

Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties

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Uw kenmerk

Bijlage(n)
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Datum 14 juni 2021
Betreft Voorlopig akkoord wijziging mandaat Europese Ombudsman

Geachte voorzitter,

Met deze brief informeer ik u over het voorlopige akkoord tussen Europees Parlement en Raad dat is bereikt over het voorstel van het Europees Parlement over de aanpassing van het mandaat van de Europese Ombudsman. De tekst van het voorstel is bijgevoegd (AFCO-PR-692761_EN).

Op 18 juni 2020 heb ik u de kabinetsreactie op de opinie van de Europese Commissie op het oorspronkelijke voorstel van het Europees Parlement gezonden met een appreciatie van het voorstel en de inzet van het kabinet [Kamerstuk 2019-2020, 22112 nr. 2880]. Eind mei 2020 heeft het toenmalige Kroatische voorzitterschap de besprekingen gestart en informele consultaties met het Europees Parlement.

De uitkomst van deze besprekingen hebben geleid tot een aangepast voorstel van het Europees Parlement op 25 mei 2021. Het is de verwachting dat de komende Raad Algemene Zaken van 22 juni 2021 met het aangepaste voorstel zal kunnen instemmen. Daarom zend ik uw Kamer nu het aangepaste voorstel en de kabinetsreactie op onderdelen hierop.

Achtereenvolgens zal ik een puntsgewijze beschrijving geven van de in de ontwerpverordening opgenomen voorstellen, waar zij zijn gewijzigd ten opzichte van het oorspronkelijke voorstel en waar dit onderdeel was van de kabinetsinzet. Vervolgens geef ik hierop een reactie. Afsluitend schets ik het proces.

Essentie gewijzigde onderdelen voorstel

Niet verlengen termijn indienen klachten

De in het huidige mandaat gehanteerde termijn van twee jaar waarbinnen een klacht kan worden ingediend bij de Ombudsman wordt gehandhaafd en niet verlengd naar drie jaar. In de besprekingen tussen Raad, Commissie en Europees Parlement is geen aanwijzing gebleken dat de huidige periode tot problemen leidt. Het kabinet kan hiermee instemmen.

Datum
14 juni 2021

Kenmerk
2021-0000308569

Uitbreiden bevoegdheden zelfstandig strategisch onderzoek

Ook in het aangepaste voorstel krijgt de Ombudsman de bevoegdheid om op eigen initiatief, d.w.z. zonder een klacht vooraf, strategische onderzoeken uit te voeren naar zaken van wanbeheer. Het gaat hier om de mogelijkheid om zelfstandig en naar eigen inzicht onderzoek uit te voeren, in het bijzonder maar niet uitsluitend, naar herhaalde, systemische of buitengewoon ernstige gevallen van wanbeheer.

Het kabinet steunt dit. Het kabinet heeft het expliciet vastleggen van de bevoegdheid van de Ombudsman om zelfstandig strategisch onderzoek te kunnen doen steeds als positief beoordeeld. Het gaat hierbij niet om structurele of periodieke onderzoeken; het mandaat van de Ombudsman bevat immers niet de beoordeling van beleid en procedures in het algemeen.

Het Europees Parlement, de Commissie en de Raad zijn het niet eens geworden om het begrip wanbeheer te definiëren. Voor het kabinet is het van belang dat hier in ieder geval niet voor een restrictieve lezing van het begrip is gekozen. Met het aangepaste voorstel blijft de Ombudsman in staat om in lijn met de huidige praktijk bijvoorbeeld zelfstandig onderzoek te doen naar de wetgevingsprocedures binnen de Raad.

Uitbreiden bevoegdheden inzake intimidatie

Met het oorspronkelijke voorstel van het Europees Parlement voor de uitbreiding van de bevoegdheid van de Ombudsman inzake intimidatie dreigde ongewenste doublure te ontstaan met de procedures volgens het Ambtenarenstatuut. Dit zou negatieve effecten voor ambtenaren kunnen hebben. Voor een uitgebreide toelichting verwijs ik u naar de kabinetsreactie van 18 juni 2020. In het aangepaste voorstel blijft de procedure op basis van het Ambtenarenstatuut leidend en ontstaat er geen parallelle structuur.

