

Speech by Beate Gminder, Secretary General of the European Ombudsman - Hearing on a Law of Administrative Procedure of the European Union

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Hearing on a Law of Administrative Procedure of the European Union, JURI Committee, European Parliament, Brussels, 28 January 2016

Dear Mr Chairman (Mr Svoboda)

Dear Ms Rapporteur (Ms Hautala),

Dear members of the JURI Committee,

Introduction

- (Thank you for the invitation)
- "What do you expect from me" was my question to my colleagues when I started to work for the EU over 20 years ago. "What do you expect from me" I have been asked many times since then by new colleagues joining my teams.
- Of course there are answers, even without a legislation on administrative procedures: the Staff Regulations give a good overview and ethical guidelines have been put in place by many services. EU institutions do have rules of procedures and codes of conduct.
- BUT how much clearer and simpler it would be, if there were an EU Administrative Law. With 63 institutions, bodies, offices and agencies in the EU and thousands of employees, they would know exactly what is expected from them.
- And - most important - the citizen would know what to expect from the EU administration.

Looking back

- The very first European Ombudsman, Jacob Söderman, in his **Special Report of 11 April**



2000 , recommended the enactment of such a Law, in the form of a Regulation.

· It did not happen. But **the European Parliament** approved, with some amendments, the Ombudsman's " *European Code of Good Administrative Behaviour* ".

· The Ombudsman's Code is today a reference document for many EU citizens who are in contact with the EU institutions. It constitutes a codification - for the benefit of all EU citizens - of the existing principles of EU administrative law and good administrative practices. When drafting the Code and codifying the existing principles, the Ombudsman took inspiration from the case-law of the EU courts and of the European Court of Human Rights. The Code was furthermore based on some of the best practices existing in the Member States. We should not forget that over 20 Member States do have a law on administrative procedures for their civil servants.

· The Ombudsman has dealt with several inquiries in the past which underline the need for one set of rules on the standards of administration which citizens can expect when interacting with the EU institutions.

· For instance, many letters communicating negative decisions to citizens (such as in contractual, public procurement or even EPSO cases) now indicate the available remedies, including the possibility of turning to the Ombudsman.

· The Code and the proposed draft Regulation make clear that this should be a standard practice for the entire EU administration.

· The Ombudsman has also called on several institutions - including the European Investment Bank and Frontex - to set up complaint mechanisms. The draft EU Administrative Law indeed underlines that administrative review should always be possible.

· Also, deadlines for replying to correspondence from citizens should be the same, irrespective of the EU institution, body, office or agency which one addresses. Today, this is not the case.

A draft Regulation presented today

· It is thanks to the excellent and continuous work of the EP **Working Group on EU Administrative Law** - chaired by Ms Heidi Hautala - that we are presented today with a draft Regulation which provides a good basis for a proposal for a Regulation by the European Commission.

· The draft fits well with the Juncker Commission's **Better Regulation strategy** of May 2015: A single EU Administrative Law would, in the absence of specific rules, set *uniform rules for all institutions* and would moreover meet the aims of the Commission's measures for Better Regulation, namely **simplification, codification, as well as accessibility of EU law**. Moreover, like the European Code of Good Administrative Behaviour, an EU Administrative Law would become a real instrument of " **empowerment** " for EU citizens.



Our experience

- Each year the Ombudsman investigates roughly 400 inquiries into alleged maladministration of the EU administration.
- These are allegations that span from lack of reply, failure to take up an infringement complaint or lack of transparency to a refusal of access to information or failure to take a justified and fair decision.
- In investigating these allegations, we follow the legislation, the case law of the Courts and the Code of good administrative behaviour.
- The current non-regulated situation gives us quite some discretion in how to judge situations. We are comfortable with this.
- But at the same time we think there is room for improvement. We think the citizens should be given clearer rights and more legal certainty.
- The citizen cannot and should not need to know about complex laws in order to judge whether an administrative act affecting him or her is right.
- Ultimately the citizen should not need to turn to us.

Links to other legislation

- I would like to underline that there already exists one set of uniform rules applying to the "**vertical**" **administrative relations** between staff members and their administration/hierarchy. These rules - namely the **EU Staff Regulations** - are the same for all the EU institutions, bodies, offices and agencies and were also adopted in the form of a Regulation. There is thus no reason why - similarly - there should not also be a single set of rules applying to the "**horizontal**" **administrative relations** between the staff (of all the EU institutions) and the EU citizens. Article 41 of the Charter of Fundamental Rights which guarantees the right to good administration provides a strong legal basis for that, together with Article 298 TFEU which provides that the institutions shall have the support of an open, efficient and independent administration.
- I note in this respect that other fundamental rights guaranteed in the Charter, like the protection of personal data (Article 8) and the right of access to documents (Article 42) have been further developed in specific Regulations. Although these Regulations have also a more specific legal basis (namely Articles 15 and 16 TFEU), there is no reason why the right to good administration should not also be further developed in a detailed Regulation.
- The necessity for a single EU Administrative Law is especially important considering the high number of specialised **EU agencies** which have been created over the years and are still being



set up. Most of those agencies need to build their administration and develop their administrative practices from scratch. It is therefore of utmost importance that the administration and management of those agencies have at their disposal - next to the sector specific rules applying to them - an adequate set of general rules on their administrative relations with the citizens.

- The Ombudsman welcomes that the proposed Regulation is a relatively short text. It also makes sense that the proposal for a draft Regulation is designed as a *lex generalis*, namely that it sets general rules which will apply unless (sector) specific administrative procedural rules exist. In general, the Ombudsman considers that the Law should focus on the main principles of good administrative behaviour and not contain provisions which are too prescriptive or technical. In this respect, some principles from the Code of Good Administrative Behaviour are missing such as non-discrimination, absence of abuse of power, fairness and legitimate expectations.

- However, in arguing for a legal framework for administrative procedures, I would also like to caution: we can see a risk of the law becoming the lowest common denominator for administrative behaviour.

- In such a case, the Ombudsman would have a difficult job to argue for continuous improvement and a higher level of good administration than the legislator would have foreseen in a particular situation.

- This would be unfortunate and potentially contrary to the spirit of what is intended. But we see it as a real risk which political judgment should be applied to before going ahead.

- Last but not least, in order for an EU Administrative Law to be a success, the final version will have to be drafted in a way which can easily be understood by the ordinary citizens. In this respect, the European Code of Good Administrative Behaviour has been seen to be a good precedent. Indeed, the Code is short and was drafted in straightforward and easy language. Many of our complainants - very often non-lawyers - do refer to the Articles of the Code in order to defend their case against the EU administration before the Ombudsman. Similarly, the success of a future EU Administrative Law will depend on whether EU citizens will effectively be able to rely on the Regulation when interacting with the EU administration. The message should thus also be: keep it simple !

Conclusion

- The Ombudsman will continue to assess complaints submitted to her on the basis of the existing rules and principles of good administrative behaviour, as they have been defined in the case-law and have been embodied in the European Code of Good Administrative Behaviour. In other words, in the event that an EU Administrative Law was indeed to be adopted by the legislator, it should allow for continuous improvement and not become a straightjacket.

- Thank you for your attention!