

Decision of the European Ombudsman adopting implementing provisions (8 July 2002)

Caption: Decision of the European Ombudsman of 8 July 2002 adopting implementing provisions.

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Decision of the European Ombudsman adopting implementing provisions (8 July 2002)

(Valid from: 01/01/2003)

THE EUROPEAN OMBUDSMAN,

Having regard to:

- (1) Articles 21 and 195 of the Treaty establishing the European Community and Article 107d of the Treaty establishing the European Atomic Energy Community;
- (2) Articles 41 and 43 of the Charter of Fundamental Rights of the European Union;
- (3) Article 14 of the decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties;

Considering that it is useful to replace the implementing provisions adopted on 16 October 1997 in the light of experience in the operation of the Ombudsman's office.

ADOPTS THE FOLLOWING IMPLEMENTING PROVISIONS:

- Article 1 Definitions
- Article 2 Receipt of complaints
- Article 3 Admissibility of complaints
- Article 4 Inquiries into admissible complaints
- Article 5 Powers of investigation
- Article 6 Friendly solutions
- Article 7 Critical remarks
- Article 8 Reports and recommendations
- Article 9 Own-initiative inquiries
- Article 10 Points of procedure
- Article 11 Reports to the European Parliament
- Article 12 Cooperation with ombudsmen and similar bodies in Member States
- Article 13 The complainant's right to see the file
- Article 14 Public access to documents held by the Ombudsman
- Article 15 Languages
- Article 16 Publication of reports
- Article 17 Entry into force

Article 1 Definitions

In these implementing provisions,

- a. "institution concerned" means the Community institution or body which is the object of a complaint or an own initiative inquiry;
- b. "the Statute" means the regulations and general conditions governing the performance of the Ombudsman's duties.

Article 2 Receipt of complaints

2.1 Complaints are identified, registered and numbered upon receipt.

2.2 An acknowledgement of receipt is sent to the complainant, quoting the registration number of the complaint and identifying the legal officer who is dealing with the case.

2.3 A petition transferred to the Ombudsman by the European Parliament with the consent of the petitioner is treated as a complaint.

2.4 In appropriate cases and with the consent of the complainant, the Ombudsman may transfer a complaint to the European Parliament to be dealt with as a petition.

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

Article 3 Admissibility of complaints

3.1 On the basis of the criteria laid down in the Treaty and the Statute, the Ombudsman determines whether a complaint is within his mandate and if so, whether it is admissible; he may request the complainant to provide further information or documents before making the determination.

3.2 If a complaint is outside the mandate, or inadmissible, the Ombudsman closes the file on the complaint. He informs the complainant of his decision and of the reasons for it. The Ombudsman may advise the complainant to apply to another authority.

Article 4 Inquiries into admissible complaints

4.1 The Ombudsman decides whether there are sufficient grounds to justify making inquiries into an admissible complaint.

4.2 If he does not find sufficient grounds to justify making inquiries, the Ombudsman closes the file on the complaint and informs the complainant accordingly.

4.3 If the Ombudsman finds sufficient grounds to justify making inquiries, he informs the complainant and the institution concerned. He transmits a copy of the complaint to the institution concerned and invites it to submit an opinion within a specified time that is normally no more than three months. The invitation to the institution concerned may specify particular aspects of the complaint, or specific issues, to which the opinion should be addressed.

4.4 The Ombudsman sends the opinion of the institution concerned to the complainant. The complainant has the opportunity to submit observations to the Ombudsman, within a specified time that is normally no more than one month.

4.5 After considering the opinion and any observations made by the complainant, the Ombudsman may either decide to close the case with a reasoned decision or to continue his inquiries. He informs the complainant and the institution concerned.

Article 5 Powers of investigation

5.1 Subject to the conditions laid down in the Statute, the Ombudsman may require Community institutions and bodies and the authorities of Member States to supply, within a reasonable time, information or documents for the purposes of an inquiry.

5.2 The Ombudsman may inspect the file of the Community institution concerned in order to verify the accuracy and completeness of its replies. The Ombudsman may take copies of the whole file or of specific documents contained in the file. The Ombudsman informs the complainant that an inspection has taken place.

5.3 The Ombudsman may require officials or other servants of Community institutions or bodies to give evidence under the conditions laid down in the Statute.

5.4 The Ombudsman may request Community institutions and bodies to make arrangements for him to pursue his inquiries on the spot.

5.5 The Ombudsman may commission such studies or expert reports, as he considers necessary to the success of an inquiry.

Article 6 Friendly solutions

6.1 If the Ombudsman finds maladministration, as far as possible he co-operates with the institution concerned in seeking a friendly solution to eliminate it and to satisfy the complainant.

6.2 If the Ombudsman considers that such cooperation has been successful, he closes the case with a reasoned decision. He informs the complainant and the institution concerned of the decision.

6.3 If the Ombudsman considers that a friendly solution is not possible, or that the search for a friendly solution has been unsuccessful, he either closes the case with a reasoned decision that may include a critical remark or makes a report with draft recommendations.

Article 7 Critical remarks

7.1 The Ombudsman makes a critical remark if he considers:

- a. that it is no longer possible for the institution concerned to eliminate the instance of maladministration *and*
- b. that the instance of maladministration has no general implications.

7.2 When the Ombudsman closes the case with a critical remark, he informs the complainant.

Article 8 Reports and recommendations

8.1 The Ombudsman makes a report with draft recommendations to the institution concerned if he considers *either*

- a. that it is possible for the institution concerned to eliminate the instance of maladministration, *or*
- b. that the instance of maladministration has general implications.