Nieuw wordt de mogelijkheid voor de Ombudsman om de maatregelen te verifiëren die de bevoegde autoriteit van de EU-instelling in kwestie heeft genomen om vermeende slachtoffers van intimidatie te beschermen en een gezonde en veilige werkomgeving te herstellen. Eén duidelijke en heldere procedure voor ambtenaren sluit aan bij het uitgangspunt van het kabinet en voor het kabinet heeft de nieuwe bevoegdheid van de Ombudsman meerwaarde bij het bestrijden van intimidatie.

Uitbreiden bevoegdheden onderzoek inzake klokkenluiders

Oorspronkelijk heeft het Europees Parlement voorgesteld dat de Ombudsman een regelmatige beoordeling zou moeten uitvoeren van de beleidsmaatregelen en evaluaties van procedures binnen de instellingen, organen en agentschappen met betrekking tot klokkenluiders. Europees Parlement, Raad en Commissie zijn overeengekomen dit niet op te nemen in het aangepaste voorstel. Daarnaast zou de Ombudsman individuele klachten van klokkenluiders in behandeling moeten kunnen nemen. Hoewel het kabinet de bescherming van klokkenluiders zeer belangrijk vindt, is zij van mening dat met name dit laatste voorstel deze bescherming juist zou kunnen uithollen. Voor een uitgebreide toelichting verwijs ik naar de kabinetsreactie van 18 juni 2020.

In het aangepaste voorstel van het Europees Parlement sluiten de bevoegdheden van de Ombudsman met betrekking tot klokkenluiders aan bij de reeds bestaande procedure van het Ambtenarenstatuut. De Ombudsman krijgt daarnaast de

Datum
14 juni 2021

Kenmerk
2021-0000308569

bevoegdheid om na te gaan of de klokkenluidersprocedure goed is verlopen en of de klokkenluidersbescherming is gehandhaafd. De bescherming van klokkenluiders wordt hiermee versterkt en dit draagt bij aan het tegengaan van misstanden en kan daarmee uiteraard rekenen op steun van het kabinet.

Toegang tot documenten

Het aangepaste voorstel zorgt voor een goede toegankelijkheid van overheidsdocumenten voor de Ombudsman, binnen de geldende Verdragen. Het voorziet in de voorwaarden waaronder de EU-instellingen en de lidstaten de Ombudsman zonder onnodige vertraging alle informatie verstrekken waar de Ombudsman ten behoeve van een onderzoek om heeft verzocht. De lidstaten behouden hierbij de mogelijkheid om de Ombudsman informatie te weigeren die onder nationale wetten inzake de bescherming van gerubriceerde informatie valt, maar kunnen deze informatie desalniettemin aan de Ombudsman verstrekken mits de Ombudsman voldoet aan de gestelde voorwaarden. De ontwerpverordening voorziet ook dat de Ombudsman zorgdraagt voor een adequate bescherming van door de EU-instellingen of lidstaten gedeelde gerubriceerde informatie of andere informatie die niet openbaar toegankelijk is.

Tevens regelt de ontwerpverordening dat de Ombudsman verzoeken om toegang van het publiek tot de eigen documenten – met uitzondering van documenten die in de loop van een onderzoek zijn verkregen – overeenkomstig de voorwaarden en beperkingen van Verordening (EG) nr. 1049/2001 behandelt.

Het kabinet onderschrijft het belang van dit onderdeel van het aangepaste voorstel waarmee enerzijds de toegang van de Ombudsman tot informatie zoveel mogelijk wordt gewaarborgd en anderzijds de belangen van de lidstaten niet worden geschaad waar het gaat om gerubriceerde informatie.

