



**THE EUROPEAN
OMBUDSMAN : A
MEDIATION BODY
BETWEEN CITIZENS AND
THE EUROPEAN
AUTHORITIES**

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European Ombudsman

On July 12th 2023, Emily O'Reilly, European Ombudsman, discussed with us the role of the Ombudsman and how it has evolved over the last legislature, as well as the Qatargate scandal and "revolving doors" during an interview with Confrontations Europe[1]. Here is a transcript of these discussions.

◆ **As a starting point to this interview, could you introduce our readers to the role of Ombudsman, its function in the European Union, and perhaps provide further explanations of the relationships this body maintains with European citizens ?**

Emily O'Reilly : The role of the European Ombudsman is to act as a bridge between citizens and the EU administration. An easy way to describe the Ombudsman is as "the watchdog of the European administration".

In practical terms, I take complaints from individuals and companies, sometimes from politicians or civil society, who feel they have been mistreated by the administration. Many complaints are directed at the Commission as it serves as the executive body of the European Union and engages the most with civil society. However, very important regulatory agencies, like the European Medicines Agency or the European Investment Bank can also be the subject of complaints.

Most of the time, I use the same procedure when examining a case. First, I check if the request is within my mandate. I then go to the institution, agency, or body and compare accounts, which can be done, for example, through a formal interview or via written correspondence.

My main tool, which allows me to carry out my mission properly, is my right to inspect any documents I need to fully evaluate a case. That includes all sorts of dossiers, emails, and preparatory documents. Complainants can be assured that my Office has seen everything that we need to see before coming to our conclusions and proposing our suggestions and recommendations. Even if these are not binding, they are usually accepted. When they are not, they still have an impact by advising new norms of administration to which the EU institutions adjust over time.

◆ **One of our main interrogations concerns the primary sources of the complaints you receive. We know that procedures, even when they are not exactly judiciary, often require time and financial resources. Do ordinary individuals constitute the majority of applicants?**

EOR : Most of the complaints I receive come from European citizens. A significant portion also comes from NGOs. To me, the fact that Brussels is a huge lobbying centre and the pulsating heart of European politics explains the presence of the biggest corporations and private interest associations. Naturally, these interests are monitored by NGOs and civil society, including organisations such as Transparency International, Corporate Europe, Client Earth, and others who keep an eye on what is happening and file complaints with us.

[1] Interview conducted on 7 July by Thomas Dorget

“These complaints could pertain to access to documents, so-called “revolving doors”, or conflicts of interests”

We also have companies that might be involved in a procurement case who feel they have been mistreated when they approach us. Although citizens represent a huge part of the complaints we receive, we obviously cannot directly compare our work to our counterparts at the national level, given the unique nature of the European administration and its competences.

◆ **As we now understand more the panel of claimants, could you elaborate a bit on the nature of the complaints. You mentioned conflict of interest and revolving doors, are there some typical cases that you work on very often?**

EOR : The overriding issue crystallizes around the question of influence – who is influencing EU legislation and how is this influence being exerted. The main technique used by lobbyists or important companies is what is known as “revolving doors”. To explain it in simple terms, companies hire people who have been working in some important regulatory agency or important European Commission department such as DG Trade or DG Competition. If these companies get to recruit somebody from these administrations, someone who knows the files, knows how legislation is put together, this represents real added value for their private interests.

These practices are not formally illegal, but there are supposed to be controls in place. What we look at is whether the case has been properly controlled, or whether people have been allowed to go to a company that they had regulated previously and give them the inside track on the regulator and its methods. This can be very tricky as we seek to balance public and private interests.

We had some key cases in this area such as that of the Head of the European Banking Authority, who went to one of the biggest banking lobbying firms in Europe, as well as the head of European Defense Agency, who went to Airbus, which is one of the agency’s most important contractors.

◆ **Could you give us your impression about the comparison that some observers tend to make between the EU standards for democracies and the ones that are observed at a national level?**

EOR : Comparing these aspects is very complex as they are very intricate. I often state that the levels of transparency and good administration tend to be higher in the EU than they are in certain Member States. However, this relies on highly variable factors and contexts. For instance, there is probably less transparency in the EU than you would find in Nordic countries, but more than you would get in Germany, a country that places greater value on data protection.

Transparency, especially in decision-making, highlights the distinctions between different EU institutions. Parliament is probably the most transparent as we witness their arguments, debates, and votes. On the other hand, the Council, representing Member States, tends to be more secretive. Many decisions are made behind closed doors and the public has no say in them.

People tend to focus their criticism on the Commission or the Parliament, while they don't even think about the Council, which manages to evade a lot of scrutiny in relation to accountability or transparency, for example, when it is negotiating. It is very hard to know the positions that countries are taking if the domestic media in Member States are not paying sufficient attention to what is happening in Brussels.

