Regulations and general conditions governing the performance of the Ombudsman’s duties

2019/0900(APP) - 31/10/2019 - Document attached to the procedure

OPINION OF THE COMMISSION on a draft Regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom.

The Commission welcomed the draft Regulation of the European Parliament, adopted at its plenary session on 12 February 2019, which examines the European Ombudsman’s statute for the first time since the entry into force of the Lisbon Treaty.

Several proposed changes confirm established practice or introduce improvements. The Commission therefore endorses, in whole or in part, the provisions of the proposal, in particular concerning:

compliance with the rules on the protection of personal data;

- the extension of the deadline for the Commission to deliver its opinion: the current rule is that, if the Ombudsman makes recommendations in the context of a decision on maladministration, the Commission must reply within three months;
- the possibility for the Ombudsman to conduct own-initiative inquiries of a strategic nature in order to identify repeated or particularly serious cases of maladministration;
- the principle of ‘structured and regular dialogue’ with the institutions and the possibility of organising public consultations before making recommendations;
- the presentation of ‘special reports’ to the European Parliament in very exceptional and sensitive cases, where the Ombudsman considers that the extent of maladministration is particularly serious;
- the possibility for the Ombudsman to appear before the European Parliament, on his own initiative or at the request of the European Parliament, in connection with an inquiry into the activities of an institution;
- the new procedure to propose a solution to eliminate instances of maladministration and satisfy the complaint;
- referral to the European Anti-Fraud Office and the European Public Prosecutor's Office where the facts are likely to fall within the scope of criminal law;
- information to the data subject and the complainant by the Ombudsman when information has been provided to the European Public Prosecutor's Office;
- the principle of cooperation with the European Union Agency for Fundamental Rights.

However, the Commission does not agree with some of the amendments and comments on some aspects, including:

- the Ombudsman has the right to make recommendations where the Ombudsman finds that a Union institution, body, office or agency is not properly applying a court ruling;
- the extension of the deadline for filing a complaint from two to three years;
- the new provisions on sexual harassment cases: the Commission considers that (i) the Ombudsman already has some of the powers envisaged and there is therefore a risk of duplication and side effects; (ii) some of these provisions do not fall within the Ombudsman's remit; (iii) there is a general problem of method and process; (iv) other provisions are unclear;
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the new provisions on whistleblowers: the Commission considers that (i) the Ombudsman's mandate does not include the evaluation of policies and procedures in general; (ii) the Ombudsman's mandate is to investigate cases of maladministration, and not to provide advice to staff members of the institutions, let alone in a confidential manner; (iii) the reference to the waiving professional secrecy should be deleted;

- the new provisions on access to documents: in particular, the Commission proposes to replace the wording of the proposal in order to clarify that the institutions, bodies, offices or agencies concerned shall give access to documents originating in a Member State and classified as secret by law only the Ombudsman's services have put in place appropriate measures and safeguards for the handling of classified documents; in general, it should be ensured that confidential information is properly identified and processed;
- the extension of the scope of testimonies of officials and other servants of the Union's institutions, bodies, offices and agencies: the Commission considers that (i) the legal framework for the disclosure of information by members of staff to the Ombudsman must be clarified, as well as the fact that staff members cannot be called upon to testify individually (ii) that the obligation of professional secrecy should always apply;
- the new provision on conflicts of interest: the Commission considers the Ombudsman is not a body for permanent scrutiny or oversight of specific activities or areas of activities of other institutions. The Ombudsman may deal with these issues on the basis of its powers to investigate complaints or to launch own initiative inquiries, but only in the context of possible instances of maladministration.