Aanvullende eisen voor kandidaten

Ook in het aangepaste voorstel zijn restrictiever voorwaarden voor de benoeming van de Ombudsman opgenomen ten opzichte van het huidige Statuut. Zo mag de Ombudsman geen lid zijn geweest van een nationale regering, het Europees Parlement of de Europese Commissie in de twee jaar voorafgaand aan benoeming. Het Europees Parlement hecht aan deze zogenaamde afkoelperiode om een bijzondere waarborg in te bouwen ten behoeve van de onafhankelijkheid en aard van het ambt van Europees Ombudsman aan de start van een nieuwe Europese legislatuur, waarin veel hoge Europese benoemingen tegelijkertijd plaatsvinden. Op verzoek van de Raad is de afkoelperiode teruggebracht van 3 naar 2 jaar. Op zich is het kabinet van mening dat er voldoende waarborgen voor de onafhankelijkheid van de uitoefening van het ambt zijn ingebouwd in het statuut van de Ombudsman en ziet zij de aflegging van de eed aan de start van de zittingstermijn eveneens als een belangrijke waarborg maar kan zij instemmen met dit voorstel vanwege de grote waarde die het Europees Parlement eraan hecht. In het aangepaste voorstel staat niet langer de uitsluitende eis opgenomen dat een kandidaat voldoet aan de voorwaarden voor het bekleden van het hoogste juridische ambt in de lidstaat van oorsprong, in Nederland de Hoge Raad. Dit zou immers veel competente kandidaten onnodig kunnen uitsluiten.

Datum
14 juni 2021

Kenmerk
2021-0000308569

Vervolgproces

Het Europees Parlement is op grond van artikel 228(4) van het Verdrag betreffende de Werking van de Europese Unie (VWEU) bevoegd om op eigen initiatief, na advies van de Commissie en met goedkeuring van de Raad het statuut van de Ombudsman en de algemene voorwaarden voor de uitoefening van het ambt van Ombudsman vast te stellen. Het Europees Parlement heeft het aangepaste voorstel in eerste ronde besproken in de plenaire vergadering van 7 - 10 juni 2021. Na een besluit van de Raad Algemene Zaken op 22 juni a.s. waarin zij goedkeuring verleent en een opinie van de Europese Commissie zal het Europees Parlement het gewijzigde Statuut van de Ombudsman kunnen vaststellen tijdens de plenaire sessie van 23 en 24 juni a.s. De wijzigingen zullen in werking treden op de eerste dag van de maand na die van de bekendmaking ervan in het Publicatieblad van de EU. Op basis van het voorlopige akkoord tussen Raad en Europees Parlement is het de verwachting dat dit proces verloopt zoals hierboven geschetst. Hiermee krijgt het belangrijke ambt van Europese Ombudsman de benodigde actualisatie van zijn mandaat en zal hij met versterkte bevoegdheden zijn werkzaamheden kunnen uitvoeren. Europees Parlement, Raad en Europese Commissie hebben zich hier de afgelopen tijd gezamenlijk voor ingezet.

De Minister van Binnenlandse Zaken en Koninkrijksrelaties,

K.H. Ollongren



2021/2053(INL)

17.5.2021

DRAFT REPORT

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
(2021/2053(INL) – 2019/0900(APP))

Committee on Constitutional Affairs

Rapporteur: Paulo Rangel

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
ANNEX TO THE MOTION FOR A RESOLUTION.....	4
EXPLANATORY STATEMENT	16

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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 (2021/2053(INL) – 2019/0900(APP))

The European Parliament,

- having regard to Article 228(4) of the Treaty on the Functioning of the European Union,
 - having regard to Article 106a(1) of the Treaty establishing the European Atomic Energy Community,
 - having regard to the Commission opinion (COM[(2021)XXX])
 - having regard to the consent of the Council ([XXXX/2021])
 - having regard to Rules 46 and 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A[9-0000/2021]),
1. Adopts the regulation annexed hereto;
 2. Instructs its President to sign the regulation in accordance with Article 297(1) of the Treaty on the Functioning of the European Union;
 3. Instructs its Secretary-General to arrange for publication of the regulation in the *Official Journal of the European Union*;
 4. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.

