

ZINCK Caroline

From: [REDACTED]
Sent: 25 February 2014 10:43
To: HIRSCH-ZIEMBINSKA Marta
Cc: EORegistry
Subject: RE: Request for meeting review complaint 104-2013-JN
Attachments: code_2013_EN.pdf

Dear Mrs Hirsch-Ziembinska,

Thank you for your mail.

Could you please make a reference to a legal basis for stating "I cannot accept your proposal for a meeting", and if you cannot refer to any written rule on this, could you please explain the basis in any secondary source of law for the implied discretionary power in your mail?

I would in particular appreciate if you would explain how the above statement is complying with Article 41(2)(a) of the Charter of Fundamental Rights and Article 16(2) of the attached Code of Good Administrative Behaviour.

It could be added that my office here in Strasbourg is on the sixth floor of the SDM building.

Best regards,

[REDACTED]

From: HIRSCH-ZIEMBINSKA Marta
Sent: 25 February 2014 09:18
To: [REDACTED]
Cc: EORegistry
Subject: RE: Request for meeting review complaint 104-2013-JN

Dear Mr [REDACTED],

Thank you for your email. Since the Ombudsman's proceedings are to be carried out in a written form in your case I cannot accept your proposal for a meeting. I suggest that you explain the main lines of your arguments in an email.

Kind regards

Marta Hirsch-Ziembinska



European Ombudsman

Marta Hirsch-Ziembinska

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From: [REDACTED]
Sent: 24 February 2014 20:00
To: HIRSCH-ZIEMBINSKA Marta
Subject: Request for meeting

Dear Mrs Hirsch-Ziembinska,

With reference to the review of the Ombudsman's decision on my complaint 0104/2013/JN (see attached letter from the registry), I'd like to request a meeting here in Strasbourg to explain the grounds for my complaint, which I consider have not been taken into account by the Ombudsman.

I will be on personal leave for six months from my position as administrator at the Committee on Legal Affairs of Parliament starting next Monday in order to serve as a co-opted member of an administrative court of appeal in Sweden.

Would Wednesday afternoon work for you?

Best regards,

Magnus

[REDACTED]



European Ombudsman

The European Code of Good Administrative Behaviour

EN





Mission statement The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency, and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behaviour in the Union's institutions.

Table of contents

2

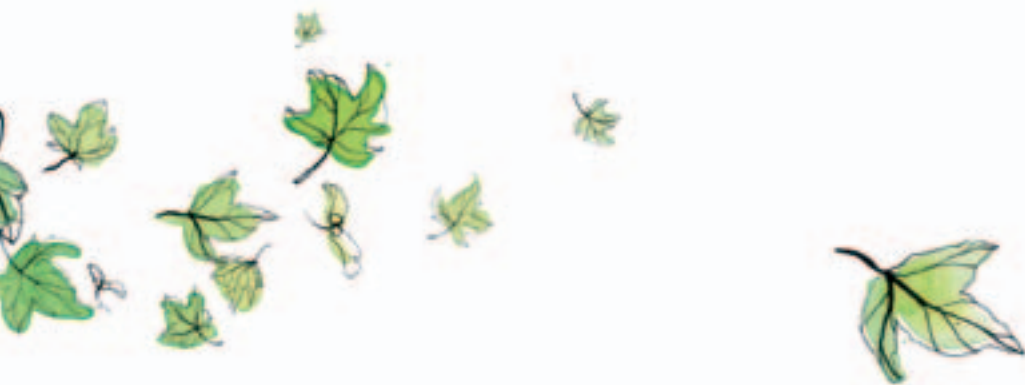
Foreword

4

Introduction

12

The European Code of
Good Administrative Behaviour



Foreword

Dear reader,

When *The European Code of Good Administrative Behaviour* was endorsed by the European Parliament in September 2001, few could have imagined the impact that it would have not only on the EU institutions and the citizens that they serve, but also on national and regional administrations throughout Europe and beyond.

