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From:	General Secretariat of the Council
date of receipt:	25 March 2019
To:	Delegations
Subject:	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

Delegations will find attached the above proposal adopted by the European parliament on 12 February 2019.

ANNEX

2018/2080(INL)

2019/0900(APP)

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 EUROPEAN PARLIAMENT,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 228(4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the Council,

Having regard to the opinion of the Commission,

Acting in accordance with a special legislative procedure,

Whereas:

(1) The regulations and general conditions governing the performance of the Ombudsman's duties should be laid down in compliance with the provisions of the Treaty on the Functioning of the European Union, particularly Article 20(2), point (d), and Article 228, the Treaty establishing the European Atomic Energy Community and the Charter of Fundamental Rights of the European Union.

(2) In particular, Article 41 of the Charter of the Fundamental Rights of the European Union recognises the right to good administration as a fundamental right of European citizens. In its turn, Article 43 of the Charter recognises the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices and agencies of the Union. In order for those rights to be effective and in order to enhance the capacity of the Ombudsman to conduct thorough and impartial inquiries, the Ombudsman should be provided with all the tools that are necessary to perform the duties referred to in the Treaties and in this Regulation successfully.

(3) Decision 94/262/ECSC, EC, Euratom of the European Parliament[1] was lastly amended in 2008. With the entry into force of the Treaty of Lisbon on 1 December 2009, a new legal framework was established for the Union. In particular, Article 228(4) TFEU enables the European Parliament, after seeking an opinion from the Commission and with the consent of the Council, to adopt regulations laying down the regulations and general conditions governing the performance of the Ombudsman's duties. It is therefore desirable to repeal Decision 94/262/ECSC, EC, Euratom and replace it by a Regulation in accordance with the legal basis currently applicable.

(4) The establishment of the conditions under which a complaint may be referred to the Ombudsman should comply with the principle of full, free and easy access, notwithstanding specific restrictions pertaining to the concurrence of new or pending legal and administrative proceedings.

(5) 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.

(6) It is necessary to lay down the procedures to be followed where the Ombudsman's inquiries reveal cases of maladministration. A provision should also be made for the submission of a comprehensive report by the Ombudsman to the European Parliament at the end of each annual session.

(7) In order to strengthen the Ombudsman's role, it is desirable to allow the Ombudsman, without prejudice to the primary duty of the Ombudsman, which is to handle complaints, to conduct own-initiative inquiries with a view to identifying repeated or particularly serious instances of maladministration and promoting best administrative practices within the Union institutions, bodies, offices and agencies.

(8) In order to increase the effectiveness of the action of the Ombudsman, the Ombudsman should be entitled, on the Ombudsman's own initiative or following a complaint, to conduct inquiries following up previous inquiries so as to ascertain whether and to what extent the institution, body, office or agency concerned has complied with the recommendations put forward. The Ombudsman should also be entitled to include, in the Ombudsman's annual

[1] Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ L 113, 4.5.1994, p. 15).

report to the European Parliament, an assessment of the rate of compliance with recommendations made, and an assessment of the adequacy of the resources made available to the Ombudsman to perform the duties referred to in the Treaties and in this Regulation.

(9) The Ombudsman should have access to all the elements required for the performance of the Ombudsman's duties. To that end, Union institutions, bodies, offices and agencies are to be obliged to supply the Ombudsman with any information that the Ombudsman requests of them, without prejudice to the Ombudsman's obligations under Regulation (EC) No 1049/2001 of the European Parliament of the Council[1]. Access to classified information or documents should be subject to compliance with the rules on the processing of confidential information by the Union institution, body, office or agency concerned. The institutions, bodies, offices or agencies supplying classified information or documents should inform the Ombudsman of such classification. For the implementation of the rules on the processing of confidential information by the Union institution, body, office or agency concerned, the Ombudsman should have agreed in advance with the institution, body, office or agency concerned the conditions for treatment of classified information or documents and of other information covered by the obligation of professional secrecy. If the Ombudsman finds that the assistance requested is not forthcoming, the Ombudsman should inform the European Parliament, which should make appropriate representations.

(10) The Ombudsman and the Ombudsman's staff are to be obliged to treat in confidence any information which they have acquired in the course of their duties. However, the Ombudsman should inform the competent authorities of facts that the Ombudsman considers might relate to criminal law and which have come to the Ombudsman's attention in the course of an inquiry. The Ombudsman should also be able to inform the Union institution, body, office or agency concerned of the facts calling into question the conduct of a member of their staff.

