

The European Ombudsman and the Internal Market: Where Is the Connection?

Ivan Mifsud

Abstract

In this chapter, the author argues that with the European Commission – overseer of the Internal Market – accused, amongst other things, of being caught ‘asleep at the wheel’, the need arose for the creation of yet another institution to watch over the European Commission, to continuously prompt the European Commission and putting right any shortcomings leading to the same European Commission’s performance improving, to the benefit of the Internal Market and European integration in general, and of the European Citizen. This role was awarded to the European Ombudsman, who has devised methods for going about this, including rather subtle ones.

1 Introduction

European integration is and has always been fragile because Europe as a continent has historically been a theatre of war and conflict in general, the cumulative result of which is an ingrained fragmentation. Robert Schuman’s famous words back in 1950, “Europe will not be made all at once, or according to a single plan,”¹ and his reference to *de facto* solidarity could not have been more apt. Against such a background, establishing, developing and maintaining an internal market - the cornerstone of European Integration - would never be easy.

As Oana-Mihaela Salomia explains,² the European Internal Market involves the interaction of three players: the Member States of the European Union, the European Citizens and the European Commission. While the European Citizen is the ultimate beneficiary of the Internal Market and European integration,

1 Schuman Declaration May 1950 https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en#:~:text=Key%20quotes,create%20a%20de%20facto%20solidarity.%22 accessed on 23rd March 2024.

2 *How do the European Commission, Member States and Citizens Interact in Enforcing Internal Market Rules?* Lex ET Scientia International Journal XXIX, VOL. 2/2022.

the Member States, these being nations who voluntarily applied to join the European Union and were not allowed to join until they satisfied entry requirements, are now involved via the Council and European Parliament in the passing of European legislation and, once this is passed, are then required to implement European legislation, under the watchful eye of the European Commission which is entrusted with monitoring the implementation of European Union Law, and is also empowered with taking infringement proceedings against those who fail in their obligation to comply.

All Member States keep their national interests and domestic political needs well in mind while contributing to the creation of new European legislation; indeed, they have little choice because the leaders of the Member States have elections to win back home. This stark reality makes European integration harder to achieve; the same national interests and domestic political requirements are also why Member States occasionally fall back on their duty to comply with their European obligations. This is a day-to-day reality that may even worsen in times of crisis or when the Member States feel that the European Union is failing them.³

Kampmark and Kurečić⁴ place much of the blame for how vaccine distribution was rolled out during the Covid-19 pandemic on the European Union and implicitly on the European Commission; they are not alone in this, with the European Commission being blamed for the 2021 humanitarian crisis on the Poland – Belarus Boarder,⁵ and being accused of being ‘asleep at the wheel’ when it comes to overseeing the application of certain environmental legislation,⁶ to name but a few instances. The causes of this are various and include a lack of resources at the European Commission; it is also suggested that priorities may lie elsewhere.⁷

This gives rise to a need for yet *another* entity to scrutinise the European Commission to hold it accountable for its actions and inactions and to keep it

3 *Vide* for example Binoy Kampmark and Petar Kurečić *Vaccine Nationalism: Competition, EU Parochialism, and Covid-19*, *Journal of Global Faultlines*, 2022 Vol. 9, No. 1, 9–20.

4 *Ibid.*

5 Maciej Grześkowiak, *The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland – Belarus Border*, *Refugee Survey Quarterly*, 2023, 42, 81–102.

6 Samantha Ibbott, *Guardians of the Treaties or Neglectful Custodians: Flaws in EU Environmental Governance*, November 16th 2023, <https://meta.eeb.org/2023/11/16/guardians-of-the-treaties-or-neglectful-custodians-flaw-in-eu-environmental-governance/#:~:text=As%20the%20%E2%80%9CGuardian%20of%20the,all%2027%20countries%20in%20detail> accessed on 9th March 2024.

