Ombudsman and emphasised that the EU institutions should fully cooperate with it in order to increase the EU’s transparency and accountability, notably by implementing its recommendations. On 12 February 2019, Parliament adopted a resolution on a draft regulation proposing an updated statute of the Ombudsman, with the aim of strengthening its independence and powers. The Commission issued its opinion on 31 October 2019. The file has been submitted to the Council for consent, with a view to final adoption by Parliament.

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