(11) Account should be taken of the recent changes concerning the protection of the Union's financial interests against criminal offences, notably the establishment of the European Public Prosecutor's Office by Council Regulation (EU) 2017/1939[2], so as to allow the Ombudsman to notify it of any information falling within the latter's remit. Likewise, in order to fully

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[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).

[2] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 283, 31.10.2017, p. 1).

respect the presumption of innocence and the rights of the defence enshrined in Article 48 of the Charter of the Fundamental Rights of the European Union, it is desirable that, where the Ombudsman notifies the European Public Prosecutor's Office of information falling within the latter's remit, the Ombudsman reports that notification to the person concerned and to the complainant.

(12) A provision should be made for the possibility of cooperation between the Ombudsman and authorities of the same type in the Member States, in compliance with the national laws applicable. It is also desirable to take steps so as to enable the Ombudsman to cooperate with the European Union Agency for Fundamental Rights, since such cooperation may render the performance of the Ombudsman's duties more effective.

(13) It is for the European Parliament to appoint the Ombudsman at the beginning of the parliamentary term and for the duration thereof, choosing the Ombudsman from among persons who are Union citizens and who offer every requisite guarantee of independence and competence. Conditions should also be laid down for the cessation of the Ombudsman's duties as well as for the replacement of the Ombudsman.

(14) The Ombudsman's duties should be performed with complete independence. The Ombudsman should give a solemn undertaking before the Court of Justice when taking office. The incompatibilities, the remuneration, the privileges and the immunities of the Ombudsman should be laid down.

(15) Provisions should be adopted regarding the seat of the Ombudsman, which should be that of the European Parliament. Provisions should also be made regarding not only the officials and other servants of the secretariat of the Ombudsman which will assist the latter, but also the budget thereof.

(16) It is for the Ombudsman to adopt the implementing provisions for this Regulation. In order to guarantee legal certainty and the highest standards in performing the Ombudsman's duties, the minimum content of the implementing provisions to be adopted should be established in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman).

2. The Ombudsman shall act independently of the Union institutions, bodies, offices and agencies, in accordance with the powers conferred on the Ombudsman by the Treaties, and with due regard to Article 20(2), point (d), and Article 228 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union on the right to good administration.

3. In the performance of the duties referred to in the Treaties and in this Regulation, the Ombudsman may not intervene in cases before courts nor may the Ombudsman question the soundness of a court's ruling or a court’s competence to issue a ruling.

Article 2

1. The Ombudsman shall help to uncover maladministration in the activities of the Union institutions, bodies, offices and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role, and, where appropriate, shall make recommendations with a view to putting an end to it. No action by any other authority or person may be the subject of a complaint to the Ombudsman.

2. Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State may, directly or through a Member of the European Parliament, refer a complaint to the Ombudsman in respect of an instance of maladministration in the activities of Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. The Ombudsman shall inform the institution, body, office or agency concerned as soon as a complaint is referred to the Ombudsman, whilst respecting the Union standards in the field of personal data protection.

3. The complaint shall make clear reference to its object and to the identity of the complainant. The complainant may request that the complaint, or parts thereof, remain confidential.

4. A complaint shall be made within three years of the date on which the facts on which it is based came to the attention of the complainant and shall be preceded by the appropriate administrative approaches to the institutions, bodies, offices and agencies concerned.

5. The Ombudsman shall determine whether a complaint is within the mandate of the

Ombudsman, and, if so, whether it is admissible. Where a complaint is outside the mandate or inadmissible, the Ombudsman, before closing the file, may advise the complainant to address it to another authority.

6. Complaints submitted to the Ombudsman shall not affect time-limits for appeals in administrative or judicial proceedings.

7. When the Ombudsman, because of legal proceedings in progress or concluded concerning the facts which have been put forward, has to declare a complaint inadmissible or terminate consideration of it, the outcome of any inquiries the Ombudsman has carried out up to that point shall be filed definitively.

8. With the exception of complaints relating to sexual harassment cases, no complaint may be made to the Ombudsman that concerns work relationships between the Union institutions, bodies, offices and agencies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[1] ("the Staff Regulations"), have been exhausted by the person concerned and the time-limits for replies by the institution, body, office or agency concerned have expired.