8.2 The Ombudsman sends a copy of his report and draft recommendations to the institution concerned and to the complainant.

8.3 The institution concerned sends the Ombudsman a detailed opinion within three months. The detailed opinion could consist of acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendations.

8.4 If the Ombudsman does not consider that the detailed opinion is satisfactory he may draw up a special report to the European Parliament in relation to the instance of maladministration. The report may contain recommendations. The Ombudsman sends a copy of the report to the institution concerned and to the complainant.

Article 9 Own-initiative inquiries

9.1 The Ombudsman may decide to undertake inquiries on his own initiative.

9.2 The Ombudsman's powers of investigation when conducting own initiative inquiries are the same as in inquiries instituted following a complaint.

9.3 The procedures followed in inquiries instituted following a complaint also apply, by analogy, to own initiative inquiries.

Article 10 Points of procedure

10.1 If the complainant so requests, the Ombudsman classifies a complaint as confidential. If he considers that it is necessary to protect the interests of the complainant or of a third party, the Ombudsman may classify a complaint as confidential on his own initiative.

10.2 If he considers it appropriate to do so, the Ombudsman may take steps to ensure that a complaint is dealt with as a matter of priority.

10.3 If legal proceedings are instituted in relation to matters under investigation by the Ombudsman, he closes the case. The outcome of any inquiries he has carried out up to that point is filed without further action.

10.4 The Ombudsman informs the relevant national authorities and if appropriate, a Community institution or body of such criminal law matters as may come to his notice in the course of an inquiry. The Ombudsman may also inform a Community institution or body of facts which, in his view, could justify disciplinary proceedings.

Article 11 Reports to the European Parliament

11.1 The Ombudsman submits an annual report to the European Parliament on his activities as a whole, including the outcome of his inquiries.

11.2 As well as special reports made under Article 8.4. above, the Ombudsman may make such other special reports to the European Parliament as he thinks appropriate to fulfil his responsibilities under the Treaties and the Statute.

11.3 The annual and special reports of the Ombudsman may contain such recommendations as he thinks appropriate to fulfil his responsibilities under the Treaties and the Statute.

Article 12 Cooperation with ombudsmen and similar bodies in Member States

The Ombudsman may work in conjunction with ombudsmen and similar bodies in the Member States with a view to enhancing the effectiveness both of his own inquiries and of those carried out by ombudsmen and similar bodies in the Member States and of making more effective provision for safeguarding rights and interests under European Union and European Community law.

Article 13 The complainant's right to see the file

13.1 The complainant shall be entitled to see the Ombudsman's file on his or her complaint, subject to Article 13.3 below.

13.2 The complainant may exercise the right to see the file on the spot. He or she may request the Ombudsman to supply a copy of the whole file, or of specific documents in the file.

13.3 Where the Ombudsman inspects the file of the institution concerned or takes evidence from a witness in accordance with Article 5.2 and 5.3 above, the complainant shall not have access to any confidential documents or confidential information obtained as a result of the inspection or hearing.

Article 14 Public access to documents held by the Ombudsman

14.1 The public shall have access to unpublished documents held by the Ombudsman, subject to the same

conditions and limits as those laid down by Regulation 1049/2001(1) for public access to documents of the European Parliament, Council and Commission and to Article 14.2 below.

14.2 Where the Ombudsman inspects the file of the institution concerned or takes evidence from a witness in accordance with Article 5.2 and 5.3 above, the public shall not have access to any confidential documents or confidential information obtained as a result of the inspection or hearing.

14.3 Applications for access to documents shall be made in writing (letter, fax or e-mail) and in a sufficiently precise manner to enable the document to be identified.

14.4 Applications for access to the following documents shall be granted automatically, except in relation to complaints that are classified as confidential in accordance with Article 10.1 above:

- a. the general register of complaints;
- b. complaints and documents annexed thereto by the complainant;
- c. opinions and detailed opinions from institutions concerned and any observations made thereon by the complainant;
- d. the Ombudsman's decisions closing cases;
- e. reports and draft recommendations made under Article 8 above.

14.5 Access is given on the spot or by providing a copy. The Ombudsman may impose reasonable charges for the supply of copies. The method of calculation of any charge is explained.

14.6 Access to the documents mentioned in Article 14.4 above is provided promptly. Decisions on applications for public access to other documents are made within 15 working days from receipt.

14.7 If an application for access to a document is refused in whole or in part reasons are given for the refusal.

Article 15 Languages

15.1 A complaint may be submitted to the Ombudsman in any of the twelve Treaty languages. The Ombudsman is not required to deal with complaints submitted in other languages.

15.2 The language of proceedings conducted by the Ombudsman is one of the twelve Treaty languages; in the case of a complaint, the language in which it is written.

15.3 The Ombudsman determines which documents are to be drawn up in the language of the proceedings.

15.4 Correspondence with the authorities of Member States is conducted in the official language of the state concerned.

15.5 The annual report, special reports and, where possible, other documents published by the Ombudsman are produced in all official languages.

Article 16 Publication of reports

16.1 The European Ombudsman shall publish in the Official Journal announcements concerning the adoption of annual and special reports, making public the means for all interested to have access to the full text of the documents.

16.2 Any reports or summaries of the Ombudsman's decisions concerning confidential complaints are published in a form that does not allow the complainant to be identified.

Article 17 Entry into force

17.1 The implementing provisions adopted on 16 October 1997 are repealed.

17.2 This decision shall come into effect on 1 January 2003.

17.3 The President of the European Parliament shall be informed of the adoption of this decision. An announcement shall also be published in the Official Journal.

Done at Strasbourg, 08.07.2002

Jacob Söderman

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001 p. 43).