7 *Ibid.*

as much as possible on its toes and fulfilling its duties. This is where the European Ombudsman enters the picture. In this chapter, the author intends to discuss the function of the European Ombudsman as a continuous prompter of the European Commission and the significance of the European Code of Good Administrative Behaviour⁸ as the standard to be followed by the European Commission continuously, the ultimate argument being that continuous prompting of the European Commission and putting right any shortcomings will lead to the same European Commission's performance improving, to the benefit of the Internal Market and European integration in general, and of the European Citizen.⁹

2 The European Ombudsman

2.1 *General Introduction*

The starting point in such a discussion has to be the Right to Good Administration¹⁰ and the European Citizen's right to complain to the European Ombudsman,¹¹ neither of which preceded the actual setting up of the European Ombudsman as an institution; on the contrary, it was the first incumbent who successfully proposed the inclusion of these rights when the Charter of Rights of the European Union was being drafted.¹² This occurred in the 1990s; since the Lisbon Treaty in 2009, the Charter of Rights of the European Union has achieved binding status, clearly strengthening the European Ombudsman's position as a promoter of principles which have leapt from 'soft law' to harder, binding law.

Soon after convincing the authors of the Charter to include the Right to Good Administration and the right to complain to the Ombudsman, Mr Söderman went on to successfully lobby the drafting of a Code of Good Administrative Behaviour,¹³ which code was first endorsed by the European Parliament

8 <https://www.ombudsman.europa.eu/pdf/en/3510> accessed on 13th March 2024.

9 By way of explanation, it is to be pointed out that while under article 228(1) TFEU the European Ombudsman has the power to scrutinise "the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role", for the purposes of this chapter reference will only be made to the European Commission.

10 Article 41 of the Charter of Rights of the European Union.

11 Article 43 of the Charter of Rights of the European Union.

12 *The European Ombudsman Origins, Establishment, Evolution* Office for Official Publications of the European Communities (Luxembourg 2005) chapter 5.

13 N.8.

in 2001, and which has formed the basis of his and ensuing incumbents' work. Over time, it was updated and further refined.

Regarding operations, the European Ombudsman receives complaints or takes up issues on her¹⁴ own initiative. Considerable effort is put into making the Ombudsman remedy as informal and accessible as possible; the complaints form, available in twenty-four languages, is easy to find on the Ombudsman's website¹⁵ and straightforward to fill in. Once filled in, it merely has to be posted to the address provided in the same form without any payment being required.

The institutions are obliged to cooperate with the European Ombudsman when she considers there to be sufficient grounds in a complaint to merit investigating it;¹⁶ the outcome of such investigations is a report on her findings, which report will point out any shortcomings noted and, where appropriate, recommend the taking of remedial steps. During this process, the European Ombudsman will invoke the Citizen's right to good administration and base her considerations on the European Code of Good Administrative Behaviour.

Some examples of notable European Ombudsman investigations involving the European Commission are the following:

- A complaint was lodged by the director of a German beer importing company against the European Commission over failure to give him information about a meeting held with UK officials over a matter he raised after considering an English law on 'guest beers' discriminatory against imported beers.¹⁷ This individual had complained to the European Commission, which subsequently held a meeting with the UK authorities and a trade association. This individual asked to attend this meeting but was refused; further to this meeting, an amendment to the legislation on 'guest beers' was proposed, and the Commission closed its inquiries. This individual sought information, including the identities of the people who attended this meeting, but the Commission refused to grant such information based on data protection considerations. The European Ombudsman refused to accept this and recommended that this individual be given the information he sought;

14 Current European Ombudsman is Ms Emily O'Reilly <https://www.ombudsman.europa.eu/en/emily-oreilly> accessed on 13th March 2024.

15 <https://www.ombudsman.europa.eu/en/make-a-complaint#SrYcZRwwAPeq> accessed on 13th March 2024.

16 Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24th June 2021, articles 5 on provision of information to the Ombudsman & 7 on hearing of officials and other servants.

17 Case reference 713/98/(IJH) reported at <https://www.ombudsman.europa.eu/en/special-report/en/380> accessed on 13th May 2024.