Since taking up the post of European Ombudsman in April 2003, I have seen a progressive shift in focus by the EU institutions and their staff towards placing the citizen firmly at the centre of their activities. This is reflected not only in the institutions' increasingly positive responses to my recommendations in individual cases, but also in their willingness proactively to identify shortcomings and to find ways of resolving potential problems before they occur. I regard my proactive role, which involves working in close partnership with the EU institutions to help improve their performance, to be just as important as my reactive role in dealing with complaints.

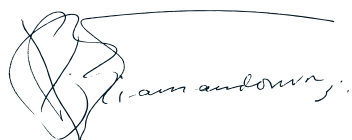
The embedding of a culture of service in as diverse a working environment as that of the EU institutions is no easy task. The EU civil service is made up of people from many different backgrounds and cultures, whose concepts of the role and purpose of public administration may differ widely. The challenge for all institutions, including my own, therefore, is to succeed in communicating to all staff, irrespective of seniority, grade, or background, that a culture of service means more than simply abiding by the law. It requires a level of self-reflexivity on the part of every official as to how best they should actively implement the principles of good administration on a daily basis, rather than simply avoiding maladministration.

The hundreds of thousands of copies of the Code that have been distributed throughout Europe and downloaded from my website are testament to the fact that the Code is more than a guide for EU officials. It has also become a vital tool for citizens wishing to inform themselves of their rights. A significant proportion of complaints received by my office each year quote directly from the Code in explaining which rule or principle the complainant considers has been breached. The Code tells citizens what the right to good administration, contained in Article 41 of the EU Charter of Fundamental Rights, means in practice, and what, concretely, they can expect from the European administration.

The Code has also encouraged efforts to improve the quality of administration throughout Europe and beyond. From Wallonia to Greece, and from the Former Yugoslav Republic of Macedonia to Djibouti, codes of good administration have drawn inspiration from the European Code, the most recent example being the Code of Good Administration adopted by the Serbian Ombudsman in June 2010.

In 2012, I adopted a set of public service principles that complement the European Code. The introduction that follows contains a detailed account of these principles. I hope that the Code will continue to serve as a source of inspiration, and that the public service principles will also prove valuable to everyone who is striving to build and maintain an administrative culture of service, both within the European Union and elsewhere in the world.

Above all, my wish is that the Code should continue to serve as a useful resource for the EU institutions and for the citizens that they serve.

A handwritten signature in blue ink, consisting of a stylized, cursive script that appears to read 'P. Nikiforos Diamandouros'.

P. Nikiforos Diamandouros
European Ombudsman

Introduction

Good administration by the institutions, bodies, offices, and agencies of the European Union (the “EU institutions”) benefits all European citizens and residents. It is of particular importance to persons who have direct dealings with the EU institutions.

Since its approval by the European Parliament in 2001, *The European Code of Good Administrative Behaviour* has become a vital instrument for putting the principle of good administration into practice. It helps individual citizens to understand and obtain their rights, and promotes the public interest in an open, efficient, and independent European administration.

The Code helps citizens to know what administrative standards they are entitled to expect from the EU institutions. It also serves as a useful guide for civil servants in their relations with the public. By making the principle of good administration more concrete, the Code helps to encourage the highest standards of administration.

At the same time as approving the Code, the European Parliament also adopted a resolution calling on the European Ombudsman to apply the Code when examining whether maladministration has occurred. Accordingly, the Ombudsman makes appropriate references to the Code during his inquiries, as well as in his proactive work to promote good administration.





Article 228 of the Treaty on the Functioning of the European Union empowers the European Ombudsman to conduct inquiries into 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.

Every citizen of the Union has the right to complain to the Ombudsman. Residents, companies, and associations may also lodge complaints.

This right is one of the fundamental rights of citizenship of the Union, guaranteed by the Charter of Fundamental Rights (Article 43).

There is no requirement that the complainant must be personally affected by the maladministration or have any special interest in the case.

The Ombudsman also conducts inquiries on his own initiative.

The right to good administration

The Ombudsman has no power to make legally binding decisions, nor is *The European Code of Good Administrative Behaviour* a legally binding instrument. Elements of the Code overlap, however, with the fundamental right to good administration, which is enshrined in Article 41 of the Charter of Fundamental Rights of the European Union.

