

Council Working Party on the Staff Regulations - Address by the European Ombudsman

Speech - **City** Brussels - **Country** Belgium - **Date** 02/03/2016

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Good morning and thank you for the invitation.

I think it is important to stress at the outset the importance I attach to the relationship between my office and the Council given the obligations we both have to serve citizens, and to ensure that the EU administration is accountable for its actions. My office receives over 2000 complaints each year from the Member States which we are able to deal with in all 24 languages.

My Office, as you know, was established under the Maastricht Treaty to deepen the democratic legitimacy of the EU institutions by giving citizens an independent office to which they can turn if they feel badly treated by EU institution, agency or body. This mirrors what all of them can do in their own member states with their own national or regional Ombudsman, or Petitions Committee, when they feel badly treated by their own domestic administration. Significant efforts were made to promote the idea of an EU Ombudsman by the Spanish and Danish delegations in the run-up to its establishment, and my office owes its existence to their efforts, but also to other delegations engaged in the creation of this office.

My recommendations and decisions are not enforceable in a strictly legal sense but all institutions and agencies implement the vast majority, indeed up to 90%. That to me is recognition of the role of such an office in underpinning the democratic legitimacy of those institutions and offices, and also of course because the right to good administration is included in the Charter of Fundamental Rights. In turn I try to live up to that mandate and responsibility by running an office based on rigorous, fair and independent decision-making.

Good governance

One of the issues for discussion today is good governance, both at national and EU levels and how better governance can improve public trust.



Fundamentally, Europeans will regain trust in their governing administrations when they begin to see positive changes for their families in their daily lives. This is mainly a political challenge but a strong and ethical public administration is often what separates strong democracies around the world from weak and failed states.

While trust levels in the EU and national governments remain at relatively low levels, they have recovered over the last few years according to Eurobarometer surveys. And while the EU level has slightly higher trust levels than national governments, the EU still does not enjoy the popular legitimacy of nation states. While many Europeans have mixed opinions about their governments, they rarely question the legitimacy of their state whereas some still question the legitimacy of the EU in its direct role in governing their lives.

In order to achieve higher levels of popular legitimacy, it is important I believe for the EU administration to be not only of the highest possible quality, but indeed the 'gold standard' in ethics, transparency, accountability and effectiveness.

So in that context, let me outline three areas of work of my Office; whistleblowing in the EU institutions, the challenge of so-called 'revolving doors' when officials leave for the private sector and the proposal for an EU Administrative Law.

Whistle-blowing

In recent years, high-profile events across the globe have revived a public conversation on the role of "whistleblowing" – While the word conjures up deep political intrigue, Watergate-style, the day-to-day reality is rather more mundane.

From my experience, what motivates an individual on the inside to come forward is a loyalty to the institution mixed with a sense of frustration that their concerns are not being heard or dealt with in an efficient, professional manner from within. They are perplexed and frustrated that matters that appear, and often are, either wrong or illegal or both are not being attended to by the relevant institution. It is frequently only when they have obediently, but without effect, blown the whistle very quietly, that they decide they have to take stronger measures,

The challenge therefore for the EU institutions, and equally for national administrations, is to develop structures not only to protect people who, in good faith, speak up about serious irregularities, but also to ensure that the substance of their complaint is fully investigated and that they are kept informed of what action will be taken to rectify the situation. And it is a challenge because it forces institutions too often to set aside institutional self interest and to make some brave moves which may have significant consequences for individuals and for the institution itself.

The revised EU Staff Regulations set down clear requirements for the EU Institutions to adopt internal rules to meet these challenges.



In July 2014 I launched an Own-Initiative Investigation into nine EU Institutions focused on whether they had adopted internal rules (and not merely guidelines) in accordance with their obligations under Article 22(c). And where the institution had not yet adopted the rules, my inquiry looked at what stage of the process was at and when it was expected that the task would be completed?

We all have an obligation to live up to peoples' expectations that the governance structures of the EU institutions be robust, transparent and open to scrutiny. This cannot be achieved in an environment where those with information about fraud or corruption are afraid to speak up out of a sense of fear of retribution. These rules also serve to protect other staff within the EU Institutions who may fear getting caught up in uncertain situations. By laying down precisely what can be expected of staff and required of staff at each stage of the process, and by training managers on how to properly deal with information about corruption, each person in the chain is afforded both certainty and protection.

The result of my inquiry was that only two of the nine institutions in question, the Commission and the European Court of Auditors, had adopted rules of the kind required. However, I am happy to see that one year after the end of my inquiry, all other key EU institutions either have adopted, or are about to adopt, updated whistleblowing rules.

'Revolving doors'

As you know, there is a very difficult challenge in relation to 'revolving doors' in most public administrations in Europe today. Indeed, anyone here with an awareness of the lobbying scene in Washington DC will know just how difficult a challenge this issue of 'revolving doors' can be for a public administration. Too often it is seen through the prism of simple career choice, or the right to work, or the benefit of experiencing the private sector, yet in my view it in fact concerns the obligation to protect the public interest by not allowing privileged information from the public service to be used to enhance the private interests of individuals or corporations.

My inquiry on this topic concerned the way the European Commission deals with potential conflict of interest situations that may arise when officials move outside of the Commission to a new job. While such moves are perfectly legitimate, conflict of interests may arise in some cases. Potential conflicts can also emerge at times when many people, anticipating changes to their working situation may already be preparing themselves for recruitment outside of the EU institutions.

