

Election of the European Ombudsman

In December, the European Parliament is set to elect the European Ombudsman for the new parliamentary term following a public hearing of the candidates by the Committee on Petitions (PETI). Five candidates are running: Giuseppe Fortunato (Italy), Ombudsman of the Campania Region; Julia Laffranque (Estonia), judge at the European Court of Human Rights; Nils Muižnieks (Latvia), former Commissioner for Human Rights at the Council of Europe; Emily O'Reilly (Ireland), the incumbent Ombudsman (since 2014); and Cecilia Wikström (Sweden), former MEP and Chair of the PETI committee.

What does the European Ombudsman do?

The Ombudsman plays an important part in ensuring that EU institutions adhere to the principle of good administration, and respect EU citizens' rights under the Treaties and the [EU Charter of Fundamental Rights](#). The Ombudsman exercises 'soft power' by dealing with complaints, lodged against maladministration of EU institutions, bodies, offices and agencies (excluding the activity of the Court of Justice in its judicial role) by citizens and legal entities, such as NGOs or businesses. The notion of maladministration is not clearly defined, but comprises situations that go beyond legality so as to encompass irregularities, omissions, negligence, lack of transparency or simply a lack of service-oriented behaviour. The Ombudsman also deals with contractual or other disputes in the framework of EU-funded projects. Although findings of the Ombudsman are not legally binding, they can seek an amicable solution to a specific issue (e.g. disclosure of document) or address a recommendation where maladministration is found. The Ombudsman can also launch [own-initiative inquiries](#), involve Parliament and request an EP decision calling on the respective institution to solve the problem. The Ombudsman cannot intervene once legal proceedings have started.

How is the European Ombudsman elected?

The Ombudsman is [elected](#) by the European Parliament (Article 228 of the Treaty on the Functioning of the European Union (TFEU) for the duration of a parliamentary term. [Rule 231](#) of the Parliament's Rules of Procedure (RoP) requires that nominations have the support of at least 40 Members of Parliament (MEPs) who are nationals of at least two Member States. The RoP provide for a possible hearing of candidates by the responsible committee, after a list of admissible candidates has been drawn up. Indeed, the [Committee on Petitions](#) heard the [five candidates](#) on 3 December 2019. The Ombudsman is then elected in plenary by secret ballot. The successful candidate must receive a majority of votes cast. Further votes are held if no candidate is elected during the first two ballots, in which case only the two candidates with the largest votes in the second ballot continue. In case of a tied vote, the oldest of the two remaining candidates is appointed. Parliament can also vote to [dismiss](#) the Ombudsman (Rule 233) in case of misconduct, upon request of a tenth of MEPs. If, notwithstanding a positive vote of Parliament, the Ombudsman refuses to resign, the president has the power to apply to the Court of Justice to have the Ombudsman dismissed and request a ruling in this respect.

Impact of the Ombudsman's work and evolution of the Ombudsman's role

While the decisions of the Ombudsman have no binding effects between parties and vis-à-vis third parties, its functional independence has had a clear impact on EU institutions' and bodies' adherence to the principle of good administration. In 2017, in [81 %](#) of cases, the institutions concerned complied with the Ombudsman's recommendations, with 8 out of 14 institutions having a 100 % compliance rate, and the European Commission, the institution most targeted by the Ombudsman's activity, complying in 76 % of cases. Beyond the role of mediator provided for in the [Ombudsman's Statute](#) adopted by the European Parliament, the Ombudsman's tasks also include the wider role of setting good administration standards, by creating clear principles of good administration in decisions on maladministration.

