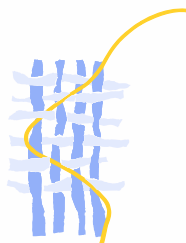




The European Code of Good Administrative Behaviour



The European Ombudsman



The European Code of Good Administrative Behaviour

The European Ombudsman



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Foreword by the European Ombudsman

Dear reader,

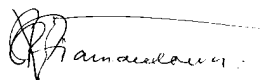
Since taking up the post of European Ombudsman on 1 April 2003, I have worked hard to promote good administration within the European Union's institutions and bodies. This work has a dual dimension. On the one hand, the Ombudsman acts as an external mechanism of control, investigating complaints about maladministration and recommending corrective action where necessary. On the other hand, the Ombudsman serves as a resource to the institutions, helping them to better their performance by directing attention to areas for improvement. The ultimate goal in both instances is to improve the service provided to European citizens.

The European Code of Good Administrative Behaviour is a vital tool for the Ombudsman in performing his dual role. The Ombudsman uses the Code in examining whether there is maladministration, thereby relying on its provisions for his control function. But equally the Code serves as a useful guide and a resource for civil servants, encouraging the highest standards of administration.

European citizens deserve nothing less. The right to good administration by EU institutions and bodies is a fundamental right, according to Article 41 of the EU Charter of Fundamental Rights. The Code tells citizens what this right means in practice and what, concretely, they can expect from the European administration. With the Charter making up Part II of the Treaty establishing a Constitution for Europe, we can be sure that this right will become increasingly meaningful in the coming years.

Citizens and officials have shown much interest in the Code since its adoption by the European Parliament in September 2001. Its impact has not been limited to the Union's institutions and bodies and I am pleased to note that the Code has been taken on board by a number of Member States and candidate countries. As European Ombudsman, I feel it is my duty to further raise awareness of the rights and obligations contained therein. It is for this reason that we have chosen to publish a new version in all of the official EU languages, as well as in the languages of the candidate countries.

I hope that the Code will continue to serve as a useful working tool for public administrations and as a reference point for citizens all over Europe.



P. Nikiforos Diamandouros
Strasbourg, 5 January 2005.

Introduction

On 6 September 2001, the European Parliament adopted a resolution approving a Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public.

The idea of a Code was first proposed by Roy PERRY MEP in 1998. The European Ombudsman drafted the text, following an own-initiative inquiry and presented it to the European Parliament as a special report. The Parliament's resolution on the Code is based on the Ombudsman's proposal, with some changes introduced by Mr PERRY as rapporteur for the Committee on Petitions of the European Parliament.

The Code takes account of the principles of European administrative law contained in the case law of the Court of Justice and also draws inspiration from national laws.

The Status of the Code

The Charter of Fundamental Rights of the European Union was proclaimed at the Nice summit in December 2000 and has now become Part II of the Treaty establishing a Constitution for Europe.

The Charter includes as fundamental rights of Union citizenship the right to good administration (art. 41) and the right to complain to the European Ombudsman against maladministration by the Union's institutions and bodies (art. 43).

This Code is intended to explain in more detail what the Charter's right to good administration should mean in practice.

Right to good administration

(Article 41 of the Charter of Fundamental Rights⁽¹⁾)

- 1** Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
- 2** This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
- 3** Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
- 4** Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

⁽¹⁾ Article 41 of the Charter corresponds to Article II-101 of the Constitution.

The European Ombudsman investigates possible cases of maladministration in the activities of Union institutions and bodies, in accordance with Article 195 of the EC Treaty and the Statute of the Ombudsman². The Ombudsman's definition of maladministration in his 1997 Annual Report is that

“maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it”.

This definition has been approved by the European Parliament.

Ombudsman

(Article 43 of the Charter of Fundamental Rights³)

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

At the same time as approving the Code, the European Parliament also adopted a resolution calling on the European Ombudsman to apply it in examining whether there is maladministration, so as to give effect to the citizens' right to good administration in Article 41 of the Charter. The Ombudsman therefore duly takes account of the rules and principles contained in the Code when examining cases of alleged maladministration.

