

Own-initiative inquiries

Thematic paper - 09/10/2017

Thematic paper [i]

A. Introduction

This paper describes the role of own-initiative inquiries (OIs) in the work of the European Ombudsman (EO). The legal basis for OIs is laid down in Article 228 of the Treaty on the Functioning of the European Union (TFEU). This empowers the Ombudsman to conduct inquiries for which she finds grounds not only on the basis of complaints but also on her own initiative.

How the Ombudsman exercises her power to conduct OIs is a key question in how she uses her mandate to help to uncover maladministration in the EU institutions. The legal framework governing the EO's activities leaves a wide margin of discretion on how to exercise this power. The TFEU includes the open-ended provision that the Ombudsman shall conduct OIs *"for which [she] finds grounds"*. The Statute of the European Ombudsman specifies that the Ombudsman shall, on her *"own initiative or following a complaint, conduct all the enquiries which [she] considers justified to clarify any suspected maladministration in the activities of Community institutions and bodies."*

From a procedural perspective, the EO's Implementing Provisions stipulate that *"[t]he procedures applicable to inquiries opened following a complaint shall apply, to the extent that they are relevant, to [OIs]."*

B. Historical context

Traditionally, the EO made use of the power to conduct OIs in two main instances. First, to investigate allegations of maladministration made in complaints that do not meet all the conditions of admissibility, such as complaints submitted by so-called unauthorised complainants (non-citizens or non-residents). Such OIs are in substance dealt with as if they were complaints. Second, to open OIs after receiving a number of complaints on the same subject. These OIs aim to help uncover whether there are systemic issues giving rise to the problem and, if there are, finding a general solution.



The EO has also, albeit more sporadically, used an OII to open an inquiry on the basis of anonymously submitted material. OIIs have also been used as a structure under which to conduct [visits to EU agencies \[Link\]](#), so as to promote good administration and share best practice.

C. More recently: 'strategic inquiries'

The focus on OIIs in the EO's work has intensified since the adoption of the [Strategy - Towards 2019 \[Link\]](#), under Emily O'Reilly. Proactively identifying areas of strategic importance through OIIs is a central pillar in the EO's strategy to achieve greater impact by acting as a driver of change in key areas related to the quality of the work of the EU institutions.

'Strategic inquiries' are generally conducted into issues of significant public interest, where the EO has a unique contribution to make and where we are likely to bring about change. They enable the EO to investigate what appear to be systemic problems in the EU institutions and promote positive developments in key areas, such as EU governance, empowerment of citizens and fundamental rights.

To complement strategic inquiries, the EO may also launch 'strategic initiatives' [1], whereby she pursues important topics without launching an inquiry. The aim is to encourage the EU administration to be as open, accountable, ethical and responsive to citizens as possible. Strategic initiatives normally take the form of a letter to the head of the institution in question. They enable the EO to raise important issues without having to open a formal inquiry and/or alleging maladministration. The EO may also note, when launching a strategic initiative, that she may consider opening an OII into the issue at a later stage if the institution's reply to her suggestions is not satisfactory.

D. Why OIIs?

The power to conduct OIIs is one of the crucial distinctions between the role of the EO and that of other bodies involved in supervising the activities of the EU institutions, in particular the Court of Justice of the EU.

The EO's greater use of OIIs has arguably significant advantages for promoting good administration. Above all, OIIs enable the EO to focus on issues of strategic importance in her work. By seeking to identify and resolve potential systemic problems in the EU administration, OIIs should generally lead to benefits for the wider public and increase the impact of the EO's work. OIIs also allow the EO to bring to public attention matters of significant public interest, and thus expose administrative policies and practices to public debate. They also enable the EO to react quickly to outside events, if necessary. As many of the EO's strategic inquiries have received a lot of public attention, the greater use of OIIs has also contributed to raising awareness of principles of good administration and made the EO, as a redress mechanism,



more visible. All this should help the EO fulfil her mandate to uncover maladministration in the EU institutions as effectively as possible.

A significant advantage of the OII power is that it permits the Ombudsman to inquire into important problems that might never be raised via complaints. This might be because the persons concerned have difficulties in complaining (e.g. vulnerable groups) or because there is a lack of concentrated interests scrutinising specific activities of the EU institutions. OIIs should, on the one hand, help pre-empt future complaints by resolving potential problems in a systemic manner. However, they can also result in greater public scrutiny and complaints in the future by raising awareness of the EO in areas where not many complaints have traditionally been received.

Complaints and OIIs: striking the right balance

Ombudsmen tend to be portrayed, in turn, as (i) a remedy for individuals experiencing problems with the public administration, and (ii) a watchdog that promotes systemic improvement in the standard of administration.

At EU level, the fundamental right to complain to the Ombudsman, contained in Article 43 of the Charter of Fundamental Rights, coupled with the fact that the EO was established as part of the section on citizenship under the TFEU, leads to much emphasis being placed on the individual remedy role.

The European Parliament has, however, fully welcomed and supported the EO's approach to make greater use of OIIs to tackle systemic issues in the EU administration. [2]

At the same time, in the absence of a complaint (that by its very nature helps legitimise a decision to inquire into a matter), a particular effort is needed to explain why the EO chooses to pursue an OII.

The EO must, however, continue to safeguard citizens' rights and offer a non-judicial means of solving problems with the EU administration. The central function of the EO will therefore remain the hundreds of inquiries conducted each year through which the EO resolves payment disputes in EU projects, obtains documents, rights wrongs and remedies injustices suffered by individual complainants. The fact that the EO does not typically open more than a few large-scale OIIs per year can be seen as a way to seek to strike the right balance between the dual functions.

Whatever the driving force for an inquiry, the fact remains that, once opened, it is an EO inquiry. Complaint-based inquiries and OIIs should not be thought of as binary options. Both serve to uncover maladministration and to improve the EU administration. An inquiry may also start out based on a complaint, only to be continued on the Ombudsman's own initiative if the complainant decides to withdraw the initial complaint. The scope of a complaint-based inquiry could also be widened to include other elements that might lead to uncovering



maladministration on the Ombudsman's own initiative. This would seem to be confirmed by the wording of Article 228 TFEU, which refers to the Ombudsman conducting **inquiries** for which she finds grounds not only on the basis of complaints but also on her own initiative.

E. Annex

Legal framework governing OIs:

Article 228 TFEU: “ *In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him [...] .* ”

Article 3(1) of the Statute of the European Ombudsman: “ *The Ombudsman shall, on his own initiative or following a complaint, conduct all the enquiries which he considers justified to clarify any suspected maladministration in the activities of Community institutions and bodies .* ”

Article 8 of the Implementing Provisions of the European Ombudsman: “ *The Ombudsman shall conduct own-initiative inquiries for which the Ombudsman finds grounds. The procedures applicable to inquiries opened following a complaint shall apply, to the extent that they are relevant, to own-initiative inquiries .* ”

[1] A list of strategic initiatives is available here:

<http://www.ombudsman.europa.eu/en/activities/strategicinitiatives.faces> [Link].

[2] See e.g.

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0062&language=EN&ring=A8-20> [Link]

[i] This paper was drafted by the Strategic Inquiries Unit and finalised on 20 September 2017.