

## 25 years of the European Ombudsman - conference report

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European Ombudsman **Emily O'Reilly** opened the digital conference with an address paying tribute to her two predecessors and recalling that her mission is to make sure that EU citizens are treated fairly by the EU administration and that the rights of good administration and openness are respected. The Ombudsman explained her strategy of using own-initiative inquiries to tackle systemic issues in the EU administration, related to questions of legislative transparency, lobbying transparency and revolving doors. The Office's overall aim is to improve the accountability of the EU's decision-making process. Noting that the legislators are currently negotiating the Ombudsman's statute, the Ombudsman asked whether it was time to reimagine the office.

European Commission Vice-President **Maroš Šefčovič**, in charge of Interinstitutional Relations and Foresight, gave the keynote speech, pointing to the areas (such as publishing Commissioners' travel expenses and improving the transparency of expert groups) where the institution has improved its administration following scrutiny by the Ombudsman. Referring to the Ombudsman's fast-track procedure for access to documents requests, Mr Šefčovič announced that the Commission is developing an online portal called the Electronic Access to Commission Documents, due to be launched in 2021.

**Dolors Montserrat**, Chair of the European Parliament's Petitions Committee, noted the strong relations between the Ombudsman and her committee. She said that the COVID-19 pandemic changed the profile of petitions received by her committee, with many petitions concerning the lack of masks or other protective gear, the closure of schools, people being temporarily stuck in other Member States, or the lack of common restrictive measures to fight the pandemic. The Petitions Committee ensured it dealt with COVID-related issues as quickly as possible in order to reassure citizens that there was someone at the EU level acting on their concerns.

Responding to a question about the rule of law and democracy, President of the International Ombudsman Institute **Peter Tyndall** noted that over the years people have tended to assume that the rule of law would continue to be upheld across the EU. He noted that ombudsman work can be outright challenged by governments not respecting the outcome of inquiries or challenged more insidiously, through budget cuts or insufficient resources. Mr Tyndall characterised the European Ombudsman's voice in support of the rule of law as very significant and underlined the importance of the annual European Network of Ombudsmen (ENO)



conference for exchanging ideas and best practices.

Director of Transparency International EU **Michiel van Hulten** said the key quality of the European Ombudsman was its independence. He noted that the main challenge for the Ombudsman and civil society organisations was building citizen trust in the EU institutions by ensuring that they work in an ethical and efficient manner.

Speaking about the future of the office, **Alberto Alemanno**, Professor of Law and Public Policy at HEC Paris, said the focus should be on continuity and noted that it is the only institution that is citizen-driven and focused. He also said there was a greater need today than 25 years ago for an extrajudicial institution such as the ombudsman but that more should be done with the ombudsman model. He suggested the Ombudsman could mobilise calls across Europe for systemic change and could be open to coalition-based work. He raised the idea of linking the European Ombudsman to the European Court of Justice – for example when the Ombudsman's findings are not followed even when they are supported by the European Parliament.

## Results of conference survey – ‘blame Brussels’

A survey of conference participants found that almost a third (32%) believed that tackling the ‘blame Brussels’ culture – when national ministers blame Brussels for decisions they have helped to shape – would be a major transparency challenge for the EU administration. This was followed by maintaining transparency standards in a post-COVID world, and monitoring how EU funds are spent (20% each). Lobbying transparency received 14 percent of the votes, monitoring migration policy implementation received 12 percent, while revolving doors saw 3 percent of the votes.

Mr Tyndall said that the blame Brussels culture and attacks by populist governments are linked to each other. He underlined the importance of the European Commission and the European Ombudsman supporting ombudsman colleagues whose offices are under pressure as they are usually trying to protect the rule of law.

Ms O'Reilly said she would put a higher value on revolving doors due to its damaging effects, which amount to monetising the public service and public knowledge for the benefit of the private sector.

## Ethics standards

Much of the discussion focused on how the Ombudsman upholds ethics standards in the EU institutions and whether there is a need for the planned new independent ethics body. Mr van Hulten noted that ethics issues are at the top of list of improving citizen trust in the EU institutions, referring to revolving doors situations in the European Commission and the need for better ethics oversight in the European Parliament.



Mr Tyndall cautioned against setting up new bodies in areas where ombudsman can already act. Speaking about ethics frameworks, he said that sanctions have to be meaningful otherwise rules will continue to be flouted. He also noted that citizens need to know that a thorough investigation has taken place and has led to a meaningful outcome.

Mr Alemanno agreed that the Ombudsman already plays a role in ethics monitoring but stressed that the Ombudsman's role is not about taking decisions related to ethics questions but monitoring whether the institutions are implementing the rules and therefore a separate body is needed. Ms O'Reilly said while it is up to the legislators to decide on the shape of any new body, she hoped that her office's experience would be drawn upon. Ms O'Reilly stressed that any new ethics body should be independent, noting that the Commission's ethics committee is unable to act on its own initiative.

## **Transparency and access to documents**

Mr Tyndall said that a proper transparency regime was lacking at the EU level and noted that as Irish Information Commissioner he has binding powers in relation to freedom of information requests. He said he would like to see a similar arrangement at the EU level.

Mr van Hulten said the usefulness of the Commission's planned online document portal will depend on what kind of documents are made available and when. He mentioned that it is currently difficult to find out which documents actually exist and noted that comprehensive access to documents – rather than technical access – would be a positive step.

Ms O'Reilly said that institutions gave the greatest 'push back' in relation to the access to document inquiries and suggested that they might be taking advantage of the fact that most people will not take the court route if access to a document is denied. The Ombudsman said her office is conducting an internal audit on access to document inquiries and that she wants to start a discussion on giving her office binding powers in this area.

## **The Future of the European Ombudsman**

Referring to whether the European Ombudsman could come under pressure from populists, Mr Tyndall noted the importance of ensuring that the Office can do its work monitoring the ethical standards and transparency of the EU administration so that the EU can lead by example.

Mr Alemanno said the Ombudsman's power lies in creating new socio and political norms that people are expected to comply with. He suggested that the Ombudsman needs to increase the moral suasion of the office even further in future. Mr van Hulten stressed the need for more transparency in the Council and making sure the EU institutions become more ethnically diverse.

Ms O'Reilly spoke about the importance of further strengthening links with the European



Network of Ombudsmen and with civil society.