ANNEX TO THE MOTION FOR A RESOLUTION

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) Decision 94/262/ECSC, EC, Euratom of the European Parliament was lastly amended in 2008. Following the entry into force of the Treaty of Lisbon on 1 December 2009, Decision 94/262/ECSC, EC, Euratom, should be repealed and replaced by a Regulation adopted on the basis of Article 228(4) TFEU.
- (3) 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. 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 to enhance the capacity of the Ombudsman to conduct thorough and impartial inquiries, which underpins the Ombudsman's independence, he/she should be provided with all the tools that are necessary to successfully perform the duties referred to in the Treaties and in this Regulation.
- (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, with due regard to the specific restrictions induced by legal and administrative proceedings.

- (5) The Ombudsman should act with due regard to the competences of the Union institutions, bodies, offices or agencies which are subject to his/her inquiries.
- (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. The Ombudsman should also be entitled to include, in the annual report to the European Parliament, an assessment of the compliance with recommendations made.
- (7) In order to strengthen the Ombudsman's role and to promote best administrative practices within the Union institutions, bodies, offices and agencies, it is desirable to allow the Ombudsman, without prejudice to his/her primary duty, which is to handle complaints, to conduct own-initiative inquiries whenever he/she finds grounds, in particular of repeated, systemic or particularly serious instances of maladministration.
- (8) It should be provided that Regulation (EC) No 1049/2001, as complemented by Regulation (EC) No 1367/2006 as far as access to environmental information is concerned, applies to requests for public access to documents of the Ombudsman, with the exception of those obtained in the course of an inquiry, in respect of which requests should be dealt with by the originating Union institution, body, office or agency.
- (9) The Ombudsman should have access to all elements required for the performance of his/her duties. To that end, Union institutions, bodies, offices and agencies should provide the Ombudsman with any information that he/she requests for the purposes of an inquiry. Where the exercise of the Ombudsman's duties would require provision to the Ombudsman of classified information held by the Union institutions, bodies, offices and agencies or by the competent authorities of the Member States, provisions should be made for providing the Ombudsman with such information.
- (10) It should be provided that the Ombudsman and his/her staff are obliged to treat in confidence any information which they have acquired in the course of their duties, without prejudice to the Ombudsman's obligation to inform the competent authorities of facts which might relate to criminal offences and have come to his/her attention in the course of an Ombudsman 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. The obligation of the Ombudsman to treat in confidence any information acquired in the course of his/her duties should be understood without prejudice to the Ombudsman's obligation to conduct his/her work as openly as possible pursuant to Article 15(1) TFEU. In particular, in order to duly exercise his/her duties and to support his/her findings, the Ombudsman should be able to refer in his/her reports to any information accessible to the public.
- (11) Where necessary for the effective performance of his/her duties, the Ombudsman should be given the possibility to cooperate and exchange information with authorities in the Member States, in compliance with the applicable national and Union law, and with other Union institutions, bodies, offices and agencies in compliance with the applicable Union law.

- (12) The Ombudsman should be appointed by the European Parliament at the beginning of the parliamentary term and for the duration thereof, choosing 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, incompatibilities, the remuneration and the privileges and immunities of the Ombudsman.
- (13) It should be specified that the seat of the Ombudsman should be that of the European Parliament as determined by letter (a) of Protocol (No 6) on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union.
- (14) The Ombudsman should achieve gender parity within the composition of his/her secretariat, with due regard to Article 1d(2) of the Staff Regulations.
- (15) It is for the Ombudsman to adopt the implementing provisions for this Regulation after consultation of the European Parliament, the Council and the Commission. In the absence of feedback from these institutions within the timeframe reasonably set out by the Ombudsman in advance, he/she can adopt the implementing provisions concerned. 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

Subject matter and principles

- 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 be completely independent in the performance of his/her duties and shall act without any prior authorisation.
- 3. 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, 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.

No action by any other authority or person may be the subject of a complaint to the Ombudsman.

