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Activities of the European Ombudsman — annual report 2021

European Parliament resolution of 14 March 2023 on the annual report on the activities of the European Ombudsman in 2021 (2022/2141(INI))

(C/2023/397)

The European Parliament,

— having regard to the annual report on the activities of the European Ombudsman in 2021,

— having regard to Article 10(3) of the Treaty on European Union (TEU),

— having regard to Articles 15, 24(3), 228 and 298(1) of the Treaty on the Functioning of the European Union (TFEU),

— having regard to Articles 11, 41, 42 and 43 of the Charter of Fundamental Rights of the European Union (the 'Charter'),

— having regard to the UN Convention on the Rights of Persons with Disabilities (UNCRPD),

— having regard to Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 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 [1],

— having regard to the European Code of Good Administrative Behaviour, as adopted by Parliament on 6 September 2001,

— having regard to the Framework Agreement on Cooperation concluded between Parliament and the European Ombudsman on 15 March 2006, which entered into force on 1 April 2006,

— having regard to its previous resolutions on the European Ombudsman's activities,

— having regard to its resolution of 9 March 2022 on engaging with citizens: the right to petition, the right to refer to the European Ombudsman and the European Citizens' Initiative [2],

— having regard to Rules 54 and 232(1) of its Rules of Procedure,

— having regard to the report of the Committee on Petitions (A9-0054/2023),

A. whereas the annual report on the activities of the European Ombudsman in 2021 was formally submitted to the President of Parliament on 7 June 2022 and the Ombudsman, Ms Emily O'Reilly, presented the report to the Committee on Petitions in Brussels on 8 September 2022;

B. whereas Articles 20, 24 and 228 TFEU and Article 43 of the Charter empower the European Ombudsman to receive complaints concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union (CJEU) acting in its judicial role;

C. whereas Article 15 TFEU states that 'in order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible' and that 'any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies'; whereas ensuring that high-quality services are provided to EU citizens and that the EU administration is responsive to their needs and concerns is crucial in protecting citizens' rights and fundamental freedoms;

D. whereas Article 41 of the Charter on the right to good administration states, inter alia, that 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union';

[1] OJ L 253, 16.7.2021, p. 1.
[2] OJ C 347, 9.9.2022, p. 110.

E. whereas Article 298(1) TFEU establishes that 'in carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration';

F. whereas the right to refer to the European Ombudsman, the right to petition and the European Citizens' Initiative are participatory tools that foster transparency, participatory democracy and active European citizenship;

G. whereas in 2021 the Ombudsman helped 20 536 people and opened 338 inquiries, of which 332 were complaint-based and 6 own-initiative, and closed 305 inquiries (300 complaint-based and 5 own-initiative); whereas the greater part of the inquiries concerned the Commission (208 inquiries or 61,5 %); whereas the next largest numbers concerned the European External Action Service (EEAS) (16 inquiries or 4,7 %), Parliament (13 inquiries or 3,8 %), the European Personnel Selection Office (13 inquiries or 3,8 %), the European Border and Coast Guard Agency (Frontex) (11 inquiries or 3,3 %), the European Medicines Agency (8 inquiries or 2,4 %), the Council of the European Union (7 inquiries or 2,1 %), the European Anti-Fraud Office (6 inquiries or 1,8 %), and other institutions (34 inquiries or 10,1 %);

H. whereas the top three concerns in the inquiries closed by the Ombudsman in 2021 were transparency and accountability (access to information and documents) (29 %), culture of service (26 %) and proper use of discretionary powers (including in infringement procedures) (18 %); whereas other concerns include respect for procedural rights, respect for fundamental rights, good management of personnel issues, sound financial management, public participation in EU decision-making, ethical issues, and whistleblowing on the EU administration;

I. whereas in its strategic work in 2021, the Ombudsman's Office opened six new strategic inquires: on how the Commission manages 'revolving doors' moves of its staff members; on the transparency of the Commission's interactions with representatives of the tobacco industry; on how Frontex complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities; on how the European Defence Agency handled the application by its former chief executive to take on a senior position at Airbus; on how the Commission monitors EU funds used to promote the right of persons with disabilities and older persons to independent living; and on how the European Investment Bank holds certain personal information of job applicants before making recruitment decisions;