- A complaint in which it was alleged that the European Commission failed to take minutes during a meeting which was part of an anti-trust investigation.¹⁸ The European Ombudsman considered this to amount to maladministration;
- An investigation into an allegation that the European Commission failed to decide whether to initiate proceedings against Spain over illegal state aid granted to several football and basketball clubs. It was alleged that the European Commission failed to act on this complaint because one of its Commissioners was an ardent supporter of one of the clubs involved.¹⁹ Following investigations, the European Ombudsman concluded that the European Commission had indeed failed to take a timely decision on whether infringement procedures should be initiated and that it also failed to allay fears that a Commissioner had a conflict of interest, which led to the Commission's inaction;
- A complaint on the European Commission's compliance with the Tobacco Control Convention.²⁰ On this occasion, the European Ombudsman upheld a complaint that the European Commission, except for the Directorate General for Health, failed under the WHO Tobacco Control Convention to be proactively transparent in its dealings with the tobacco industry and related lobbying groups. While the Juncker Commission responded by defending the current situation as legally adequate to prevent undue influence from the tobacco industry, the European Ombudsman concluded by finding maladministration on the European Commission's part, arising from its refusal to apply the proactive transparency policy of DG Health across the whole Commission. The matter was revisited some years later, leading the European Ombudsman to reach similar conclusions;²¹
- An investigation into the tender award to the “world's largest asset manager”²² to carry out a study on integrating environmental, social and governance objectives into European Banking Laws²³ led the European Ombudsman

18 Case reference 1935/2008/FOR reported at <https://www.ombudsman.europa.eu/en/decision/en/4164> accessed on 13th March 2024. This is often referred to as the *Intel* case.

19 Case reference 2521/2011/JF reported at <https://www.ombudsman.europa.eu/en/doc/correspondence/en/52874> accessed on 13th March 2024.

20 Case reference 852/2014/LP reported at <https://www.ombudsman.europa.eu/en/decision/en/73774> accessed on 13th March 2024.

21 Case reference 01/6/2021/KR reported at <https://www.ombudsman.europa.eu/en/news-document/en/179462> accessed on 13th March 2024.

22 Case reference 853/2020/KR reported at <https://www.ombudsman.europa.eu/en/case/en/57060> accessed on 13th March 2024.

23 *Ibid.*

to express serious reservations since this commercial entity had a direct financial interest in the sector. However, the European Ombudsman, having assessed current rules on public procurement, did not find maladministration on the European Commission's part and recommended that, in view of this incident, updating such rules should be considered. On its part, the European Commission replied by committing to reflect on this recommendation;

- An investigation into persons leaving employment or positions within the European institutions, including the European Commission, and taking up key positions and posts in industry. These included a former European Commission President taking up a post at Goldman Sachs Bank, a former European Banking Authority joining a banking lobby and a former Chief Executive of the European Defence Authority joining Airbus.²⁴ The European Ombudsman received and investigated complaints over these three instances, considering the applicable rules, which include the power to refuse to grant permission to such officials to take up such employment and how these rules were applied, making recommendations for improvement where necessary.

These above examples are to be taken in context. They occurred over the years and should not be taken as implying that everything the European Commission has ever done is wrong. On the other hand, one wonders what would have happened had there not been a European Ombudsman before whom such instances were brought to light.

2.2 *The Importance of Keeping the European Commission on Its Toes*

The above examples share a common thread, this being that they can all have a detrimental effect, whether large or small, on the Internal Market: for example, in the Internal Market, unlawful state aid is prohibited, as is undue lobbying with lawmakers; opaque decision making is also an enemy of a well-set up and functioning, evolving internal Market. These examples also confirm that the need to submit the European Commission to a watchdog is real. Like any other entity, the European Commission cannot be left to its own devices on a presumption that it will never err. Hence, there is a need for the European Ombudsman to keep the Commission on its toes. Mistakes will happen, shortcomings will occur, and it is the European Ombudsman's obligation firstly to maximise her efforts into continuously prompting the European Commission not to commit shortcomings, and secondly, when notwithstanding such

²⁴ Strategic Initiative reference SI/2/2017/NF reported at <https://www.ombudsman.europa.eu/webpub/2022/revolving-doors/en/> accessed on 13th March 2024.

continuous prompting, such mistakes do indeed happen, to offer a remedy aimed at putting right the wrongs committed.