- 4. Where appropriate, the Ombudsman shall make recommendations, solution proposals and suggestions for improvement to address the issue.
- 5. In the performance of his/her duties, the Ombudsman may not question the soundness

of a court's ruling or a court's competence to issue a ruling.

Article 2

Complaints

1. 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.
2. 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.
3. A complaint shall be lodged within two 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 Union institution, body, office or agency concerned.
4. The Ombudsman shall dismiss a complaint as inadmissible if it is outside his/her mandate or if the procedural requirements laid down in paragraphs 2 and 3 are not fulfilled. Where a complaint is outside the Ombudsman's mandate, he/she may advise the complainant to address it to another authority.
5. If the Ombudsman finds that the complaint is manifestly unfounded, he/she shall close the file and inform the complainant. In case where the complainant has informed the Union institution, body, office or agency concerned about his complaint, the Ombudsman shall also inform the authority concerned.
6. Complaints concerning employment relations between the Union institutions, bodies, offices and agencies and their staff shall be admissible only if the person concerned has exhausted all internal administrative procedures, in particular those referred to in Article 90 of the Staff Regulations, and the competent authority of the Union institution, body, office or agency concerned has taken a decision or the time-limits for its reply have expired. The Ombudsman shall also be entitled to verify the measures adopted by the competent authority of the Union institution, body, office or agency concerned to ensure the protection of alleged victims of harassment and to restore a healthy and safe working environment respecting the dignity of the persons concerned while an administrative inquiry is ongoing, provided that the persons concerned have exhausted the internal administrative procedures in relation to these measures.
7. The Ombudsman shall inform the Union institution, body, office or agency concerned as soon as a complaint registered by him/her has been declared admissible and he/she has decided to open an inquiry.
8. Complaints submitted to the Ombudsman shall not affect time-limits for appeals in administrative or judicial proceedings.

9. 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.
10. The Ombudsman shall inform as soon as possible the complainant of the action taken on the complaint and, as far as possible, seek a solution with the Union institution, body, office or agency concerned to eliminate the instance of maladministration. The Ombudsman shall inform the complainant of the solution proposed along with the comments, if any, of the Union institution, body, office or agency concerned. The complainant may submit comments or provide, at any stage, additional information that was not known at the time of submission of the complaint.

Where a solution accepted by the complainant and the Union institution, body, office or agency concerned has been found, the Ombudsman may close the file without pursuing the procedure provided for in Article 4.

Article 3

Inquiries

1. In accordance with his/her duties, the Ombudsman shall conduct inquiries for which he/she finds grounds, on his/her own initiative or following a complaint.
2. The Ombudsman shall inform the Union institution, body, office or agency concerned without undue delay of such inquiries. Without prejudice to Article 5, the Union institution, body, office or agency concerned may, on its own initiative or upon the Ombudsman's request, submit any useful comment or evidence.
3. The Ombudsman may conduct own-initiative inquiries whenever he/she finds grounds, in particular in instances of repeated, systemic or particularly serious maladministration in order to address them as an issue of public interest. In the context of such inquiries, he/she may also make proposals and initiatives to promote best administrative practices within Union institutions, bodies, offices and agencies.

Article 4

Interaction between the Ombudsman and the institutions

1. Where, following an inquiry, the Ombudsman finds instances of maladministration, he/she shall inform, without undue delay, the Union institution, body, office or agency concerned of his/her findings and, where appropriate, make recommendations.
2. The Union institution, body, office or agency concerned shall send the Ombudsman a detailed opinion within three months. The Ombudsman may, upon a reasoned request of

the Union 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 Union institution, body, office or agency concerned within the three months deadline or within the extended deadline, the Ombudsman may close the inquiry without such an opinion.