J. whereas in a broad inquiry into 'revolving doors' covering a sample of 100 decisions taken by the Commission in 2019-2021, the Ombudsman found that the Commission had prohibited only two activities;

K. whereas 2021 marked the twentieth anniversary of the entry into force of Regulation (EC) No 1049/2001 ([3]) (Transparency Regulation) on public access to documents; whereas in 2021 the Ombudsman made access to documents a focus for the Office throughout the year, as transparency remains the leading topic of complaints and the priority for her work; whereas the Ombudsman hosted a public conference on how the Transparency Regulation should be modernised to meet the public needs in this area;

L. whereas the CJEU has ruled several times that openness in the legislative process is precisely what contributes to conferring greater legitimacy on the institutions in the eyes of EU citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated; whereas the CJEU has stipulated that it is in fact a lack of information and debate that can give rise to doubts in the minds of citizens and facilitate the spread of misinformation, not only about the lawfulness of an individual act, but also about the legitimacy of the entire decision-making process ([4]);

M. whereas improving citizens' participation and ensuring transparency at EU level are key to bridging the perceived gap between the EU, its institutions, its citizens and representative organisations, overcoming citizens' low trust and confidence levels in EU institutions and achieving a real multilevel democracy; whereas the Ombudsman plays a key role in bridging this gap;

([3]) 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).

([4]) Judgments of the Court of Justice of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, ECLI:EU:C:2008:374, paragraph 59, and of 22 March 2018, *Emilio De Capitani* v *European Parliament*, T-540/15, ECLI:EU:T:2018:167, paragraph 78.

N. whereas citizens' complaints to the Ombudsman are an essential component of participatory democracy and of the legitimacy of the Union's decision-making process as they promote transparency and good administration in the EU institutions and bodies; whereas the role of the Ombudsman has developed over the years allows them now to use own-initiative powers to help tackle systemic problems in the EU administration and make recommendations for improvement with a view to resolving the problems in various cases of maladministration, thus taking on an increasingly important role in citizens' lives when it comes to issues such as the environment, migration and health;

O. whereas in cases when a complaint falls outside her mandate, the Ombudsman should advise the complainant to refer it to another authority or to the Committee on Petitions;

P. whereas the CJEU has highlighted that the democratic model adopted by the EU has two dimensions: representative democracy, based on Article 10 (1) and (2) TEU, and participative democracy, based on Article 10 (3) TEU; whereas the first dimension implies that the representatives of citizens are accountable for the decisions they take and the second dimension enables citizens to participate in the decisional process; whereas the CJEU has stipulated that transparency is pertinent in both dimensions ([5]);

Q. whereas in its strategic work in 2021, the Ombudsman's Office opened its own new and strategic initiatives on how the EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity; on artificial intelligence and the EU administration; on the EU administration's duty to inform the public about how to exercise the right of public access to EU documents; on the transparency of the EU portal for managing tenders for contracts awarded by EU institutions; on the Commission's transparency obligations in the context of the forthcoming review of EU tobacco legislation; on how the Commission makes available information about meetings between commissioners and organisations or self-employed individuals; and on how the Commission ensures respect for human rights in the context of international trade agreements;

R. whereas the CJEU, when referring to giving the public the widest possible right of access to EU documents, has stated that openness in that respect contributes to strengthening democracy by allowing citizens to scrutinise all the information which has formed the basis of a legislative act; whereas the CJEU has argued that the possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights ([6]);

S. whereas the CJEU has interpreted Article 10 (3) TEU to mean that, in a system based on the principle of democratic legitimacy, co-legislators must be held accountable for their actions to the public; whereas the CJEU has stipulated that, if citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information ([7]);

1. Approves the annual report for 2021 presented by the European Ombudsman and commends her excellent presentation of the most important facts and figures concerning the Ombudsman's work in 2021;