9. The Ombudsman shall inform as soon as possible the complainant of the action taken on the complaint.

Article 3

1. The Ombudsman shall, on the Ombudsman's own initiative or following a complaint, conduct all the inquiries, including those following up previous ones, which the Ombudsman considers justified to clarify any suspected maladministration in the activities of Union institutions, bodies, offices and agencies. The Ombudsman shall act without requiring any prior authorisation and shall inform the institution, body, office or agency concerned in due time of such action. The institution, body, office or agency concerned may submit any useful comment or evidence to the Ombudsman. The Ombudsman may also request the institution, body, office or agency concerned to submit such comments or evidence.

[1] OJ L 56, 4.3.1968, p. 1.

2. Without prejudice to the primary duty of the Ombudsman, which is to handle complaints, the Ombudsman may conduct own-initiative inquiries of a more strategic nature in order to identify repeated or particularly serious instances of maladministration, to promote best administrative practices within the Union institutions, bodies, offices and agencies and to proactively address structural issues of public interest falling within the Ombudsman's remit.

3. The Ombudsman may engage in structured and regular dialogue with the Union institutions, bodies, offices and agencies and organise public consultations before providing recommendations or at any stage thereafter. The Ombudsman may as well systematically analyse and assess the progress of the institution, body, office or agency concerned, and issue further recommendations.

4. The Union institutions, bodies, offices and agencies shall supply the Ombudsman with any information the Ombudsman has requested from them and provide the Ombudsman with access to the files concerned. Access to classified information or documents shall be subject to compliance with the rules on the processing of confidential information by the Union institution, body, office or agency concerned.

   The institutions, bodies, offices or agencies supplying classified information or documents in accordance with the first subparagraph shall inform the Ombudsman of such classification in advance.

   For the implementation of the rules provided for in the first subparagraph, the Ombudsman shall have agreed in advance with the institution, body, office or agency concerned the conditions for treatment of classified information or documents.

   The institutions, bodies, offices or agencies concerned shall give access to documents originating in a Member State and classified as secret by law only after the Ombudsman's services have put in place appropriate measures and safeguards for handling the documents that ensure an equivalent level of confidentiality, in line with Article 9 of Regulation (EC) No 1049/2001 and in compliance with the rules on security of the Union institution, body, office or agency concerned.

   Officials and other servants of Union institutions, bodies, offices and agencies shall, at the request of the Ombudsman, testify to facts which relate to an ongoing inquiry by the Ombudsman. They shall speak on behalf of their institution, body, office or agency. They

shall continue to be bound by the obligations arising from the rules to which they are subject. When they are bound by a duty of professional secrecy, this shall not be interpreted as covering information relevant for complaints or inquiries on harassment or maladministration.

5. The Ombudsman shall periodically examine the procedures linked to the administrative action of the Union institutions, bodies, offices and agencies and shall assess whether they are able effectively to prevent conflicts of interest, to guarantee impartiality and to ensure full respect for the right to good administration. The Ombudsman may identify and assess possible instances of conflicts of interest at all levels which could constitute a source of maladministration, in which case the Ombudsman shall draw up specific conclusions and inform the European Parliament of the findings on the subject.

6. In so far as their national law allows, the competent authorities of the Member States shall, at the request of the Ombudsman or on their own initiative, urgently transmit to the Ombudsman any information or document that may help to clarify instances of maladministration by Union institutions, bodies, offices or agencies. Where such information or document is covered by national law on the processing of confidential information or by provisions preventing its being communicated, the Member State concerned may allow the Ombudsman to have access to this information or document provided that the Ombudsman undertakes to handle it in agreement with the originating competent authority. A description of the document shall be provided in any event.

7. If the assistance requested by the Ombudsman is not forthcoming, the Ombudsman shall inform the European Parliament, which shall make appropriate representations.

8. Where instances of maladministration have been found following an inquiry, the Ombudsman shall inform the institution, body, office or agency concerned, where appropriate making recommendations. The institution, body, office or agency so informed shall send the Ombudsman a detailed opinion within three months. The Ombudsman may, upon a reasoned request of the institution, body, office or agency concerned, grant an extension of that deadline, which shall not exceed two months. When no opinion is delivered by the institution, body, office or agency concerned within the three month deadline or within the extended deadline, the Ombudsman may close the inquiry without such an opinion.

9. The Ombudsman shall then send a report to the institution, body, office or agency concerned and, notably where the nature or the scale of the instance of maladministration uncovered so

requires, to the European Parliament. The Ombudsman may make recommendations in the report. The complainant shall be informed by the Ombudsman of the outcome of the inquiry, of the opinion expressed by the institution, body, office or agency concerned and of any recommendations made in the report by the Ombudsman.

10. Where appropriate in relation to an inquiry into the activities of a Union institution, body, office or agency, the Ombudsman may appear before the European Parliament, on the Ombudsman's own initiative or at the request of the European Parliament, at the most appropriate level.