Since the entry into force of the Lisbon Treaty in December 2009, the Charter of Fundamental Rights has the same legal value as the Treaties. As a result, everyone is now legally entitled to good administration of his or her affairs by the EU institutions.



Replying to citizens

Right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union)

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

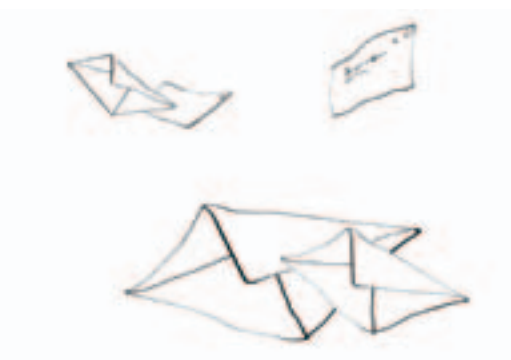
a. the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

b. 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;

c. the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union 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.



The public service principles

The full and correct application of the Code, of the Charter of Fundamental Rights, and of EU law in general, depends on the existence of an administrative culture of service, in which civil servants understand and internalise the principles of good administration.

Ethical standards constitute a vital component of the culture of service.

In June 2012, following a public consultation, the Ombudsman published a high-level distillation of the ethical standards to which the EU public administration adheres. These took the form of five public service principles which are set out immediately below.

Public service principles that should guide EU civil servants

1. Commitment to the European Union and its citizens

Civil servants should be conscious that the Union's institutions exist in order to serve the interests of the Union and of its citizens in fulfilling the objectives of the Treaties.

They should make recommendations and decisions only to serve these interests.

Civil servants should carry out their functions to the best of their abilities and strive to meet the highest professional standards at all times.

They should be mindful of their position of public trust and set a good example to others.

2. Integrity

Civil servants should be guided by a sense of propriety and conduct themselves at all times in a manner that would bear the closest public scrutiny. This obligation is not fully discharged merely by acting within the law.

Civil servants should not place themselves under any financial or other obligation that might influence them in the performance of their functions, including by the receipt of gifts. They should promptly declare any private interests relating to their functions.

Civil servants should take steps to avoid conflicts of interest and the appearance of such conflicts. They should take swift action to resolve any conflict that arises. This obligation continues after leaving office.

3. Objectivity

Civil servants should be impartial, open-minded, guided by evidence, and willing to hear different viewpoints. They should be ready to acknowledge and correct mistakes.

In procedures involving comparative evaluations, civil servants should base recommendations and decisions only on merit and any other factors expressly prescribed by law.

Civil servants should not discriminate or allow the fact that they like, or dislike, a particular person to influence their professional conduct.



4. Respect for others

Civil servants should act respectfully to each other and to citizens. They should be polite, helpful, timely, and co-operative.

They should make genuine efforts to understand what others are saying and express themselves clearly, using plain language.

Bearing the principles in mind can help civil servants to understand and apply rules and principles correctly, and guide them towards the right decision in situations where they should exercise judgement.

5. Transparency

Civil servants should be willing to explain their activities and to give reasons for their actions.

They should keep proper records and welcome public scrutiny of their conduct, including their compliance with these public service principles.



The principles thus help to raise the quality of public administration, strengthen the rule of law, and make it less likely that discretionary power will be used arbitrarily.

Whenever relevant, the Ombudsman refers to the principles during inquiries into possible maladministration in the activities of the EU institutions, bodies, offices, and agencies.

The Code and the Member States

The Code, like Article 41 of the Charter and the public service principles, is directly applicable only to the institutions and civil servants of the European Union.

Nonetheless, the Code has provided inspiration for certain similar texts in Member States of the European Union, candidate states and third countries.

Furthermore, as the explanations that accompany the Charter of Fundamental Rights make clear, the right to good administration is based on the case law of the Court of Justice concerning good administration as a general principle of EU law. Such general principles also bind the Member States when they are acting within the scope of EU law.



The European Code of Good Administrative Behaviour



The Code approved by the European Parliament contains the following substantive provisions¹:

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 term “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 an EU institution, body, office, or agency;
- b. “Official” shall mean an official or other servant of the European Union.

