

Decision of the European Ombudsman adopting Implementing Provisions

Document

Article 1 - Definitions

For the purposes of these implementing provisions:

- (a) 'institution' means a European Union institution, body, office or agency;
- (b) 'Statute' means the Regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman's duties [1] ;
- (c) 'Ombudsman' is the person elected by the European Parliament pursuant to Article 228 of the Treaty on the Functioning of the European Union;
- (d) 'Secretariat' comprises the officials and other agents who assist the Ombudsman;
- (e) 'document' means any content, whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording).

Article 2 - Receipt of complaints

2.1. The Ombudsman shall accept complaints submitted in writing. The Ombudsman shall take appropriate measures to assist persons with disabilities to exercise their right to submit a complaint.

2.2. A complainant shall identify any information in the complaint that the complainant considers confidential. The identification of any such information as confidential by a complainant shall not prevent the Ombudsman, for the purposes of carrying out an inquiry, from communicating the information to the institution concerned. The Ombudsman shall inform the institution of what information the complainant considers to be confidential.

2.3. In appropriate cases, and with the consent of the complainant, the Ombudsman may transfer a complaint to another competent authority.



Article 3 - Processing of complaints

3.1. The Ombudsman shall handle complaints in any official and working language of the institutions of the European Union. [2] 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 institutions of the European Union.

3.2. The Ombudsman shall determine whether a complaint is admissible in accordance with Article 2(4) of the Statute. The Secretariat may request the complainant to provide further information or documents to enable the Ombudsman to make that determination.

3.3. If a complaint is inadmissible, the Ombudsman shall inform the complainant accordingly and close the file on the complaint.

3.4. Where the Ombudsman decides that there are grounds to inquire into an admissible complaint, the Ombudsman opens an inquiry. If the Ombudsman considers that there are no grounds to conduct an inquiry, including when a complaint is manifestly unfounded, the Ombudsman shall inform the complainant accordingly and close the file on the complaint.

3.5. Where appropriate, the Ombudsman may inform the institution concerned of inadmissible complaints or complaints where the Ombudsman finds that there are no grounds to open an inquiry.

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 particular nature of a complaint, including in areas such as whistleblowing and harassment.

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.

Article 4 - Information gathering actions during inquiries

4.1. When the Ombudsman finds grounds to open an inquiry, the Ombudsman shall identify the allegations made by the complainant that fall within the scope of the inquiry.

4.2. The Ombudsman may ask the institution concerned to provide a reply in relation to those allegations. The Ombudsman may also ask the institution concerned to set out in its reply its views on specific aspects of the allegations and on specific issues arising from or related to the



complaint.

4.3. At the Ombudsman's request, institutions shall provide the Ombudsman with information , including documents, for the purposes of an inquiry, in accordance with Article 5 of the Statute. The Ombudsman inquiry team may examine the information and inspect documents, 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.

4.4. The institution's replies on the matters referred to in paragraphs 2 and 3 of this Article 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.

4.5. The Ombudsman may ask the institution concerned to organise a meeting with the Ombudsman inquiry team in order to clarify issues falling within the scope of the inquiry.

4.6. The Ombudsman may hear officials or other servants of an institution in accordance with Article 7 of the Statute.

4.7. The Ombudsman may, for the purposes of carrying out an inquiry, request a Member State, through its Permanent Representation, to provide information or documents relating to the alleged maladministration by an institution, in accordance with the rules laid down in the Statute.

4.8. When an institution or a Member State provides information or documents to the Ombudsman pursuant to paragraph 2, 3, 5 or 7 of this Article, it shall clearly identify EU classified information or any other information it considers to be confidential. The Ombudsman shall not disclose any such information, either to the complainant or to the public, without the prior written consent of the institution or the competent authority of the Member State concerned. The Ombudsman shall treat EU classified information in accordance with the rules laid down in the Statute and in the Ombudsman's decision on security rules and procedures for access to EU classified information.

4.9. At the Ombudsman's request, institutions shall provide their replies in the language of the complaint. If necessary, the Ombudsman may request the institutions to provide copies of relevant documents in the language of the complaint. In making such a request, the Ombudsman shall act proportionately to the needs of the complainant and reasonably with regard to the resources of the institutions.

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, including EU classified information, 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 a 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.

4.11. If an institution or a Member State does not provide the Ombudsman with the assistance described in paragraphs 2, 3, 5 and 7 of this Article, the Ombudsman shall remind the institution or Member State concerned why that assistance is necessary. If, after discussion with the institution or Member State concerned, the matter cannot be resolved to the satisfaction of the Ombudsman, the Ombudsman may inform the European Parliament, which shall act accordingly.

4.12. The Ombudsman may, for the purposes of carrying out an inquiry, ask the complainant or any third party to provide the Ombudsman with information or documents, or to clarify information or documents already provided. Where appropriate, the Ombudsman may seek the complainant's views on the institution's position, without prejudice to Article 5(8) of the Statute. The Ombudsman may also request a meeting with the complainant in order to clarify issues falling within the scope of the inquiry. The Ombudsman may close an inquiry where the complainant has failed to provide any requested information that is necessary to complete the inquiry.

