

## **Decision of the European Ombudsman adopting Implementing Provisions**

### *Article 1*

#### **Definitions**

For the purposes of these implementing provisions:

- (a) 'institution' means a European Union institution, body, office or agency;
- (b) the 'Statute' means the Regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman's duties<sup>1</sup>;
- (c) the 'Ombudsman' is the person elected by the European Parliament pursuant to Article 228 of the Treaty on the Functioning of the European Union;
- (d) the 'Secretariat' comprises the officials and other agents who assist the Ombudsman;
- (e) a 'document' shall mean 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. The Ombudsman shall treat a petition falling within the Ombudsman's duties as defined in Article 1(3) of the Statute, which is transferred by the European Parliament with the consent of the petitioner, as a complaint.
- 2.4. 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 Union. The Ombudsman shall communicate with the complainant in that language, unless the complainant accepts to receive communications in another official and working language of the 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 close the file on the complaint.

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<sup>1</sup> OJ L 253, 16.7.21, p. 1-10.

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 close the file on the complaint.

3.5. Where appropriate, the Ombudsman informs institutions of inadmissible complaints or complaints where the Ombudsman finds that there are no grounds to open an inquiry.

3.6. 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 strategic objectives or 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 this purpose.

#### *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 or documents for the purposes of an inquiry. The Ombudsman inquiry team may inspect documents, either at the premises of the institution concerned or by electronic means. EU classified documents 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 4.2 and 4.3 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 importance, 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 set out in the Statute.

4.8. When an institution or a Member State provides information or documents to the Ombudsman pursuant to paragraph 4.2, 4.3, 4.5 or 4.7, it shall clearly identify EU classified information or any other information it considers to be confidential. The Ombudsman will not disclose any such information, either to the complainant or to the public, without the prior

agreement of the institution or the Member State concerned. The Ombudsman will 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.

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, only for so long as the inquiry is ongoing and the period of time for dealing with any request for review has not expired. Such documents or information will 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 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 paragraph 4.2, 4.3, 4.5 or 4.7, 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 an inquiry.

4.13. The Ombudsman may commission any studies or expert reports that the Ombudsman considers relevant.

## *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 and the complainant.

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 importance, 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 regarding issues identified 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 make suggestions for improvement 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 and, if so, how the institution has implemented or intends to implement the recommendation(s). 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 6.3, 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 Union institutions, bodies, offices or agencies.

7.2. The Ombudsman may submit a Special Report to the European Parliament on any inquiry in which the Ombudsman finds maladministration and which the Ombudsman considers to be of public importance.

## *Article 8*

### **Own-initiative inquiries**

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

8.2. The procedures applicable to inquiries opened following a complaint shall apply, to the extent that they are relevant, to own-initiative inquiries.

8.3. 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 the duties defined in Article 1(3) of the Statute, the

Ombudsman may decide to conduct own-initiative inquiries also following such contacts with the institutions, in accordance with paragraphs 8.1 and 8.2.

#### *Article 9*

##### **Procedural rights of the complainant**

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

9.2. The complainant may submit comments or provide, at any stage during the inquiry, 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.

9.4. When making a request for review pursuant to Article 9.3 of this Decision, the complainant shall be entitled to request access to the Ombudsman's file on the complaint, in accordance with the rules set out in the Statute, with the exception of documents declared confidential by an institution, a Member State or the Ombudsman, or any other confidential information in the file. Disclosure of information in the file to the complainant shall be subject to the conditions laid down in Article 5(8) of the Statute.

9.5. To protect the legitimate interests of the complainant or of a third party, the Ombudsman may classify 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, where appropriate, 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 any decision taken by the Ombudsman or its Secretariat.

#### *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.

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

### *Article 13*

#### **Publication of information on inquiries**

The Ombudsman may make public non-confidential information about the progress of an inquiry. In particular, in inquiries of public importance, 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. The present Decision shall come into effect on xx. It shall apply to all inquiries ongoing on that date, all inquiries opened on that date and all complaints concerning which the Ombudsman has, on that date, not yet taken a position

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

Done at Strasbourg, xx.

Emily O'REILLY  
*The European Ombudsman*