

The European Ombudsman's guide to complaints

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European Ombudsman

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A publication for staff of the EU institutions, bodies, offices, and agencies

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The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency, and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behaviour in the Union's institutions.

Foreword

This booklet is intended for the staff of EU institutions, bodies, offices, and agencies (from now on, abbreviated to 'institutions').

As someone working for an institution, it is quite possible that — at some stage in your career — you will be involved in responding to a complaint. The complaint may be addressed to your institution directly, or it may come via the European Ombudsman. It is also possible that you may consider lodging a complaint with the Ombudsman yourself.

This booklet has been designed to help you better understand the Ombudsman's approach to complaint-handling and to administrative problems. It explains how best to respond to



complaints that the Ombudsman brings to your attention and how to avoid complaints in the first place. It also explains what the Ombudsman can specifically do to help you.

As European Ombudsman, I am keen to engage with the EU institutions to help resolve complaints, promote a culture of service, and enhance the Union's image in the eyes of citizens. Since taking office in April 2003, I have met staff at all levels of the EU administration to explain the rationale underpinning my work, to suggest how best to respond to complaints, and to improve administrative practices.

Our common goal is to make the fundamental right to good administration a reality for all those who contact us. I hope that, in striving to meet this goal, you will continue to see the Ombudsman as an ally who helps you to combat maladministration and systemic problems, and to deliver a top class service.

P. Nikiforos Diamandouros
Responding to complaints

An introduction to the Ombudsman

What does he do?

The European Ombudsman investigates complaints about maladministration in the EU institutions. The Ombudsman may also launch inquiries on his own initiative. The Ombudsman is completely independent and impartial in the performance of his duties.

What does he not

do?

The Ombudsman cannot investigate:

- individual EU officials. The Ombudsman investigates possible maladministration by institutions, not the conduct of officials. If presented with a case of alleged harassment, for example, the Ombudsman examines how the institution has dealt with the problem rather than the conduct of the individuals concerned. The Ombudsman's inquiries do not constitute a disciplinary or pre-disciplinary procedure.
- complaints against national, regional, or local authorities in the Member States, even when the complaints are about EU matters.

What is maladministration?

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 role is complementary to that of the courts. An Ombudsman inquiry aims, where possible, to achieve a 'winwin' solution. Furthermore, a finding of maladministration by the Ombudsman does not automatically imply that there is illegal behaviour that could be sanctioned by a court.

What do people complain about?

The European Ombudsman's inquiries mainly concern:

- openness and public access to documents,
- the Commission as 'Guardian of the Treaties',
- institutional and policy matters,
- the award of tenders and grants,
- the execution of contracts,
- administration and the Staff Regulations,
- competitions and selection procedures.

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

Who do people complain about?

Since the Commission is the main EU institution that makes decisions having a direct impact on citizens, companies and associations, it is logical that it should be the principal object of complaints. The European Parliament's administration, the European Personnel Selection Office (EPSO), and the Council also feature regularly. Most EU institutions have been the subject of at least one Ombudsman inquiry. The Ombudsman's inquiries concerning the Court of Justice of the European Union relate only to its non-judicial activities, for example, tenders, contracts, and staff cases.

How is an inquiry carried out?

The Ombudsman uses both oral and written inquiry procedures. The first step in a written inquiry is to forward the complaint to the institution concerned and request an opinion, normally within three calendar months. The EU institutions are required to supply the Ombudsman with any information he requests from them and to give him access to the files concerned. He may also inspect documents and interview officials and other servants, although this latter possibility is rarely used.



Where there appears to be a problem that could be solved rapidly, the Ombudsman may, with the agreement and cooperation of the institution concerned, use less formal procedures, mainly via telephone.

What outcome can one expect?

About half of all the Ombudsman's inquiries find that the institution has acted correctly and that there is no maladministration. In many other cases, the institution itself acts to settle the matter during the inquiry. If there does seem to be a problem and the case is not settled by the institution, the Ombudsman tries, where possible, to achieve a friendly solution, which satisfies both the institution and the complainant. If the attempt at conciliation fails, the Ombudsman can issue recommendations to solve the case. If the institution does not accept the proposed recommendations, he can make a special report to the European Parliament. The Ombudsman's decisions are not legally binding but the rate of compliance with his findings is consistently high.

How best to respond to complaints

Can you resolve the issue yourself and help avoid an Ombudsman inquiry?

Before the European Ombudsman will open an inquiry, the complainant must first have contacted the institution concerned to try to solve the problem. It is better for the issue to be resolved at this stage. Often the individual is simply looking for an explanation, a reason, an apology, or advice, and the administration itself is best placed to provide this. A settlement proposed by the institution is quicker and ultimately more satisfying all round and helps promote the image of the EU and its institutions as being citizen friendly.