⁽²⁾ Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties, OJ L 113/15, 4.5.1994.

⁽³⁾ Article 43 of the Charter corresponds to Article II-103 of the Constitution.

A European administrative law

When it approved the Code, the European Parliament called on the European Commission to submit a proposal for a regulation containing the Code. The view was that a regulation would emphasise the binding nature of the rules and principles contained therein and apply uniformly to all EU institutions and bodies, thereby promoting transparency and consistency.

This goal could now best be achieved on the basis of a proposal from the Commission for a European law on good administration. Article III-398 of the Constitution could provide the legal basis for such a law. It states that:

“In carrying out their missions, the Institutions, bodies and agencies of the Union shall have the support of an open, efficient and independent European administration.

In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article III-427, European laws shall establish specific provisions to that end.”

The Ombudsman will continue to emphasise the added value of transforming the Code into a European law. This would help eliminate the confusion currently arising from the parallel existence of different codes for most EU institutions and bodies, would ensure that the institutions and bodies apply the same basic principles in their relations with citizens and would underline, for both citizens and officials, the importance of such principles.

The European Code of Good Administrative Behaviour

The Code approved by the European Parliament contains the following substantive provisions:

Article 1

General provision

In their relations with the public, the Institutions and their officials shall respect the principles which are laid down in this Code of good administrative behaviour, hereafter referred to as “the Code”.

Article 2

Personal scope of application

1. The Code shall apply to all officials and other servants to whom the Staff Regulations and the Conditions of employment of other servants apply, in their relations with the public. Hereafter the term official refers to both the officials and the other servants.

2. The Institutions and their administrations will take the necessary measures to ensure that the provisions set out in this Code also apply to other persons working for them, such as persons employed under private law contracts, experts on secondment from national civil services and trainees.
3. The public refers to natural and legal persons, whether they reside or have their registered office in a Member State or not.
4. For the purpose of this Code:
 - (a) the term “Institution” shall mean a Community institution or body;
 - (b) “Official” shall mean an official or other servant of the European Communities.

Article 3

Material scope of application

1. This Code contains the general principles of good administrative behaviour which apply to all relations of the Institutions and their administrations with the public, unless they are governed by specific provisions.
2. The principles set out in this Code do not apply to the relations between the Institution and its officials. Those relations are governed by the Staff Regulations.

Article 4

Lawfulness

The official shall act according to law and apply the rules and procedures laid down in Community legislation. The official shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

Article 5

Absence of discrimination

1. In dealing with requests from the public and in taking decisions, the official shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.
2. If any difference in treatment is made, the official shall ensure that it is justified by the objective relevant features of the particular case.
3. The official shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

Article 6

Proportionality

1. When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.
2. When taking decisions, the official shall respect the fair balance between the interests of private persons and the general public interest.

Article 7

Absence of abuse of power

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.

Article 8

Impartiality and independence

1. The official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.
2. The conduct of the official shall never be guided by personal, family or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

Article 9

Objectivity

When taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

Article 10

Legitimate expectations, consistency and advice

1. The official shall be consistent in his own administrative behaviour as well as with the administrative action of the Institution. The official shall follow the Institution's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case; these grounds shall be recorded in writing.
2. The official shall respect the legitimate and reasonable expectations that members of the public have in the light of how the Institution has acted in the past.
3. The official shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter.

Article 11

Fairness

The official shall act impartially, fairly and reasonably.

Article 12

Courtesy

1. The official shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.
2. If the official is not responsible for the matter concerned, he shall direct the citizen to the appropriate official.
3. If an error occurs which negatively affects the rights or interests of a member of the public, the official shall apologise for it and endeavour to correct the negative effects resulting from his or her error in the most expedient way and inform the member of the public of any rights of appeal in accordance with Article 19 of the Code.