While complaint handling and provision of remedies to aggrieved persons are important, the European Ombudsman's duty to continuously prompt the European Commission is vital. Having a strong, effective, influential ombudsman with whom the European Commission never feels comfortable is of utmost importance. It is such sentiment of discomfort that will entice the European Commission to be particularly careful in its work, to do things properly, to heed the Ombudsman's directions, and to keep in mind when making decisions what the repercussions will be if found committing maladministration. The day that such a sentiment is lost, the European Ombudsman will have lost its ability to prompt the European Commission into doing its utmost to as much as possible never commit acts of maladministration.

The main manner in which the European Ombudsman keeps the European Commission on its toes is through its investigatory function. The system allows the lodging of complaints by the general public with the European Ombudsman to be made as easy as possible. Receiving such complaints is a source of information for the Ombudsman because it is in this manner that she knows what the Commission has been up to. Undoubtedly, the European Commission is aware of this but can do nothing about it: the Ombudsman exists, and the facility of reporting matters to her. The only way to avoid such complaints and subsequent inquiries is by avoiding acts of maladministration in the first place.

Another way the European Ombudsman continues to prompt the European Commission is by continuously disseminating information about its work and the principles it upholds. The annual report of the European Ombudsman is an example of this: like any other ombudsman's annual report, the institution does not simply report on its activities, how many cases it has handled, how much budget it was allocated and how this was spent, but has turned this report into a vehicle intended to carry its message to the European Parliament to whom she reports, to the European Commission and all other entities that fall under her jurisdiction thus reminding them about their obligations, and to the general public to inform them of their rights and also to shame somewhat those who commit maladministration by naming them and recording their shortcoming. Another example of such effective, continuous dissemination of information is that disseminated via the European Ombudsman's particularly attractive, user-friendly and up-to-date website <https://www.ombudsman.europa.eu/>, which not only serves as a prime source of information about the office, its history and evolution, how it functions, its philosophy and teachings, its achievements and the numerous instances of maladministration which it

has identified over the years but also serves to mirror the state of the office itself, portraying it as a hardworking, efficient institution headed by a friendly looking and welcoming person who at the same time makes it crystal clear that she tolerates no nonsense.

Apart from the dissemination of information, there is also the creation of information and the taking of initiatives, which also keep the European Commission on its toes.²⁵ These include the annual 'Putting it Right Report', which, as the name implies, is an account of how the various institutions responded to the European Ombudsman's proposals. This initiative on the European Ombudsman's part serves to praise those who cooperate with her and likewise to shame those who do not; thus, for example, the European Commission is exposed for only accepting two out of five solutions proposed by the European Ombudsman under article 3(5) of the Statute²⁶ in 2019. This, not being a statistic to be proud of, should prompt the European Commission to do better in future, whether by accepting to implement such proposed solutions or by preventing a repeat of the maladministration which led to the European Ombudsman intervening in the first place. One also finds the 'Impact of the European Ombudsman' first published in 2020 and again in 2021, these being documents unashamedly intended to boost the Ombudsman's standing in the public eye, the underlying rationale being that the more influential the European Ombudsman proves to be, the more able to keep the European Commission and others she has jurisdiction over, on their toes.

If these publications were not enough, the European Ombudsman, since 2017, even organises an 'Award for Good Administration' which "recognises actions by the EU public service that have a visible and positive impact on the lives of citizens, and aims to encourage the sharing of good ideas and practices". By 2021, this award had morphed into one overall prize, four prizes in different categories with nominations assessed by an independent advisory board, and yet another prize for which the general public voted. This is a highly publicised ceremony, with the keynote speech in 2021 delivered by the President of the European Commission, Ursula von der Leyen herself.

Commendable as these publications and initiatives may be, the most important publication is the earlier mentioned European Code of Good Administrative Behaviour,²⁷ discussed in the next section of this chapter.

25 And likewise all other entities which fall under the European Ombudsman's remit.

26 Decision 94/262 since then repealed and replaced by Regulation 2021/1163 "As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint".