2. Congratulates Emily O'Reilly and her office, on their remarkable work and constructive efforts to find a balance between the EU institutions' right to work and the public interest in an EU administration that works with the highest standards of integrity and accountability; congratulates them on enhancing representative and participative democracy, while improving public participation in and the legitimacy of the EU decision-making process; recognises that the work of the Ombudsman has led to positive changes within the institutions and bodies of the Union;

3. Appreciates the excellent relations between Ombudsman Emily O'Reilly and the Committee on Petitions in 2021; appreciates the strong collaboration between the two bodies as an important tool in increasing the democratic accountability of the EU institutions; recalls that relations with the European Ombudsman are one of the responsibilities that Parliament's Rules of Procedure confer on the Committee on Petitions; appreciates the common interest reflected in several resolutions based on the Ombudsman's inquiries, particularly in relation to the transparency and accountability of the EU administration in the context of COVID-19;

([5]) Judgment of the Court of Justice in case T-540/15, ECLI:EU:T:2018:167, paragraph 41.

([6]) Judgments of the Court of Justice in cases C-39/05 P and C-52/05 P, ECLI:EU:C:2008:374, paragraph 46; and T-540/15, ECLI:EU:T:2018:167, paragraph 80; of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, ECLI:EU:C:2013:671, paragraph 33; and of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, ECLI:EU:T:2016:494, paragraph 35.

([7]) Judgments of the Court of Justice of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, ECLI:EU:T:2011:105, paragraph 69; and in case T-540/15, ECLI:EU:T:2018:167, paragraph 98.

4. Welcomes the initiatives carried out by the Ombudsman to find out how the EU institutions, bodies, offices and agencies could make citizens aware of the right of public access to documents; welcomes the public conference on the future of access to documents rules organised by the Ombudsman's Office in Brussels on 15 November 2021 entitled 'Access to EU documents: what next?';

5. Congratulates the Ombudsman for the work in issuing a short guide for the EU administration on what policies and practices they should implement to give effect to the right of public access to EU documents; congratulates the Ombudsman for the advice given through the Interactive Guide available on the Ombudsman's website;

6. Strongly believes that citizens' access to all documents of the European institutions bodies, offices and agencies is the basis of a participatory democracy and helps improve public awareness of and support for the EU institutions; welcomes the Ombudsman's efforts to improve public participation in and the legitimacy of the EU decision-making process; points out that the right to refer a matter to the Ombudsman increases citizens' engagement with and trust in the EU institutions, as it promotes transparency and the good administration of the EU institutions and bodies;

7. Recalls that the CJEU underlined that the requirement of impartiality, which is binding on the institutions, bodies, offices and agencies in the performance of their tasks, is intended to guarantee equal treatment, which is one of the foundations of the European Union; highlights that this requirement aims at avoiding situations of potential conflicts of interest and covers any circumstances an official or agent is called upon to decide on, given the fundamental importance of the guarantee of independence and integrity as regards both the internal functioning and the external image of the institutions, bodies, offices and agencies of the Union ([8]);

8. Considers it very important to continue to properly inform EU citizens about the Ombudsman's role and the scope of the activities carried out by the Ombudsman, and of the Ombudsman's influence on the development of the EU institutions;

9. Recalls that one of the ways to improve citizens' perception of the EU is by making it more accessible, understandable and transparent to them; believes that enabling citizens to hold their governments accountable would strengthen citizens' democratic rights and increase citizens' trust in the EU decision-making process; calls on the Commission to take the necessary steps to guarantee the highest possible degree of transparency; deeply regrets that despite the several calls by Parliament and by the Ombudsman, the Council's current work is still marred by a lack of transparency and citizens do not have appropriate access to legislative documents produced by the Council; calls on the Council to comply with the transparency standards of a democracy as required under the Treaties and recommended by the Ombudsman in her special report of May 2018 ([9]);

10. Highlights that 2021 marked the 20th anniversary of the Transparency Regulation coming into force; welcomes the special focus of the Ombudsman's Office on this matter throughout 2021; notes that this system has shown positive effects but could be adjusted to better adapt to technological developments; notes with concern that the current legislation on public access to EU documents is severely obsolete due to technological advances in recent decades in access to documentation, new means of communication and different ways of recording, managing and storing information; acknowledges the need to revise the Transparency Regulation in order to place the EU at the forefront of public access to documents and democratic transparency for citizens; welcomes the Ombudsman's input on the Transparency Regulation and invites the Commission, the Council and the relevant committee in Parliament to take this into account;