Article 13

Reply to letters in the language of the citizen

The official shall ensure that every citizen of the Union or any member of the public who writes to the Institution in one of the Treaty languages receives an answer in the same language. The same shall apply as far as possible to legal persons such as associations (NGOs) and companies.

Article 14

Acknowledgement of receipt and indication of the competent official

1. Every letter or complaint to the Institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.

2. The reply or acknowledgement of receipt shall indicate the name and the telephone number of the official who is dealing with the matter, as well as the service to which he or she belongs.
3. No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

Article 15

Obligation to transfer to the competent service of the Institution

1. If a letter or a complaint to the Institution is addressed or transmitted to a Directorate General, Directorate or Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of the Institution.
2. The service which originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the official to whom the file has been passed.
3. The official shall alert the member of the public or organisation to any errors or omissions in documents and provide an opportunity to rectify them.

Article 16

Right to be heard and to make statements

1. In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision making procedure, the rights of defence are respected.
2. Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

Article 17

Reasonable time-limit for taking decisions

1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes which the official has sent to his superiors requesting instructions regarding the decisions to be taken.
2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time.

Article 18

Duty to state the grounds of decisions

1. Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.
2. The official shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.
3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the official shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning.

Article 19

Indication of the possibilities of appeal

1. A decision of the Institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time-limits for exercising them.
2. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 230 and 195 of the Treaty establishing the European Community.

Article 20

Notification of the decision

1. The official shall ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.
2. The official shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

Article 21

Data protection

1. The official who deals with personal data concerning a citizen shall respect the privacy and the integrity of the individual in accordance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹.

⁽¹⁾ OJ L 8/1, 12.1.2001.

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2. The official shall in particular avoid processing personal data for non-legitimate purposes or the transmission of such data to non authorised persons.

Article 22

Requests for information

1. The official shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request. When appropriate, the official shall give advice on how to initiate an administrative procedure within his field of competence. The official shall take care that the information communicated is clear and understandable.
2. If an oral request for information is too complicated or too comprehensive to be dealt with, the official shall advise the person concerned to formulate his demand in writing.
3. If, because of its confidentiality, an official may not disclose the information requested, he or she shall, in accordance with Article 18 of this Code, indicate to the person concerned the reasons why he cannot communicate the information.
4. Further to requests for information on matters for which he has no responsibility, the official shall direct the requester to the competent person and indicate his name and telephone number. Further to requests for information concerning another Community institution or body, the official shall direct the requester to that institution or body.
5. Where appropriate, the official shall, depending on the subject of the request, direct the person seeking information to the service of the Institution responsible for providing information to the public.

Article 23

Requests for public access to documents

1. The official shall deal with requests for access to documents in accordance with the rules adopted by the Institution and in accordance with the general principles and limits laid down in Regulation (EC) No 1049/2001².
2. If the official cannot comply with an oral request for access to documents, the citizen shall be advised to formulate it in writing.

Article 24

Keeping of adequate records

The Institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

Article 25

Publicity for the Code

1. The Institution shall take effective measures to inform the public of the rights they enjoy under this Code. If possible, it shall make the text available in electronic form on its website.
2. The Commission shall, on behalf of all institutions, publish and distribute the Code to citizens in the form of a brochure.

Article 26

Right to complain to the European Ombudsman

Any failure of an Institution or official to comply with the principles set out in this Code may be the subject of a complaint to the European Ombudsman in accordance with Article 195 of the Treaty establishing the European Community and the Statute of the European Ombudsman³.

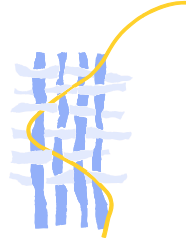
⁽²⁾ OJ L 145/43, 31.5.2001.

⁽³⁾ Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties, OJ L 113/15, 4.5.1994.

Article 27

Review of operation

Each Institution shall review its implementation of the Code after two years of operation and shall inform the European Ombudsman of the results of its review.



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