Over the last 25 years, the Ombudsman has [evolved](#) considerably as an institution, with the post-holders focusing on different issues related to maladministration. Jacob Söderman (1995-2003), the first EU Ombudsman, concentrated on the legal aspect of complaints in his scrutiny and introduced the European

Code of Good Administrative Behaviour as a 'soft law' instrument. His successor, Nikiforos Diamandouros (2003-2013) broadened the maladministration concept by including areas not strictly related to illegality and transparency issues. The incumbent Ombudsman has also sought to play a more active political role through high-level, politically sensitive inquiries (e.g. on Council transparency, trilogues, and the appointment of the Secretary-General of the European Commission), with the stated aim of improving the visibility and openness of decision-making in the EU.

Proposed changes in the Ombudsman's Statute

Given the need to replace the existing Ombudsman's Statute, last amended in 2008, before the Treaty of Lisbon came into force, and with the aim to further strengthen and improve the Ombudsman's role and effectiveness, in February 2019 the European Parliament adopted a [resolution](#) on the amendment of the Statute. This was done under the special legislative procedure set out under [Article 228\(4\) TFEU](#), which empowers Parliament to lay down regulations governing the Ombudsman's duties, after seeking an opinion from the Commission and with the consent of the Council.

Under the proposed modifications, the deadline for filing a complaint would be extended from two to three years, and the Ombudsman could examine the treatment of harassment cases by EU institutions and bodies, including sexual harassment cases. Whistle-blowers would be given better protection. The institution concerned should give the Ombudsman access to information requested for an inquiry, subject to the rules on processing confidential information. The Ombudsman could also periodically examine EU institutions' administrative procedures, to assess whether these prevent conflicts of interest and guarantee impartiality. The deadline for affected institutions, agencies or bodies to reply to an Ombudsman's inquiry could be extended by two months. The Ombudsman would be able to make recommendations when an EU institution is not applying a court ruling, and, in case of large-scale maladministration, send the report to the Parliament, and appear on their own initiative or at Parliament's request, when appropriate in an inquiry. Finally, the Ombudsman should cooperate with the European Union Agency for Fundamental Rights (FRA) and other institutions and bodies, while also avoiding duplication.

While [welcoming](#) some of these proposed changes, in October 2019, the Commission rejected the extended deadline for filing complaints and the Ombudsman's right to make recommendations when an EU institution fails to apply a court ruling. It also rejected proposals on harassment, pointing to the Ombudsman's existing powers and the risk of duplication. The Commission also objected to provisions on whistle-blowers; provisions on access to documents, due to the need for safeguards on handling classified documents; and the widened scope for EU officials' testimony, because of lack of a clear legal framework for information disclosure to the Ombudsman and maintaining professional secrecy. Finally, the Commission opposed the proposed provisions on conflicts of interest, and stressed that the Ombudsman's powers to investigate complaints and launch own initiative inquiries should remain limited only to instances of maladministration. The Council has yet to react formally to Parliament's proposals.

Priorities of the candidates for Ombudsman

During the PETI hearing, Giuseppe Fortunato [emphasised](#) the Ombudsman's role as the citizen's 'impartial institutional friend' guaranteeing a transparent administration, and highlighted the small number of citizens' complaints processed in recent years, compared to national and regional level ombudsmen, and the need for changing institutions' mindset. Julia Laffranque has [stated](#) that she would be an impartial and constructive link between people and the EU institutions, [stressing](#) the need for greater legal expertise in the post to respond to criticism from a substantive and procedural perspective. Nils Muižnieks has [stressed](#) the need for access to information and ensuring good administrative practice and accountability in EU institutions and agencies, at a time of backsliding on well-established human rights, and pointed out that, beyond legal experience, the Ombudsman also needs to have good political instincts and a wider understanding of issues. Emily O'Reilly has [pledged](#) to continue working to make the EU administration a role model for the whole of the EU, by further pursuing the strategy of putting citizens and their rights at the centre of its actions, and [improving](#) the EU's current public image of a distant elitist organisation. Cecilia Wikström said she would [aim](#) to foster a real citizen-friendly culture of service in EU institutions and bodies, not least by clearly defining this in a law of administrative procedure, and helping to ensure it in practice through regular dialogue and recommendations.