What if the complainant turns to the Ombudsman?

If a complaint is lodged with the Ombudsman, he adopts a constructive approach to its handling. His aim is not to blame or sanction. Nor does he wish to encourage a defensive reaction, let alone a defensive culture. The complainant, after all, may specifically have opted to complain to the Ombudsman rather than go to the Court. Such a choice signals that he is ready to achieve some kind of solution to the problem that is not limited to securing annulment of the administration's decision. This is a window of opportunity that should not go to waste.

How should you react if the Ombudsman opens an inquiry?



An Ombudsman inquiry gives the institution an opportunity to consider whether it could have acted differently under the applicable legal framework, thereby settling the complaint. In order to achieve this, both parties must show flexibility and be ready to look for a solution to the problem. In order to ensure a fresh assessment of the issue, the file could, for example, be examined by 'a new pair of eyes'. It is important to underline that an early reassessment and change in position does not necessarily imply admission that a mistake has been made.

Maladministration is a broader concept than illegality. The fact that a decision was adopted without breaching the law does not necessarily mean that it was adopted in conformity with principles of good administration. Good administration implies looking proactively for alternative solutions which, while also legal, are more citizen centred.

What if he uncovers a problem?

If a mistake has been made, it should be put right at the earliest possible stage. One should apologise, if necessary, and move on. That is the purpose of the Ombudsman's friendly solution proposals: to seize the opportunity to solve disputes by having the two parties accept a fair solution. Rather than seeking to justify and defend the original decision taken by the institution, the services should exploit the opportunities for successful resolution of the case by accepting the Ombudsman's proposals for friendly solutions. The Ombudsman will credit the institution whenever a friendly solution is reached. While resolving a problem might entail a significant gesture — a payment of compensation, an agreement to relaunch a procedure — it is almost always worth it. After all, refusing to resolve problems at the opportune time may well prove both costly and time consuming in the end.

Can lessons be learned for the future?

Sometimes complaints are symptoms of underlying systemic issues or problems. One of the Ombudsman's functions is to identify these and to promote ways of tackling them so that the problems experienced by one individual are not repeated in the future. By engaging with the institutions, the Ombudsman works to ensure that the wider lessons from complaint-handling are learned across the administration. As such, in addition to serving as an external mechanism of control, the Ombudsman also constitutes a valuable resource which the institutions can use to help improve their performance and to reduce the likelihood that similar problems will reoccur.

Avoiding complaints

The fundamental right to good administration

With a view to avoiding complaints and to ensuring the highest standards of administration, it is important to be aware of the rules and principles that the EU institutions should respect. Of particular importance is Article 41 of the EU Charter of Fundamental Rights, which contains the fundamental right to good administration and, following the entry into force of the Lisbon Treaty, is now legally binding. The Ombudsman proposed that this right be included in the charter,



arguing that citizens are entitled to an open, accountable, and service-minded administration.

Right to good administration 1. 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. 2. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 41 of the charter should not be understood as an exhaustive account of the principles of good administration. These go further than the law, requiring the EU institutions not only to respect their legal obligations, but also to be proactively service-minded and to ensure that members of the public are properly treated and enjoy their rights fully. The European Code of Good Administrative Behaviour, described below, serves to identify the principles of good administration, which extend beyond the elements laid down in the now legally enforceable fundamental right.

A culture of service

Good administration constitutes an essential feature of a culture of service to citizens. An institution which has adopted such a culture will recognise that relations with citizens are part of its core business. It will encourage its staff not only to respect individual rights, but also to be polite, helpful, and cooperative in dealing with citizens, to be willing to explain their activities, give reasons for their actions, and accept public scrutiny of their conduct.

An important part of a service culture is the need to acknowledge mistakes when they occur and to put matters right whenever possible. A prompt and sincere apology may be all that is needed to avoid triggering a formal complaint. Even if a complaint is made to the Ombudsman, the fact of having made a sincere apology may lead the Ombudsman to take the view that there are no grounds for an inquiry.

The Ombudsman's work can be a useful resource in trying to create and nurture a culture of service. For example, even when the Ombudsman makes a finding of no maladministration in an inquiry, he may issue a further remark, if he identifies an opportunity to enhance the quality of the administration in the future. A further remark should be understood as providing advice on how to improve a particular practice. It is also in this spirit that the Ombudsman identifies star cases in his annual reports which serve as a model for all EU institutions in terms of how best to react to issues that the Ombudsman raises.