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.

¹. The text that follows has been updated to take account of the changes made by the Treaty of Lisbon to the nomenclature of the Treaties and the numbering of their articles, as well as the 2008 revision of the Statute of the Ombudsman. Certain typographical and linguistic errors have also been corrected. The Ombudsman will consider launching a consultation on updating the Code.

Article 4 Lawfulness

The official shall act according to law and apply the rules and procedures laid down in EU legislation. The official shall in particular take care to ensure 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 or her 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. Where such grounds exist, they shall be recorded in writing.

2. The official shall respect the legitimate and reasonable expectations that members of the public have in 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 or she 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.

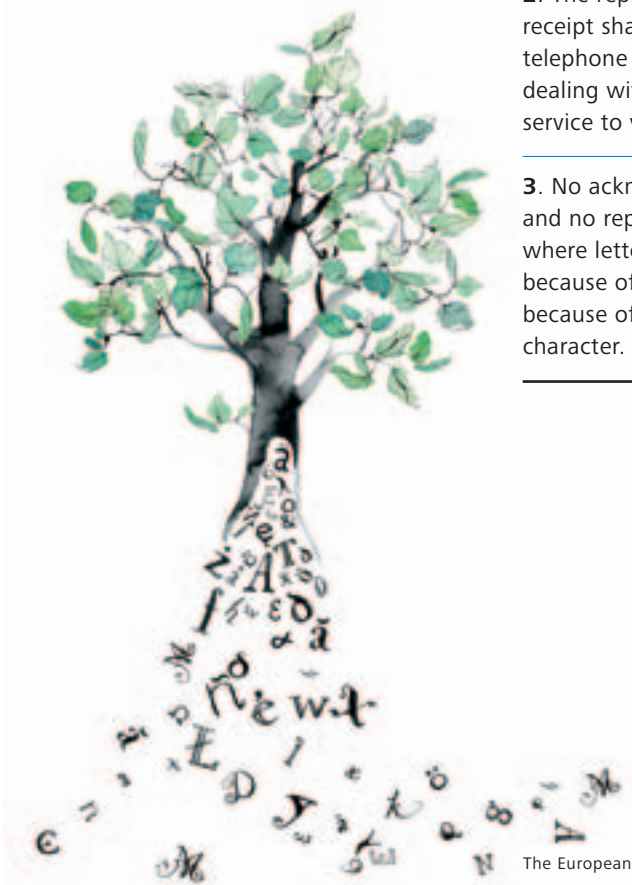
Article 14

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 inform 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 or her 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 or her 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 as soon as possible. In such a case, a definitive decision should be communicated to the author in the shortest possible time.



Timeliness

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 an 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 sent, the official shall subsequently provide the citizen who expressly requests it with an individual reasoning.



Article 19

Indication of appeal possibilities

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, and 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 263 and 228 of the Treaty on the Functioning of the European Union.

Article 20

Notification of the decision

1. The official shall ensure that persons whose rights or interests are affected by a decision are informed of that decision in writing, as soon as it is taken.

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) 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 data².

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 or she 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 or her field of competence. The official shall take care that the information communicated is clear and understandable.

2. OJ L 8/1, 12.1.2001.

2. If an oral request for information is too complicated or too extensive to be dealt with, the official shall advise the person concerned to formulate his or her demand in writing.

3. If an official may not disclose the information requested because of its confidential nature, he or she shall, in accordance with Article 18 of this Code, indicate to the person concerned the reasons why he or she cannot communicate the information.

4. Further to requests for information on matters for which he or she has no responsibility, the official shall direct the requester to the competent person and indicate his or her name and telephone number. Further to requests for information concerning another EU institution, the official shall direct the requester to that institution.

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) 1049/2001³.

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.

3. OJ L 145/43, 31.5.2001.

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 228 of the Treaty on the Functioning of the European Union and the Statute of the European Ombudsman⁴.

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.

⁴. Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties. OJ 1994 L 113, p. 15, as last amended by Decision of the European Parliament 2008/587/EC, Euratom of 18 June 2008, OJ 2008 L 189, p. 25.



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