3. The Ombudsman shall then forward a report to the Union 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 Union institution, body, office or agency concerned and of any recommendations made in the report.
4. Where appropriate in relation to an inquiry into the activities of a Union institution, body, office or agency, the Ombudsman can be heard before the European Parliament, at the appropriate level, on his/her own initiative or at the request of the European Parliament.
5. At the end of each annual session the Ombudsman shall submit to the European Parliament a report on the outcome of the inquiries that he/she carried out. The report shall include an assessment of the compliance with the Ombudsman's recommendations, solution proposals and suggestions for improvement. The report shall also include, when justified, the outcome of the Ombudsman's inquiries related to harassment, whistleblowing and conflicts of interest within the Union institutions, bodies, offices or agencies.

Article 5

Provision of information to the Ombudsman

1. For the purpose of this Article, "provision of information" covers all physical and electronic means by which the Ombudsman and his/her secretariat are given access to information, including documents, independently of its form.
2. "EU classified information" shall mean any information or material designated by EU security classification, the unauthorized disclosure of which could cause varying degrees of prejudice to the interests of the European Union or of one or more of the Member States.
3. Subject to the conditions laid down in this article, the Union institutions, bodies, offices and agencies and the competent authorities of the Member States shall, at the request of the Ombudsman or on their own initiative, and without undue delay, provide the Ombudsman with any information he/she has requested for the purposes of an inquiry.
4. The Ombudsman shall be provided with EU classified information subject to the following conditions and principles:

- a) the Union institution, body, office or agency providing the EU classified information has completed its relevant internal procedures and, where the originator is a third party, the latter has given its prior written consent;
 - b) the need to know for the Ombudsman has been established ;
 - c) access to information classified CONFIDENTIEL UE/EU CONFIDENTIAL or above shall be granted only to persons holding a personnel security clearance to the relevant security level in accordance with national law and authorized by the competent security authority.
5. For the provision of EU classified information, the Union institution, body, office or agency concerned shall assess whether the Ombudsman has effectively put in place internal security rules as well as physical and procedural measures for protecting EU classified information. To this effect, the Ombudsman and a Union institution, body, office or agency may also enter into an arrangement establishing a general framework governing the provision of EU classified information.
6. In accordance with paragraphs 4 and 5, access to EU classified information shall be provided in the premises of the Union institution, body, office or agency concerned, unless otherwise agreed with the Ombudsman.
7. Without prejudice to paragraph 3, the competent authorities of Member States may refuse to provide the Ombudsman with information covered by national laws on protection of classified information or by provisions preventing its communication.

Nonetheless, the Member State concerned may provide to the Ombudsman this information subject to conditions set out by its competent authority.

8. The Union institutions, bodies, offices or agencies and the competent authorities of the Member States providing EU classified information or any other information which is not accessible to the public shall inform the Ombudsman thereof in advance.

The Ombudsman shall ensure adequate protection of such information and shall not disclose it to the complainant or to the public without the prior consent of the Union institution, body, office or agency or the competent authority of the Member State concerned. As regards EU classified information, the consent shall be given in writing.

9. The Union institutions, bodies, offices or agencies refusing access to EU classified information shall provide the Ombudsman with a justification in writing, indicating, at least, the grounds for refusal.
10. The Ombudsman shall retain possession of information referred to in paragraph 8 only until the inquiry is definitively closed.

The Ombudsman may request an institution, body, office or agency, or Member State to retain such information for at least a period of five years.

11. If the assistance requested by the Ombudsman is not forthcoming, he/she may inform

the European Parliament, which shall act accordingly.

Article 6

Public access to documents of the Ombudsman

The Ombudsman shall deal with requests for public access to documents, with the exception of those obtained in the course of an inquiry, including after its closure, in accordance with the conditions and limits provided for in Regulation (EC) No 1049/2001, as complemented by Regulation (EC) No 1367/2006 as far as access to environmental information is concerned.

Article 7

Hearing of officials and other servants

1. Officials and other servants of Union institutions, bodies, offices and agencies shall be heard, at the request of the Ombudsman, with regard to facts which relate to an ongoing inquiry by the Ombudsman.
2. 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.