27 N.8.

2.3 *The European Code of Good Administrative Behaviour*

This Code, intended to lay down the rules of acceptable behaviour of the officers who work within the European Union, is not only approved by the European Parliament²⁸ and published in thirty languages but is also written in such a way that is aimed at achieving the maximum effect in the sense of maximum adherence by those to whom it applies. One notes, for instance, the thrust in the following statement:

As European Ombudsman, I have witnessed the integrity, dedication and humanity of many European public servants. This Code is designed to support those efforts by sharing best practice ...

This continues regarding the increased awareness “of the practical business case for a citizen-centred approach” and regarding European decision-making being subjected to “unprecedented scrutiny” while expressing confidence “that the decision-making processes are in general robust enough to meet these scrutiny demands”. The European Ombudsman is clearly warning the entities over which her office has jurisdiction that she is demanding a citizen-centred approach, that she expects to find evidence of integrity, dedication and humanity during her investigatory work, that she is going to up her scrutiny over these entities, and that they would do well to be up to such rigorous scrutiny. The European Ombudsman presents her position and her expectations with remarkable tact, even going so far as to thank the intended audience for considering the contents of this document and signing off “*Le gach dea-ghul*”²⁹ but the immediately preceding reference to the European Citizen’s fundamental right to good administration, directly enforceable since 2009, as the backbone of this Code, is the giveaway: through the niceties and tact the European Ombudsman reminds the institutions and their officials that the contents of this Code are non-negotiable and mandatory. They are also publicly available, thus serving a second purpose: the European Citizen has easy access to them and knows what to expect and what to require from the European institutions and their personnel.

28 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, 25.

29 Irish for “With best wishes”.

The Foreword is followed by a throwback to 2012 when the European Ombudsman had condensed the expected standards of behaviour into ‘five public service principles’ namely:

- Commitment to the European Union and its citizens,
- Integrity,
- Objectivity,
- Respect for others, and
- Transparency.

The author of this chapter considers the above-listed principles to be nothing short of self-evident, except that when one refers back to the earlier cited examples of shortcomings and bad administrative behaviour identified by the European Ombudsman, one realises that what should be self-evident is not so much to everybody all of the time: for example, it should be obvious that minutes of meetings should be taken, and that Commissioners should not exercise their influence to do favours for football clubs, but it is not, or these cases would not have occurred.

As for the actual contents of the Code, many articles are well-established legal principles. These include respecting the principle of proportionality,³⁰ upholding the principles of natural justice,³¹ guaranteeing due process³² within a reasonable time,³³ equality of arms³⁴ and also respecting fundamental human rights;³⁵ in the same Code, one then finds principles of behaviour such as being courteous and trying to be helpful³⁶, replying to the general public in the same language,³⁷ and acknowledging receipt of letters or complaints within two weeks of receipt³⁸ that are very hard for any public entity to argue against respecting and abiding by, which gives them a force in themselves even though they not based on established legal principles. One also notes the obligation imposed on those entities to whom this Code of Good Administrative Behaviour applies to publicise the Code and its contents³⁹ and also the obligation to report back on the implementation of said Code within the stipulated period,⁴⁰ thus guaranteeing that those subject to it cannot leave

30 Article 6.

31 Article 8 ‘Impartiality and Independence’ and article 19 ‘Duty to state the ground of decisions’.

32 Article 16 ‘Right to be heard and to make statements’.

33 Article 17 ‘Reasonable time-limit for taking decisions’.

34 Article 9 ‘Objectivity’ and article 11 ‘Fairness’.

35 Article 5 ‘Absence of Discrimination’.

36 Article 12 ‘Courtesy’.

37 Article 13 ‘Reply to letters in the same language as the citizen’.

38 Article 14 ‘Acknowledgement of receipt and indication of the competent official’.

39 Article 25.

40 Article 27.

it to metaphorically speaking gather dust on the shelf hoping that it will be lost in the passages of time, but are held to account and in the process kept on their toes in true ombudsman style.

The fact that contents of the Code include the obligation to inform the general public of the remedies available to them, such as the existence of any possibility to appeal⁴¹ and also to inform the general public of their right to complain to the European Ombudsman⁴² is, in this author's opinion, pure genius in terms of keeping the institutions, bodies and agencies including the European Commission on their toes: they are not only kept on their toes by the European Ombudsman. They must furthermore feed this process by publicising their guardian and scrutinisers.