11. Takes note of the fact that the Commission, as stated by Vice-President Věra Jourová during the 'Access to EU documents: what next?' public conference held on 15 November 2021, stands ready to continue legislative work on access to documents in partnership with the co-legislators;

12. Highlights the fact that the Ombudsman has launched a strategic initiative into how the administration records text and instant messages sent/received by staff members in their professional capacity; supports the Ombudsman's commitment to improving the way the EU administration deals with text and instant messages and other new technologies as part of its transparency obligations;

([8]) See judgment of 12 October 2022, *Vasallo Andrés* v *Parliament*, T-496/21, paragraph 21 (ECLI:EU:T:2022:628); judgment of 27 March 2019, *Dr. August Wolff GmbH & Co. KG Arzneimittel* and *Remedia d.o.o.* v *Commission*, C-680/16 P, paragraph 26 (ECLI:EU:C:2019:257).

([9]) Special Report of the European Ombudsman in strategic inquiry OI/2/2017/TE on the transparency of the Council legislative process.

13. Notes the Ombudsman's enquiry on into Commission's refusal to grant public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of COVID-19 vaccines; recalls that text messages whose content relates to the policies, activities and decisions falling within the institution's sphere of responsibility are considered EU documents under the Transparency Regulation; calls on the Commission to fully live up to the principles of ethics, transparency and accountability towards European citizens;

14. Highlights the Ombudsman's enquiry into how the Commission handled a request for public access to documents concerning the quality of medical masks distributed in spring 2020 during the COVID-19 pandemic; notes with concern that at the time the request was made and during a public health crisis, the Commission did not ensure the highest level of transparency required;

15. Stresses the need to monitor the implementation of the Ombudsman's recommendations of 2016 on more transparency in the legislative process; welcomes the Ombudsman's call for a greater transparency in trilogues, while recognising the need for the right balance between transparency and the particular challenges and sensitivities involved in reaching compromises on legislative proposals; reiterates its call to also publish before or shortly after trilogue meetings, documentation including calendars, agendas, minutes, documents examined, amendments and information on Member State delegations and their positions and minutes in a standardised and easily accessible online environment, by default in accordance with the Transparency Regulation and in compliance with CJEU case-law;

16. Welcomes the Ombudsman's broad strategic inquiry into how the Commission handles revolving doors situations as well as the Ombudsman's inquiries into revolving doors in other bodies of the European Union, such as the European Investment Bank or the European Defence Agency; recalls that proper management of the revolving doors issue is essential to maintaining confidence in the EU institutions; reiterates its call on the Ombudsman to continue her work to ensure the timely publication of the names of senior EU officials involved in revolving doors cases and to guarantee full transparency with regard to all related information; calls on the Commission to sharpen the rules concerning revolving doors and conflict of interest and ensure that strong rules are implemented across all EU institutions;

17. Congratulates the Ombudsman for the enquiry into how the Commission handled concerns about the composition of the High Level Forum on the EU Capital Markets Union, concluding that the Commission's measures to mitigate potential conflicts of interest resulted in only seven of the group's 28 members being truly independent; highlights that maladministration was found to have taken place in this instance; calls on the Commission, therefore, to put in place the most stringent ethical rules in order to prevent conflicts of interest and to take further steps to address revolving doors, fully complying with the Ombudsman's recommendations;

18. Welcomes the Ombudsman's strategic inquiry to assess how the Commission ensures that its interactions with tobacco interest representatives are transparent; regrets that, with the exception of Directorate-General for Health and Food Safety (DG SANTE) and its Directorate-General Taxation and Customs Union (DG TAXUD), the Commission is still failing to ensure full and proactive transparency about meetings with representatives of the tobacco industry; regrets that this failure undermines full public scrutiny as required by the provisions of the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC);