The European Code of Good Administrative Behaviour

One of the key documents on which the Ombudsman relies in his work is *The European Code of Good Administrative Behaviour*. Drawing inspiration from the case-law of the Court of Justice of the European Union and the administrative law of the Member States, it contains the classic principles of good administration, such as lawfulness, absence of discrimination, proportionality, rights of defence, and duty to state grounds for decisions. But it also contains more innovative principles, such as courtesy. The code is available on the Ombudsman's website or from his office.

The European Parliament approved the European Code of Good Administrative Behaviour in September 2001. In its resolution, Parliament called on the Ombudsman to apply the code in his work of remedying and preventing maladministration. The Ombudsman therefore takes account of the rules and principles contained in the code when examining complaints and in conducting own-initiative inquiries. Officials who follow the code can be confident that they will avoid instances of maladministration.

Lodging complaints

Staff complaints

If you work for an EU institution, you can complain to the European Ombudsman about problems you may encounter with the administration. These can range from allegations of unfair dismissal to claims for social security cover for a member of your family. Staff members who prefer to have their case reviewed judicially may appeal to the EU Civil Service Tribunal.

To complain, you should write to the Ombudsman by post, fax, or e-mail in any of the treaty languages ¹, setting out clearly who you are, which EU institution you are complaining against, and the grounds for your complaint. Please note the following points.

- **You must have exhausted all the possibilities for internal administrative requests and complaints, in particular the complaint procedure of Article 90(2) of the Staff Regulations.**
- A complaint must be made within two years of the date when you became aware of the facts on which your complaint is based.
- The Ombudsman cannot inquire into matters that are currently before a court or that have already been dealt with by a court.

A complaint form is available on the Ombudsman's website or from his office.

1. The list of the treaty languages is available on the Europa website at: <http://europa.eu> [Link]

Whistleblowing

Members of staff have a responsibility not only to behave properly themselves but also to report wrongdoing by other members of staff.



The Ombudsman is one of the persons to whom an official or other servant can turn, if, in the course of, or in connection with the performance of, his/her duties, he/she becomes aware of:

- facts which give rise to a presumption that there exists possible illegal activity, including fraud or corruption, detrimental to the Union's interests;
- conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of EU officials.

Before turning to the Ombudsman, an official or other servant **must have followed the procedure laid down by Article 22a of the Staff Regulations**. He/she can do so, by informing either his/her immediate superior or Director-General or, if he/she considers it useful, the Secretary-General, or persons in equivalent positions, or the European Anti-Fraud Office (OLAF) directly.

Should an individual turn to the Ombudsman in such a case, the Staff Regulations (Article 22b) provide that he/she shall not suffer any prejudicial effects on the part of the institution to which he/she belongs provided that:

- he/she honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;
- he/she has previously disclosed the same information to OLAF or to his/her own institution and has allowed them the period of time provided for, depending on the complexity of the case, to take appropriate action. The relevant period shall not apply where the official can demonstrate that, having regard to all the circumstances of the case, it is unreasonable.

The Ombudsman treats whistleblower complaints confidentially.

Complaints concerning data protection

The European Data Protection Supervisor (EDPS) has the power to investigate complaints from anyone who considers that his/her rights have been infringed when an EU institution has processed data relating to him/her.

Regulation (EC) No. 45/2001 on data protection also contains a 'whistleblower' provision (Article 33) for complaints by officials and other servants. They may complain to the EDPS regarding an alleged breach of the provisions of the regulation governing the processing of personal data, even if the personal data in question concern someone else. Furthermore, complaints to the EDPS do not have to be made through official channels and no-one shall suffer prejudice on account of a complaint lodged with the EDPS alleging a breach of the provisions governing the processing of personal data.

The concept of maladministration includes failure to comply with EU law on data protection. However, the EDPS has particular expertise in the field of data protection and is the specialised authority with regard to the supervision of compliance by EU institutions with EU law on data protection. Complaints which concern only data protection should normally be addressed to the



EDPS, rather than the Ombudsman.

The Ombudsman and the EDPS have signed a memorandum of understanding to ensure constructive cooperation between the two bodies and a consistent approach to the legal and administrative aspects of data protection.

Complaints to the EDPS can be submitted using the 'Complaint Submission Form' available on the EDPS internet site:

<http://www.edps.europa.eu/EDPSWEB/edps/Supervision/Complaints> [Link]

Further information

We hope you have found this guide helpful and that it will be a useful reference for you in your work. If you would like further information or wish to make suggestions as to how the guide could be improved in future editions, please contact the European Ombudsman.

If you require a large print version of this publication, please contact the European Ombudsman's office. We shall also endeavour to provide an audio version upon request.

European Ombudsman 1 avenue du Président Robert Schuman CS 30403 F - 67001
Strasbourg Cedex T. +33 (0)3 88 17 23 13 F. +33 (0)3 88 17 90 62
<http://www.ombudsman.europa.eu> [Link]

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