2.4 *The European Ombudsman's Complementary Role to the Courts*

The European Ombudsman and the Courts' roles have often been compared and found to overlap. While Paul Craig describes the European Ombudsman as an "extra-judicial machinery through which grievances concerning poorly performed Union administrative services can be inexpensively voiced and processed",⁴³ Marta Hirsch-Ziembinska⁴⁴ views the ombudsman remedy as an alternative way how to resolve disputes with the EU Administration, the main difference being that the Ombudsman does not issue binding decisions, but offers the advantages that no costs are involved and that proceedings are much less formal. To this, Spoerer and O'Ferrall⁴⁵ add that while the Courts "assesses compliance with the applicable law exclusively",⁴⁶ the Ombudsman takes a wider viewpoint in the form of assessing compliance with the principles of good administration and going beyond illegality into issues which, although legal are still not right, or not fair.⁴⁷ Proceedings before the Ombudsman are expeditious and informal compared to court proceedings; they are also investigatory and non-litigious, thus allowing the Ombudsman to take a wider view of the problem before her.

41 Article 19.

42 Article 26.

43 *EU Administrative Law* (Oxford University Press 2nd Ed., 2014) 757.

44 The European Ombudsman's activity with regard to public access to environmental information in the context of the Aarhus Convention https://unece.org/fileadmin/DAM/env/pp/a_to_i/7th_meeting/Statements_and_Presentations/7TFAL_V_2_Developments_EO_Hirsch-Ziembinska.pdf accessed on 20th March 2024.

45 The European Ombudsman's role in access to documents <https://link.springer.com/article/10.1007/s12027-022-00717-6> accessed on 20th March 2024.

46 *Ibid.*

47 Speech by Emily O'Reilly at EU1's academic seminar on the Evolving Role of the European Ombudsman <https://www.ombudsman.europa.eu/en/event-document/en/165564> last accessed on 20th March 2024.

Apart from taking a wider view of issues brought before her than a court and the facility of taking up matters on her own initiative, which is something the courts cannot do, the European Ombudsman even turns to her counterparts at the national level with whom the institute she heads has formed a formal alliance called the European Network of Ombudsmen,⁴⁸ for collaboration, where European law and policy matters are concerned, conducting parallel investigations, holding regular meetings and conferences and even maintaining a system whereby if a member has a query concerning European Union Law, the European Ombudsman will liaise with experts in particular from the European Commission to get these queries replied to. In this manner, the European Ombudsman has built the current system whereby the institutions over which she has jurisdiction are kept on their toes.

Here lies the main difference between the Ombudsman and the Courts: while the institutions are subjected to one court proceeding at a time every time a case is opened against them, the European Ombudsman has developed the facility of not only investigating the European Commission and the other entities over which she has jurisdiction but continuously getting back to the entities on their shortcomings, via the various initiatives taken which include awarding an annual prize for good administration, calling the institutions to report on what initiatives are taken to uphold the principles of good administration, reporting on the impact of the Ombudsman's work, raising legal matters over which the members of the network have queries, etc. These methods are made even more effective by the continuous effort to publicise her work and the moral pressure put on the European Commission and other entities falling under the European Ombudsman's jurisdiction, for example, describing the ombudsman 'critical remarks' as an indication of "triple failure".⁴⁹ Given that no public institution is keen on bad publicity, nor wants to be part of a failure, let alone a triple one, it is undoubted that these subtleties serve their purpose of keeping the institutions on their toes and in this sense, the European Ombudsman proves to be effective at guarding the European Commission as the latter carries out its duty to guard the Internal Market.

48 This was set up in 1996 <https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/about/en> accessed on 20th March 2024. The European Committee of Petitions is even included in this network.

49 "When redress should have been provided, however, closing the case with a critical remark signals a triple *failure*. The complainant has failed to obtain satisfaction; the institution concerned has failed to put the maladministration right; and the Ombudsman has failed to persuade the institution concerned to alter its position". *The European Ombudsman Follow-Up to Critical and further Remarks how the EU Institutions responded to the Ombudsman's Recommendations in 2008* 5 <https://www.ombudsman.europa.eu/pdf/en/4423> accessed on 20th March 2024.