19. Points out that, following an inquiry into Frontex's complaints mechanism, in which the Ombudsman drew attention to the agency's delays in fulfilling its new obligations under the mechanism itself and those of the Fundamental Rights Officer, the Ombudsman has opened an own-initiative inquiry into how Frontex complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibility; highlights that this inquiry sought to clarify matters related to the accountability of Frontex's joint operations, to activities related to returns of migrants and to migration support in screening at EU external borders;

20. Welcomes the opening of an inquiry into the Commission's role in assessing the sustainability of gas projects listed as projects of regional significance by the Energy Community — which brings together the EU, countries in the Western Balkans, countries in the Black Sea Region, and Norway — following a complaint by a civil society organisation, which denounced that the Commission had failed to ensure that the sustainability of gas projects had been properly assessed before being included on the list; recalls that these projects were evaluated according to a methodology formerly used by the Commission for its list of projects of common interest, which is currently inadequate and no longer used; considers that, particularly in the current geopolitical energy context, energy projects promoted or financed by the EU should be evaluated in the most transparent, consistent and participative way possible;

21. Welcomes the Ombudsman's statements on trade procedures, highlighting as maladministration the fact that the Commission did not finalise an updated 'sustainability impact assessment' before concluding the EU-Mercosur trade negotiations;

22. Emphasises the importance of the adoption of an updated statute for the Ombudsman's Office in June 2021; recalls that the new statute codifies many of the Office's working practices over recent years; welcomes the fact that the revised statute provides a strengthened legal framework for the Office and introduces new safeguards that further guarantee its independence; strongly believes that budget allocated to the Office of the Ombudsman must be amended to ensure that it has the necessary resources to effectively handle the overall workload and is able to continue to work competently at the service of European citizens;

23. Congratulates the Ombudsman's Office on the implementation and revision of the 'fast-track' procedure, which seeks to deal quickly with public access to documents complaints; notes that the procedure showed excellent results, including a significant decrease in processing times, an increase in the number of access to documents complaints, and general stakeholder satisfaction with the 'fast-track' procedure;

24. Welcomes the new strategy for the rights of persons with disabilities presented by the Commission on 3 March 2021, which covers the period from 2021 to 2030 and sets the framework for the implementation of the UNCRPD by the Member States and the EU institutions;

25. Welcomes the Ombudsman's commitment; acknowledges her work as a member of the EU framework aimed at protecting, promoting and monitoring the correct implementation of the UNCRPD by the EU institutions; acknowledges Europe's role as a global partner in supporting the inclusion of persons with disabilities;

26. Underlines the results of two inquiries concerning how EU funds are spent in social care institutions; welcomes the Ombudsman's own-initiative inquiry into how the Commission monitors EU funds used to promote the right to live independently of persons with disabilities and older persons;

27. Welcomes the list of best practices for accommodating the needs of persons with disabilities during emergencies, drawn up as a result of a strategic initiative on how the Commission accommodates the special needs of staff members with disabilities in the context of COVID-19; encourages the Ombudsman and her office to continue their work in favour of persons with disabilities and to ensure that they can fully enjoy their right of referral to the European Ombudsman;

28. Congratulates the Ombudsman for expanding the role of the European Network of Ombudsmen (ENO) in capacity building and the sharing of best practices between ombudsmen institutions of Member States, EEA countries and EU candidate countries; congratulates the ENO for organising targeted webinars focused on different topics including artificial intelligence and e-government in public administrations; Frontex's complaints mechanism and the monitoring of forced returns; and institutional care, the use of EU funds and lessons from the COVID-19 pandemic;

29. Encourages the Ombudsman to continue her collaboration with national ombudsmen through the ENO; believes it necessary to step up interactions and exchanges of best practices with and between national and regional ombudsmen and the European Ombudsman to ensure that citizens are better informed about their rights and have better guidance when making complaints; calls on this network to consider the role that national and regional ombudsmen could play in increasing the involvement of EU citizens in the EU decision-making process;

30. Congratulates the Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations and the EEAS on winning the European Ombudsman Award for Good Administration 2021 for their considerable efforts last year to help repatriate over a half million EU citizens stranded around the world due to the COVID-19 pandemic;

31. Instructs its President to forward this resolution and the report of the Committee on Petitions to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, and their ombudsmen or similar competent bodies.