

Strengthening the rule of law in the European Union

Response from the European Ombudsman to the Communication by the European Commission

In the context of its Communication on *Further strengthening the Rule of Law within the Union*¹, the European Commission sought feedback from relevant stakeholders and other EU bodies. This paper contains the contribution of the European Ombudsman.

Introduction

The European Union is a community of values underpinned by respect for the rule of law. This implies obligations for its Member States, but also for the EU institutions, which should act as role models when it comes to ethical, transparent and accountable law-making and administration.

Robust ombudsman institutions are an important constitutional safeguard in democratic systems, promoting good administration, which helps to support the rule of law. The creation of the European Ombudsman under the Treaty of Maastricht was a reflection of this.

The role of the European Ombudsman in strengthening the rule of law

In its Communication, the Commission points out that “[t]he rule of law includes [having] a transparent, accountable, democratic and pluralistic process for enacting laws”. This has been among the priorities for the European Ombudsman in her strategic work on the EU’s decision-making processes, reflected in her inquiries into the transparency of Council working parties², trilogue legislative negotiations³, Commission expert groups⁴, as well as her work on the Transparency Register⁵. The European Ombudsman will continue in her efforts to ensure a top class EU administration that leads by example.

¹ Communication from the Commission to the European Parliament, the European Council and the Council - *Further strengthening the Rule of Law within the Union State of play and possible next steps* (COM/2019/163) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0163>.

² OI/2/2017/TE <https://www.ombudsman.europa.eu/en/special-report/en/94921>.

³ OI/8/2015/JAS <https://www.ombudsman.europa.eu/en/decision/en/69206>.

⁴ OI/6/2014/NF <https://www.ombudsman.europa.eu/en/recommendation/en/63441>.

⁵ SI/7/2016/KR <https://www.ombudsman.europa.eu/en/correspondence/en/67708>



The Communication also notes that the rule of law is “*central to making the European Union work well as an area of freedom, security and justice and an internal market, where laws apply effectively and uniformly*”. When individual citizens draw the Commission’s attention to possible Member State infringements of EU law, the Commission should provide adequate information about how it has handled the infringement complaint and, if it does not intend to pursue the matter, explain why. The European Ombudsman will continue to monitor the Commission’s actions in this area.

The role of Member State ombudsmen in an EU context

As the Commission notes in its Communication “*general shortcomings in public administration can... serve as indicators of possible rule of law problems*”. National and regional ombudsmen are well-placed to identify such shortcomings at an early stage. These issues come to their attention through complaints or may be identified via own-initiative investigations. Where possible, ombudsmen themselves can seek to remedy problems or, at the very least, draw attention to them. Ombudsmen are therefore a rich source of information on the state of the rule of law in their own jurisdictions. Although the remits of national ombudsman institutions vary substantially across EU countries, they have hands-on experience and knowledge of problems with fundamental rights and the respect of the rule of law in their countries or regions.

While distinct from courts, ombudsman institutions are bound by the same duties of impartiality and independence. They complement the judiciary in providing a check on other democratic institutions and executive powers. Ombudsmen may also hold public institutions to account in situations where courts cannot intervene, because the issues raised are not strictly legally enforceable or because the complainants are not able to bring a case before a court of law.

The European Network of Ombudsmen

The European Ombudsman chairs the European Network of Ombudsmen (ENO), whose members (national and regional ombudsmen, and petitions committees) may work together on cases and share information on topics, including problems with the application of EU law.

The European Ombudsman, through the ENO, could thus be a valuable source of information on potential rule of law matters. As proposed by the European Parliament⁶, this information could be included in the Ombudsman’s annual report, or in another format. This could include information from ENO on preventive actions taken at national level, relevant complaints and initiatives taken by the ombudsman institutions with a view to safeguarding the rule of law. The experience and knowledge of national ombudsman institutions about

⁶ See the European Parliament’s Resolution 2015/2254 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (Paragraph 12): http://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html?redirect.



the situation of the rule of law in their Member States could, in this way, feed into the EU Justice Scoreboard.

The Commission has already acknowledged the role ombudsmen can play to promote good administration in the application of EU law at national level⁷.

Proposed rule of law mechanism under the EU budget

In view of the proposed rule of law mechanism under the EU budget⁸, the European Ombudsman and national ombudsmen could help to protect the interests of individuals or organisations that ultimately receive EU funding. The European Parliament has identified this as a priority⁹. National ombudsmen will continue to assist beneficiaries of EU funding who feel they have been subjected to unfair or discriminatory decisions by national budgetary authorities. The European Ombudsman, for her part, has monitored how the Commission can seek to ensure the protection of fundamental rights when EU funds are spent in the Member States¹⁰.

The European Ombudsman has also reviewed how national authorities implement the requirement¹¹ to have in place effective complaint mechanisms for matters concerning European Structural and Investment Funds. The experience of national ombudsman institutions proved to be valuable to this end. This subject will be further monitored by the European Ombudsman through the ENO.

⁷ Communication from the Commission - '*EU law: Better results through better application*' includes an annex on '*Administrative procedures for the handling of relations with the complainant regarding the application of European Union law*': https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2017.018.01.0010.01.ENG&toc=OJ%3AC%3A2017%3A018%3ATO

⁸ Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (2018/0136(COD)): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0324>.

⁹ Based on amendments 23, 49 and 50 tabled by the European Parliament on 4 April 2019 to the Commission's legislative proposal. https://www.europarl.europa.eu/doceo/document/TA-8-2019-0349_EN.html?redirect.

¹⁰ In her inquiry into fundamental rights and the EU's cohesion policy, the European Ombudsman emphasised that the Commission should take action if fundamental rights have been or risk being violated, even though it is not directly responsible for managing these funds. OI/8/2014/AN <https://www.ombudsman.europa.eu/en/decision/en/59836>.

¹¹ Article 74(3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1303>.