11. As far as possible, the Ombudsman shall seek a solution with the institution, body, office or agency concerned to eliminate the instance of maladministration and satisfy the complaint. The Ombudsman shall inform the complainant of the solution proposed along with the comments, if any, of the institution, body, office or agency concerned. If the complainant so wishes, the complainant shall be entitled to submit comments, or additional information that was not known at the time of submission of the complaint, to the Ombudsman, at any stage.

12. At the end of each annual session the Ombudsman shall submit to the European Parliament a report on the outcome of the inquiries that the Ombudsman carried out. The report shall include an assessment of the compliance with the Ombudsman's recommendations and an assessment of the adequacy of the resources available to perform the Ombudsman's duties. These assessments may also be the subject of separate reports.

Article 4

The Ombudsman and the Ombudsman's staff shall deal with requests for public access to documents, other than those referred to in Article 6(1), in accordance with the conditions and limits provided for in Regulation (EC) No 1049/2001.

With regard to complaints concerning the right of public access to documents drawn up or received by a Union institution, body, office or agency, the Ombudsman shall, after due analysis and all necessary consideration, issue a recommendation concerning the access to those documents. The institution, body, office or agency concerned shall respond within the time frames provided by Regulation (EC) No 1049/2001. If the institution, body, office or agency concerned does not follow a recommendation from the Ombudsman to give access to documents, it shall duly state the reasons for its refusal. In such a case, the Ombudsman shall inform the complainant about the legal

remedies available, including the procedures available to refer the case to the Court of Justice of the European Union.

Article 5

The Ombudsman shall conduct regular assessments of the policies and reviews of the procedures in place in the relevant Union institutions, bodies, offices and agencies in accordance with Article 22a of the Staff Regulations ('whistleblowing') and shall, where appropriate, make concrete recommendations for improvement with a view to ensuring full protection for officials or other servants reporting facts in accordance with Article 22a of the Staff Regulations. The Ombudsman may, upon request, provide in confidence information, impartial advice and expert guidance to officials or other servants on the proper conduct to take in the presence of the facts referred to Article 22a of the Staff Regulations, including on the scope of the relevant provisions of Union law.

The Ombudsman may also open inquiries based on the information provided by officials or other servants reporting facts in accordance with Article 22a of the Staff Regulations, who may report in confidence and anonymously, where the facts described could constitute maladministration in a Union institution, body, office or agency. In order to enable this purpose, applicable staff regulations regarding secrecy may be waived.

Article 6

1. The Ombudsman and the Ombudsman's staff, to whom Article 339 TFEU and Article 194 of the Euratom Treaty shall apply, shall be required not to divulge information or documents which they obtain in the course of their inquiries. Without prejudice to paragraph 2, they shall, in particular, be required not to divulge any classified information or document supplied to the Ombudsman or documents falling within the scope of Union law regarding the protection of personal data, as well as any information which could harm the complainant or any other person involved.

2. If the Ombudsman considers that facts learnt in the course of an inquiry might relate to criminal law, the Ombudsman shall notify the competent national authorities and, in so far as the case falls within their powers, the European Anti-Fraud Office and the European Public Prosecutor's Office. If appropriate, the Ombudsman shall also notify the Union institution, body, office or agency with authority over the official or other servant concerned, which may apply the second paragraph of Article 17 of Protocol No 7 on the Privileges and Immunities

of the European Union.

The Ombudsman may also notify the Union institution, body, office or agency concerned of the facts calling into question the conduct of a member of their staff, as well as any persistent activity that has the effect of hampering the ongoing inquiry.

The Ombudsman shall report such notifications to the complainant and to the other persons concerned whose identity is known.

Article 7

1. The Ombudsman may cooperate with authorities of the same type in the Member States provided that the Ombudsman complies with the national law applicable.

2. Within the scope of the Ombudsman's duties, the Ombudsman shall cooperate with the European Union Agency for Fundamental Rights and with other institutions and bodies, while avoiding any duplication with their activities.

Article 8

1. The Ombudsman shall be elected, and eligible for reappointment, in accordance with Article 228(2) of the TFEU.

2. The Ombudsman shall be chosen from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence, have not been Members of national governments or Members of Union's institutions within the past three years, meet conditions of impartiality equivalent to those required for a judicial office in their country and have the acknowledged competence and experience to undertake the duties of the Ombudsman.