◆ **What in your opinion would be the main reform to increase the scrutiny over the Council's debates? Do you think that what is going on during the negotiations should be completely public as it is during parliament sessions?**

EOR : What we have recommended in the past is that the position of the Member States should be recorded as a piece of legislation is going through the Council. We are not saying it should be published immediately, but it should be recorded, so people can look at the record and see how several countries disagreed. The current functioning of the Council makes it a little bit opaque so that you or even Members of Parliament would have a lot of difficulty in getting through the Council website to find out which country took which position and on what. In my opinion, such a lack of transparency leaves space for Eurosceptics and fuels the caricature of a European Union that usurps sovereignty and power from the people of Europe. Back in 2016, a lot of misinformation, caricature, and exaggeration allowed a certain image of the EU to be embedded in the mind of voters, which then led to Brexit.

◆ **As we are discussing the Brexit crisis stemming from a lack of transparency, we are curious if the COVID-19 crises and the ongoing war in Ukraine have the public scrutiny of the EU? Have you noticed an increase of interest in your work and role due to these major events?**

EOR : We did receive a lot of complaints during the COVID-19 epidemic, many of which were more directed at the Member States, for example, concerning issues around access to care. These were within the health mandates of the Member States and not within those of the EU. We did, however, investigate the European Centre for Disease Prevention and Control and how it operated during the pandemic. We determined that it was a weak agency, overly dependent on the Member States to provide it with information. As a result of our work, among other factors, the EU is looking toward having a bigger role in public health.

In relation to Ukraine, we have examined concerns regarding the transparency of the sanctions and how they are monitored. The Common Security and Defence Policy is also gaining prominence on the list of top priorities in the political agenda for the next Commission's mandate. Consequently, we are anticipating a growing number of requests for access to documents in relation to defense issues. As the potential for increased military spending arises, we expect lobbyists from the arms industry to be active, so you can also imagine an increase in the number of NGOs and civil society groups closely monitoring those cases and seeking out conflicts of interest.

◆ **One of the aspects of your mandate is to guarantee the respect of fundamental rights in the EU, especially regarding rule of law. There are topical worries about the situation in some Member States which openly disregard those principles, mainly on behalf of their sovereignty. Do you feel any change within the frame of your mandate in the legislature of 2019 to 2024?**

EOR : Over the years, there have been ongoing concerns regarding the rule of law, especially concerning Hungary and Poland. The European Commission has utilised various mechanisms at its disposal to address these issues, with varying degrees of success. It is important to note that when we receive complaints, our focus is not on what individual Member States like Poland or Hungary are doing, but rather on the actions of the Commission or other EU bodies in response to these matters.

For instance, if there is an infringement case related to the rule of law or fundamental rights in any EU country, the Commission is responsible for deciding the course of action. My role could then involve examining the timeliness of the Commission's decision-making process or its reasoning behind certain actions.

We have also conducted numerous investigations into contextual factors related to fundamental rights. For instance, the recent tragedy where hundreds of migrants died off the coast of Greece highlights the absence of a single European body capable of conducting independent investigations.

“Even within the European Parliament, there have been calls for the establishment of an international body to investigate such incidents”

It is perplexing that despite the existence of Frontex, there appear to be barriers preventing it from conducting investigations. Therefore, the loss of 600 lives in European waters remains a deeply concerning issue that demands attention and action.

◆ **And can you investigate this situation?**

EOR : Our institution has the capability to conduct investigations into the procedural and administrative aspects surrounding the situation to see whether Frontex has acted appropriately and, where necessary, make suggestions for the future.

It is worth noting that journalists have also played a remarkable role in shedding light on this issue. For instance, The New York Times has undertaken extensive investigative work. Additionally, various associations have produced well-documented reports that piece together the entire situation. This type of fact-based reporting aligns with what the EU should be doing.

The challenges surrounding this issue are multifaceted. They include the individuals who, unfortunately, are involved in human trafficking and those who encourage such activities. Moreover, the climate crisis, ongoing conflicts, and wars also contribute to this complex situation. Additionally, the failure of Member States to equitably share responsibility when it comes to addressing this issue compounds the problem. This results in countries like Greece, Italy, or Spain, which are geographically closer to the front lines, bearing most of the burden, while countries further away face fewer challenges.

◆ **Do you have direct relationships or coordination with similar institutions at the national level, such as national ombudsman offices in different countries?**

EOR : Yes, we have a strong network of ombudsman offices through the European Network of Ombudsmen. We actively share best practices and collaborate on various issues. When I served as the Irish Ombudsman, I would often seek advice from the European Ombudsman on cases with a European dimension. We hold an annual conference, and this year's event will take place in Brussels. The topics we plan to discuss include artificial intelligence in public administration and ethical aspects related to the role of ombudsmen. We also engage in so-called parallel investigations, especially when a case involves both European and national elements.