Article 8

Inquiries in the context of whistleblowing

1. The Ombudsman may conduct an inquiry to uncover any maladministration in the treatment of information as defined in Article 22a of the Staff Regulations which has been disclosed to him/her by an official or other servant in accordance with the relevant rules laid down in the Staff Regulations or the Conditions of Employment of Other Servants.
2. In such cases, the official or other servant shall benefit from the protection offered by the Staff Regulations or the Conditions of Employment of Other Servants against any prejudicial effects on the part of the Union institution, body, office or agency as a result of having communicated the information.
3. The Ombudsman may also inquire whether there was any maladministration in the handling of such case by the Union institution, body, office or agency concerned, including as regards the protection of the official or other servant concerned.

Article 9

Professional secrecy

1. The Ombudsman and his/her staff shall not divulge information or documents which

they obtain in the course of an inquiry. Without prejudice to paragraph 2, they shall, in particular, not divulge any EU classified information or internal documents of the Union institutions, bodies, offices and agencies supplied to the Ombudsman or documents falling within the scope of Union law regarding the protection of personal data, nor any information which could harm the rights of the complainant or of any other person involved.

2. If facts learnt in the course of an Ombudsman inquiry might constitute or relate to a criminal offence, the Ombudsman shall report to the competent national authorities and, in so far as the case falls within their respective competences, the European Anti-Fraud Office and the European Public Prosecutor's Office, in accordance with Article 24 of Regulation 2017/1939. This is without prejudice to the general reporting obligation of all Union institutions, bodies, offices and agencies to the European Anti-Fraud Office, in accordance with Article 8 of Regulation 883/2013.
3. If appropriate, and after agreement with OLAF or the European Public Prosecutor's Office, the Ombudsman shall also notify the Union institution, body, office or agency with authority over the official or other servant concerned, which may initiate the appropriate procedures.

Article 10

Cooperation with Member States' authorities and Union institutions, bodies, offices and agencies

1. Where necessary for the performance of his/her duties, the Ombudsman may cooperate with authorities in the Member States, in compliance with the applicable national and Union law.
2. Within the scope of his/her duties, the Ombudsman may also cooperate with other Union institutions, bodies, offices and agencies, in particular with those in charge of the promotion and protection of fundamental rights. The Ombudsman shall avoid any overlap or duplication with the activities of those Union institutions, bodies, offices and agencies.
3. 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, except where the Permanent Representation concerned agrees that the Ombudsman's secretariat may directly contact the competent authorities of that Member State.

Article 11

Appointment of the Ombudsman

1. The Ombudsman shall be elected, and eligible for reappointment, in accordance with Article 228(2) TFEU from candidates selected following a transparent procedure.

2. Following the publication of the call for nominations in the Official Journal, the Ombudsman shall be chosen from among persons who :
 - are Union citizens,
 - have full civil and political rights,
 - offer every guarantee of independence,
 - meet the conditions required for the exercise of the highest judicial office in their country or have the acknowledged competence and qualifications to undertake the duties of the Ombudsman, and
 - have not been members of national governments or members of the European Parliament, the European Council, or the European Commission within the two years preceding the date of publication of the call for nominations.

Article 12

Cessation of the Ombudsman's duties

1. The Ombudsman shall cease to exercise the duties referred to in the Treaties and in this Regulation either at the end of his/her 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 16(2) shall be responsible for urgent matters falling within the Ombudsman's remit.

Article 13

Dismissal

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

Article 14

Exercise of the Ombudsman's duties

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 that he/she will perform the duties referred to in the Treaties and in this Regulation with complete independence and impartiality and that he/she will respect the obligations arising therefrom during and after his/her term of office. 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.
3. During the Ombudsman's term of office, he/she may not engage in any other political or administrative duties, or any other occupation, whether gainful or not.