Article 9

1. The Ombudsman shall cease to exercise the duties referred to in the Treaties and in this Regulation either at the end the term of office or upon resignation or dismissal.

2. Save in the event of dismissal, the Ombudsman shall remain in office until a new Ombudsman has been elected.

3. In the event of early cessation of duties, a new Ombudsman shall be appointed within three months of the office's falling vacant for the remainder of the term of office of the European

Parliament. Until such time as a new Ombudsman has been elected, the principal officer referred to in Article 13(2) shall be responsible for urgent matters falling within the Ombudsman's remit.

Article 10

Where the European Parliament intends to request the dismissal of the Ombudsman in accordance with Article 228(2) of the TFEU, it shall hear the Ombudsman before making such a request.

Article 11

1. In the performance of the duties referred to in the Treaties and in this Regulation, the Ombudsman shall act in accordance with Article 228(3) TFEU. The Ombudsman shall refrain from any act incompatible with the nature of the said duties.

2. When taking up office, the Ombudsman shall give a solemn undertaking before the Court of Justice sitting as a full Court that the duties referred to in the Treaties and in this Regulation will be performed with complete independence and impartiality and that the obligations arising during and after the term of office will be fully respected. The solemn undertaking shall in particular include the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits after the end of the term of office.

Article 12

1. During the Ombudsman's term of office, the Ombudsman may not engage in any other political or administrative duties, or any other occupation, whether gainful or not.

2. The Ombudsman shall have the same rank in terms of remuneration, allowances and pension as a judge at the Court of Justice.

3. Articles 11 to 14 and Article 17 of Protocol No 7 shall apply to the Ombudsman and to the officials and other servants of the Ombudsman's secretariat.

Article 13

1. The Ombudsman shall be awarded an adequate budget, sufficient to ensure the Ombudsman's independence and to provide for the performance of the duties referred to in the Treaties and in this Regulation.

2. The Ombudsman shall be assisted by a secretariat, the principal officer of which the Ombudsman shall appoint.

3. The Ombudsman should aim to achieve gender parity within the composition of the Ombudsman’s secretariat.

4. The officials and other servants of the Ombudsman's secretariat shall be subject to the rules and regulations applicable to officials and other servants of the Union. Their number shall be adopted each year as part of the budgetary procedure and be adequate for the proper performance of the Ombudsman's duties and workload.

5. Officials and other servants of the Union and of the Member States appointed to the Ombudsman's secretariat shall be seconded in the interests of the service and guaranteed automatic reinstatement in their institution, body, office or agency of origin.

6. In matters concerning the Ombudsman's staff, the Ombudsman shall have the same status as the institutions within the meaning of Article 1a of the Staff Regulations.

Article 14

The Ombudsman shall assess the procedures in place to prevent harassment of any kind and nature within the Union institutions, bodies, offices and agencies, as well as the mechanisms to penalise those responsible of harassment. The Ombudsman shall draw up appropriate conclusions as to whether those procedures are consistent with the principles of proportionality, adequacy and energetic action, and whether they provide victims with effective protection and support.

The Ombudsman shall examine in a timely manner whether the Union institutions, bodies, offices and agencies adequately handle harassment cases of any kind and nature by correctly applying the procedures provided for in connection with complaints in that field. The Ombudsman shall draw up appropriate conclusions on the subject.

The Ombudsman shall within the secretariat appoint a person or designate a structure with expertise in the field of harassment able to assess in a timely manner whether harassment cases of any kind and nature, including sexual harassment, are handled adequately within the Union institutions, bodies, offices and agencies and, where appropriate, to provide advice to their officials and other servants.

Article 15

The seat of the Ombudsman shall be that of the European Parliament.

Article 16

Any communication addressed to the national authorities of the Member States for the purposes of applying this Regulation shall be made through their Permanent Representations to the Union.

Article 17

The Ombudsman shall adopt the implementing provisions for this Regulation. These shall be in accordance with this Regulation and include at least provisions on:

(a) procedural rights of the complainant and the institution, body, office or agency concerned ;

(b) ensuring the protection of officials or other servants reporting cases of sexual harassment and of breaches of Union law within the institutions, bodies, offices or agencies of the Union, in accordance with Article 22a of the Staff Regulations (‘whistleblowing’);

(c) receipt, processing and closure of a complaint;

(d) own-initiative inquiries;

(e) follow-up inquiries; and

(f) information gathering actions.

Article 18

Decision 94/262/ECSC, EC, Euratom is repealed.

Article 19

This Regulation shall enter into force on the first day of the month following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …

For the European Parliament

The President