4.13. The Ombudsman may commission studies or expert reports that are considered relevant for the exercise of the Ombudsman's mandate, including in cases mentioned in Article 2(6) of the Statute.

Article 5 - Proposals for solutions

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.

5.2. The institution concerned shall reply to the Ombudsman's proposal for a solution within a specified timeframe, 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.

5.3. The Ombudsman shall inform the complainant of the solution proposed and of the institution's reply to that proposal after obtaining the reply of the institution concerned. The complainant may submit comments to the Ombudsman within one month.



Article 6 - Findings, recommendations and closure of inquiries

6.1. The Ombudsman may make suggestions for improvement in the course of an inquiry.

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.

6.3. Where the Ombudsman finds maladministration, the Ombudsman shall make any appropriate recommendation(s) to the institution concerned in accordance with Article 4(1) of the Statute and ask the institution concerned to provide an opinion on the recommendation(s) within three months. The opinion shall state whether the institution has implemented or intends to implement the recommendation(s) and, if so, how. The Ombudsman shall forward the opinion to the complainant, who may submit comments on it within one month.

6.4. The Ombudsman, after analysing the opinion of the institution concerned and any comments submitted by the complainant in accordance with paragraph 3 of this Article, may close the inquiry setting out findings. Where the Ombudsman closes the inquiry with a finding of maladministration, the Ombudsman may reiterate any recommendation(s) previously made.

6.5. Where the Ombudsman becomes aware that the matter under investigation has become the subject of legal proceedings, the Ombudsman shall close the inquiry and inform the complainant and the institution.

Article 7 - Reports to Parliament

7.1. The Ombudsman shall report to the European Parliament on the Ombudsman's inquiries on a regular basis, including by way of an annual report, which shall include an assessment of compliance with the Ombudsman's recommendations, proposals for solutions and suggestions for improvement. The report shall also include, where relevant, the outcome of the Ombudsman's inquiries related to harassment, whistleblowing and conflicts of interest within the institutions.

7.2. The Ombudsman may submit a Special Report to the European Parliament, after having informed the institution concerned that such a report will be made. Special reports can cover any inquiry in which the Ombudsman finds maladministration and which the Ombudsman considers to be of particular public interest.

Article 8 - Own-initiative inquiries and follow-up



inquiries

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

8.2. 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 Article 1(3) of the Statute and in accordance with Article 3(3) thereof, the Ombudsman may decide to conduct own-initiative inquiries following such contacts with the institutions.

8.3. The procedures applicable to inquiries opened following a complaint shall apply to own-initiative inquiries under paragraphs 1 and 2 of this Article to the extent that they are relevant to those inquiries.

Article 9 - Procedural rights of the complainant

9.1. The Ombudsman shall keep the complainant informed about the progress of the inquiry.

9.2. At any stage during the inquiry, the complainant may submit comments or provide additional information that was not known at the time of the submission of the complaint and that falls within the scope of the Ombudsman's inquiry.

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.

9.4. When making a request for review pursuant to paragraph 3 of this Article, 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, Article 5(8) thereof.

9.5. To protect the legitimate interests of the complainant or of a third party, the Ombudsman may identify 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.

9.6. The complainant may withdraw a complaint at any stage of an inquiry. This shall not prevent the Ombudsman from opening an own-initiative inquiry into the subject matter of the complaint.



Article 10 - Procedural rights of the institutions

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.

Article 11 - Delegation of complaint handling

The Ombudsman may delegate to the Secretariat parts of the complaint handling process. The Secretariat shall inform the complainant of the right to request the Ombudsman to review a decision taken by the Ombudsman or its Secretariat in accordance with the Ombudsman's decision on requests for review.

Article 12 - Cooperation with ombudsmen and similar bodies in Member States

12.1. The Ombudsman may cooperate with ombudsmen and similar bodies in the Member States, including through the European Network of Ombudsmen, in accordance with the Statute.

12.2. Members of the European Network of Ombudsmen can submit queries to the Ombudsman about issues related to the European Union. Where the Ombudsman deems it appropriate, the Ombudsman may seek a reply from the relevant institution on the query.

Article 13 - Publication of information on inquiries

The Ombudsman may make public unclassified and non-confidential information about the progress of an inquiry. In 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.

Article 14 - Entry into force

14.1. The Ombudsman repeals the implementing provisions adopted on 20 July 2016.

14.2. This Decision shall come into effect on 10 October 2023. It shall apply to all inquiries ongoing on that date, all inquiries opened on that date and all complaints on which the Ombudsman has, on that date, not yet taken a position.



14.3. The Ombudsman shall publish this Decision in the Official Journal of the European Union and on the Ombudsman's website.

Done at Strasbourg, 21 June 2023.

Emily O'REILLY

The European Ombudsman

[1] OJ L 253, 16.7.21, p. 1-10.

[2] The European Ombudsman concluded an administrative agreement with the Kingdom of Spain to allow the official use, in the context of communications between the European Ombudsman and the citizens and residents of Spain, of the other languages that enjoy a status recognised in accordance with the Spanish Constitution of 1978, in addition to Spanish/Castilian.