◆ **Regarding the Qatar Gate issue, could you elaborate on your involvement and any ongoing investigations related to it?**

EOR : We have been in extensive correspondence with the European Parliament and its President to share our views on the President's 14-point proposal and what would make the points more credible, sustainable, and effective. In the broader context of Qatargate, there was also a case involving a Director-General within the European Commission who was linked to the development of legislation concerning the access of Qatar Airways to European airspace. It was revealed that he had received hospitality and free flights from Qatar Airways. We are currently investigating this case and have requested information from the Commission regarding this instance and any similar cases involving individuals with significant influence receiving gifts or hospitality. It is worth noting that in this case, it was the individual himself who determined whether there was a conflict of interest, which raises questions about the assessment process.

◆ **Have you issued any recommendations for improving transparency, especially following the Qatar Gate scandal?**

EOR : Our focus has primarily been on the creation of a body with credibility and ensuring that it has the necessary independence and powers. Many individuals who would not typically be engaged with EU matters became interested in Qatargate due to its dramatic nature. As a result, they developed a keen awareness of ethics issues and the importance of a strong independent ethics regime.

One key recommendation we have made is the need for independence in bodies responsible for investigating breaches of codes or rules. These bodies should have the autonomy to decide on their own initiative whether an investigation is warranted, rather than waiting for a request to investigate. Additionally, they should possess the authority to access the information they require to conduct thorough investigations.

Our primary advice has been to move away from self-regulation, as self-regulation can limit the scope and independence of investigations. Currently, both the European Parliament and the European Commission have aspects of self-regulation in their ethics oversight mechanisms, which can restrict their effectiveness.

◆ As many parliaments do, the European Parliament often prefers to be self-regulated. This preference can be seen in the context of comparing its practices with those of other Member States. Parliaments generally resist external scrutiny or oversight from independent bodies, as they consider themselves the voice or representation of the people and may believe that such oversight is unnecessary. It can be challenging to convince MEPs to establish their own investigative body or an independent investigative body.

Another issue related to public trust within the European Union is the phenomenon of revolving doors. This phenomenon, which involves the movement of individuals between the public sector and private industries, is becoming increasingly prevalent in Brussels, particularly within EU institutions. It raises questions about potential conflicts of interest and can erode public trust. One potential approach to address this issue is considering whether stricter regulations or prohibitions on revolving door practices should be implemented.

How do you feel about this phenomenon of revolving doors?

EOR : It depends on who is revolving and where they are revolving to. You cannot do it with an algorithm; it has to be analysed on a case-by-case basis. I have noticed, not just in Europe but elsewhere, the possibility of lobbying administrations for politicians is increasingly becoming a career option. Ten, 15, or 20 years ago, this was not the case. You ended your career and that was it, particularly for civil servants. That is because starting a career as a civil servant in the EU is a very good bet, ending with a very good pension. If you are incentivised to lever up, the incentive must be pretty good. I think the pre-eminence of this phenomenon has increased as the EU has become a much stronger regulatory force.

If the Parliament, the Council, and the Commission are making laws that will have an impact on some of the biggest companies in the world, these companies are going to do everything it takes to have the legislation be favorable to them. One of the best ways, as I said earlier, is to get somebody who has been working on the file and who knows the granular details of these things to come and work for them.

I remember a former senior official who was working in a law firm telling me one time that his enterprise managed to get some big former Heads of Units in sensitive posts. For that, they were so happy that they had a cocktail party to celebrate.

The problem is that there must be a cultural understanding of why this is problematic. You see an exaggerated version of it in the US where the revolving door seems to go at 1000 kilometers a second. The question that we must ask ourselves, as a political and democratic community, is: do we want Europe to follow such a path?

“If we do not deal with the problem at this point, we will wake up in a few years’ time to find it out of control.”

The Commission, following our investigations and recommendations, has tightened things up, but as long as there are companies wanting inside information, some officials will continue going to work there because these companies can pay them well. It really is a question of following the money.

If you can show that a company offered 2 million euros to an official to go work for them, then you could certainly argue that this offer had an impact on how they worked during their time in the EU administration. Anecdotally, we hear about those figures, but with data protection, there is no chance of getting that information out.

When you compare revolving doors to Qatargate, the money found in suitcases really informed people's understanding of the scandal. They got a direct look at the alleged role of Qatar in trying to influence the EU's policymakers.

◆ To conclude this interview with a bit of prospective, I would have one last question about the future of the EU. What do you see as the main priorities, within your mandate, for the next legislature to come from 2024 to 2029?

Do you have any recommendations on how to improve public trust in the institutions for the elections to come in?

EOR : There are huge global issues affecting us all now, including geopolitical issues, defence issues, and the climate crisis, which in my view is the biggest one in light of the Commission's ambitious agenda. I hope for the next election that a lot of young people will go out to vote, because all the crises that I just mentioned will particularly affect them. This is also why it is so critical to ensure a kind of trust in the European institutions to do the right thing.

The EU must maintain its transparency and its accountability, because that is the way it maintains its legitimacy. There is no legitimacy without moral authority.