Article 15

Remuneration, privileges and immunities

1. The Ombudsman shall have the same rank in terms of remuneration, allowances and pension as a judge at the Court of Justice.
2. 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 16

Secretariat of the Ombudsman

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 he/she shall appoint.
3. The officials and other servants of the Ombudsman's secretariat shall be subject to the Staff Regulations and the Conditions of Employment of Other Servants of the European Union. Their number shall be adopted each year as part of the budgetary procedure.
4. Where officials of the Union are seconded to the Ombudsman's secretariat, this secondment shall be considered as a secondment in the interests of the service in accordance with Article 37, first paragraph, letter (a), and Article 38 of the Staff Regulations.

Article 17

Seat of the Ombudsman

The seat of the Ombudsman shall be that of the European Parliament as determined by letter (a) of Protocol (No 6) on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union.

Article 18

Implementing provisions

The Ombudsman shall adopt the implementing provisions for this Regulation, after consultation of the European Parliament, the Council and the Commission. These shall be in accordance with this Regulation and include at least provisions on:

- (a) procedural rights of the complainant and the Union institution, body, office or agency concerned ;
- (b) receipt, processing and closure of a complaint;
- (c) own-initiative inquiries;
- (d) follow-up inquiries;

Article 19

Final provisions

1. Decision 94/262/ECSC, EC, Euratom is repealed.
2. 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.
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

EXPLANATORY STATEMENT

I. Ratio essendi

The first European Ombudsman took his office in 1995, after the Treaty of Maastricht had set up this body in 1992. After more than 20 years of activity, the Ombudsman has established a reputation and working methods that have contributed to the growing prestige, as well as to the moral and social recognition of this body's role.

The Statute was not updated during the last decade. In fact, the Decision which will be repealed precedes the entry into force of the Treaty of Lisbon. It is thus of paramount importance to adapt its provisions to the applicable Treaties, whilst guaranteeing that this body continues to play a specific and decisive role in the constitutional framework of the European Union.

II. Modifications and adjustments envisaged by the new Statute

Regarding the substantive changes envisaged by your rapporteur when it started this procedure, *vide* the explanatory statement in report T8-0080/2019.

III. A unique special legislative procedure

The legislative procedure to adopt the Statute of the European ombudsman is of special constitutional and institutional nature. On the one hand, Parliament has an authentic right of legislative initiative, the so-called direct right of initiative. On the other hand, consent of the Council is required and the Commission must give its opinion.

The fact that the treaties establish such a legislative procedure, one of higher constitutional dignity, stems from the - also special - link between Parliament and the European Ombudsman. Parliament elects the Ombudsman, provides assistance and is the main recipient of her/his reports as Parliament is the ultimate representative of the citizens that the Ombudsman is to defend against the vagaries of the European administration.

Your rapporteur, with the endorsement of shadow rapporteurs, considered that the views of the Council about the legislative options of the Parliament on this regard should be heard in such a way as to prevent a legitimate refusal to give consent or a simple “pocket veto”. More so, the Commission should also participate, to be in a better position to issue its opinion and to play a role of *honest broker*, indeed to help find compromises.

As such, it was decided to have informal consultations, with the two institutions. These have proven fruitful, while not hindering the direct right of initiative and legislative competence of the European Parliament. It has allowed Council to anticipate the main legislative options of the Parliament and, necessarily, influence our decisions.

The establishment of this procedure of informal consultations is not a matter of pragmatism. On the contrary, it results from our understanding of the nature and constitutional role of the power of consent of the Council. Indeed, Council's consent means more than a simple authorization or signature. In the same way as the original royal assent in the United

Kingdom, also the consent of Council is part of the legislative function. That is to say, the consent of the Council also means an adhesion to the content of the Regulation, an adherence to the content of the legislative decision of the European Parliament.

In view of such understanding, preliminary informal consultations are most opportune and even necessary. If by giving its consent, Council is substantively adhering to the legislative options of this Parliament, then it is only natural that this house hears Council before taking definitive decisions.

This *modus operandi* constitutes a practical precedent to other areas where Parliament has direct right of initiative and Council's consent is required. But it also reflects, in our view, the most appropriate reading of the intention of the treaties when setting up such special legislative procedure.

IV. Outcome

This report aims to reflect the views of Parliament after having conducted informal consultations with Council and Commission.