3 Concluding Observations

The European Ombudsman's connection with the European Internal Market is indirect yet continuous. It is 'indirect' in the sense that the European Commission is the immediate guardian and overseer of the European Internal Market, while the European Ombudsman's relationship is with the European Commission, continuously prompting it to carry out its duties beyond its strict legal obligations and into the realm of justice, fairness and correctness. It has resulted from the European Ombudsman's work that it cannot be taken as a given that the European Commission will always execute its duties in a shortcoming-free manner: as we have seen in 2.1 above, European Commission officials had put their gains first and allowed themselves to be lured into the private sector when – no matter what the written rules stated at the time – they should not have been so lured; people have also acted on passion where their favourite football and basketball clubs were concerned to the point of even compromising their duties, they have even been subjected to influence by powerful lobby groups and not taken sufficient steps to protect themselves against this onslaught, they had even failed to take minutes when such minute-taking was crucial. These instances occurred when they should not have; they were also committed by people in high office who are compensated handsomely for their work and thus were even more obliged to know better, but the stark reality is that there is no reason to doubt the real risk that such shortcomings will continue to occur in future and must be guarded against.

Underlying every system is a need to operate not only in line with the written Law but also correctly and diligently encompasses something wider than the written law. This wider concept of correctness and diligence, together with respecting the written Law and established legal principles, is what the European Ombudsman has laid out in the Code of Good Administrative Behaviour and requires from the European Commission. At the same time, it executes its job as guardian and overseer of the European Internal Market. Successive incumbent European Ombudsmen have, since the mid-1990s, worked hard and creatively to continuously prompt the European Commission to do its duty in a fair, well-meaning, altruistic manner for the greater good, for the further growth and strengthening of the European Single Market.

The European Ombudsman's work cannot stop, and whoever holds this prestigious position now and in future cannot rest on their laurels but must sustain and, indeed, where possible, increase efforts to keep the European Commission on its toes, urging it to put right any wrongs committed, always to perform better, to strive to outdo itself and to rise in stature as a result of its increased legitimacy, for the ultimate benefit of the European Citizen, not as a favour or as some concession but because the European Citizen actually finances the

European institutions not least the European Commission through their taxes, and therefore the **paying** European Citizen deserves no less.

Bibliography

Books

The European Ombudsman Origins, Establishment, Evolution, Office for Official Publications of the European Communities (Luxembourg 2005).

Chris Cook & John Stevenson, *The Routledge Companion to European History since 1763* (Routledge 2005).

Journals

How do the European Commission, Member States and Citizens Interact in Enforcing Internal Market Rules? *LEX ET Scientia International Journal* XXIX, VOL. 2/2022.

Grzeškowiak, Maciej *The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland – Belarus Border*, *Refugee Survey Quarterly*, 2023, 42, 81–102.

Kampmark, Binoy and Kurečić, Petar *Vaccine Nationalism: Competition, EU Parochialism, and Covid-19*, *Journal of Global Faultlines*, 2022 Vol. 9, No. 1, 9–20.

Online Articles

Hirsch-Ziembinska, Marta *The European Ombudsman’s activity with regard to public access to environmental information in the context of the Aarhus Convention* https://unece.org/fileadmin/DAM/env/pp/a_to_i/7th_meeting/Statements_and_Presentations/7TFAI_V_2_Developments_EO_Hirsch-Ziembinska.pdf

Ibbott, Samantha *Guardians of the Treaties or Neglectful Custodians: Flaws in EU Environmental Governance*, 16th November 2023, <https://meta.eeb.org/2023/11/16/guardians-of-the-treaties-or-neglectful-custodians-flaw-in-eu-environmental-governance/#:~:text=As%20the%20%E2%80%9CGuardian%20of%20the,all%2027%20countries%20in%20detail>

Spoerer, Markus and O’Ferrall, Richard More *The European Ombudsman’s role in access to documents* <https://link.springer.com/article/10.1007/s12027-022-00717-6>

Websites

European Ombudsman <https://www.ombudsman.europa.eu/>

European Union’s official website