This is not just a matter of ethics and obligation of officials to behave with integrity. It goes of course to the notion of citizen trust, which if badly handled can result, not just in reputational damage but possible legal challenges.

During my inquiry I commended the Commission for the manner in which it has constructively facilitated my inquiry.



I concluded that the EU Staff Regulations do provide a strong legal basis for managing conflict of interest issues within the EU institutions. The important elements as we know are that:

- Officials are, **even after they stop working for the institution** , bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.
- Officials who intend to **accept a job within two years of leaving** the service shall inform their institution. If that job is related to the work carried out by the official during the **last three years** working for the EU institution, the institution has the right to **forbid** the official from taking the job if the institution considers that it would lead to a conflict of interest. It can also impose **conditions** .
- An EU institution must also, in principle, prohibit its **former senior officials** , during the **12 months** after they leave the institution, from **lobbying** the institution's staff.

The challenge of course lies in the implementation of these procedures and structures. On the basis of the inspection of files carried out, we found certain deficiencies in the Commission's implementation.

My recommendations in this inquiry set out to the Commission to:

- Make well-reasoned, well-documented and consistent decisions on applications for outside work, including analysis of comments from other Commission services.
- Ensure the assessment is carried out by staff without direct professional connections with the official concerned. Take action against former staff that ignore their obligations and accept a job offer despite a negative decision by the Commission. Such measures could include disciplinary action affecting their pension rights and a ban from the Transparency Register, which would seriously hinder any future lobbying career.

My recommendation also calls for extra transparency measures in relation to cases involving **Directors, Directors-General and members of cabinets** . These are senior officials, who have an extra responsibility. This is not only my view, but recognised in the revised Staff Regulations. I called on the Commission to publish online the decisions to approve requests to work elsewhere from senior officials including their name, details of their Commission duties, details of their new job and the Commission assessment, conclusions and conditions in respect of any potential conflict of interest. This system is already in place in at least one Member State administration, the UK. The legal basis for this recommendation, which I believe to be the most important, is Article 16(4) of the Staff Regulations.

In my recommendation to the Commission, I also reminded them of my powers to call EU officials to testify before my Office, if necessary.

After much discussion and debate within the Commission, and with much help from Vice President Georgieva, at the end of last year the Commission published for the first time the



names of senior officials who had left the Commission for the private sector with the full details as I recommended.

This was a very positive move and again showed the Juncker Commission to be leading not only among EU institutions but ahead of most Member States.

EU administrative law

Thirdly, and finally, can I mention the proposal by my Office since the year 2000 and also the European Parliament for a general EU Administrative Law.

The first Ombudsman drafted a "*European Code of Good Administrative Behaviour*", which was approved by the European Parliament in 2001. This set out the principles of good administrative behaviour and best practice that staff should respect when dealing with the public (such as, lawfulness, absence of discrimination, objectivity, the right to be heard, fairness, courtesy, the duty to state grounds of decisions, reasonable time-limit for taking decisions).

The Code constitutes - next to the EU case-law - an important text of reference for the Ombudsman to assess whether the EU institutions comply with the fundamental right to good administration (Article 41 of the Charter of Fundamental Rights).

The Ombudsman's decisions contain plenty of references to the articles of the Code. This Code deals with the "horizontal" relations between the staff of the EU institutions and the public, whereas the EU Staff Regulations deal with the "vertical" relations between the staff and the institutions.

The Ombudsman and the Parliament have repeatedly called for the adoption of a single EU Administrative Law (in the form of a Regulation on the basis of Article 298 TFEU), the latest initiative being the draft Regulation presented in January 2016 by the Legal Affairs Committee of the European Parliament. The Commission and the Council are however it seems reluctant to adopt such a Law, which I find disappointing.

Conclusion

In conclusion, I would like to refer to the excellent study commissioned by the Dutch Presidency on Public Integrity and Trust in the EU, by the Hertie School of Governance. While my mandate covers the EU only, I can see many common issues also at national and regional levels. And indeed, I discuss these issues with my regional and national Ombudsman colleagues as I chair the Network of European Ombudsman.

I agree with the report conclusion that, while we have many issues in common, there is still a great variety of the problems and solutions facing us within Europe. This relates frequently to question of culture, history and not just public administration. I agree also that there exists a



temptation to overestimate the power of the law and of formal institutions in the face of informal practices.

Often the countries which deal best with trust and integrity have less regulation, far less red tape relying much more on the instinctive and culturally embedded good behaviour both of citizens and of administrators but also on critical citizens and media. These issues have great relevance for Ombudsmen especially, given our democratic role and I also agree with the report conclusion that politicians matter more than civil servants in redressing trust as they are the important ones when it comes to moulding or changing culture for good or for bad.

The one addition I would make to this report, as mentioned already, is that public trust had improved in Europe over recent years though from a low point in 2013 and I would hope that higher standards of governance within the EU in recent years has contributed to this slight rise.

To conclude, can I again recognise the quality and integrity of the officials who work in the institutions of the European Union. The integrity and hard work of the great majority of those people should not be undermined by a failure to deal with the inappropriate behaviour of those very few colleagues who may, occasionally, do damage to the public trust that should properly reside in the administration of the European Union.

I seek to work as co-operatively as possible with those institutions and I welcome this encounter in that spirit and I am happy to try to answer any questions you may have, or listen to any observations on our work.

Thank you.