

GOOD ADMINISTRATION IN THE EUROPEAN UNION

MOVING TOWARDS A CULTURE OF SERVICE FOR THE EUROPEAN INSTITUTIONS

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Paradoxically, trust in the European institutions is historically low at a time when the institutions are more open, transparent and keen to engage in discussion with European citizens than ever before. The primary law of the EU now explicitly refers to good administration both in the founding Treaties and in the Charter of Fundamental Rights (1). The importance of the European Ombudsman is also growing in the institutional framework (2); the European Code of Good Administrative Behavior provides a framework on how the EU institutions and civil servants should carry out their missions to the highest standards (3) and a wide range of administrative assistance is now in place in the EU (4). Despite all these developments, the European Parliament should continue to actively support the European Ombudsman. The European Parliament should also consider the policy recommendations enclosed in the present paper as we believe they would help to foster the EU-wide concern over good administration and allow the EU to regain the trust of the European citizens when it comes to their relations with its institutions.

According to the Spring 2013 Eurobarometer, 60% of Europeans do not trust the EU and its institutions. This figure has doubled over the past 6 years. The lack of trust is particularly worrying at a time when the European integration project is putting the European citizen at its centre. One could surely argue

1. I would like to thank Alfred Cummins for his help with the English version of this paper.

that trust in national institutions is equally low; however this parallel should not undermine an independent consideration and treatment of the European Citizens' perception of the EU institutions.

Trust in the European institutions is historically low at a time when the institutions are more open, transparent and keen to engage in discussion with European citizens than ever before. In recent years, the EU institutions have adopted internal guides for the attention of their civil servants, on how to carry out their tasks in full respect of good administration. As the European Ombudsman stressed, "good administration depends on creating and nourishing a culture of service to citizens. Mistakes are inevitable in any administration. But a culture of service makes it possible to acknowledge and put right mistakes when they occur."²

In order to achieve greater trust between the citizen and the European civil service, the European Ombudsman's role and work must remain central. However, more steps must also be taken to support the Ombudsman and supplement this work. We will outline some new and concrete policy actions, which could regain the trust of the European citizens and improve their relations with the EU institutions.

1. Good administration in the EU

The European integration project is increasingly concerned with its people (both natural and legal). Indeed, since the Maastricht Treaty was signed in 1992, the European Citizen became central to the EU. A dynamic and positive vision of the future of the EU is based on greater integration towards political union among Member States. Such an evolution means enhanced relations and more frequent interactions between the European Citizens, companies, residents and the European institutions themselves.

An important concern for all institutions (administration) is not only that their interlocutors are informed about their rights and possible actions but also that their relations respect the conditions of good administration. First, it is worth recalling, in brief

2. Declaration of the European Ombudsman, Nikiforos Diamandouros at the meeting with the College of Commissioners on 15 February 2011.

what good administration in the EU is. According to some scholars, there is a degree of uncertainty regarding the definition of good administration (Mendes, 2009).³ Good administration should connect different levels but is it a right, a principle, an objective or a standard (Mendes, 2009)?

Good administration can take different forms. For lawyers, the *right* to good administration is not to be confused with the *principle* of good administration. The right to good administration is a set of requirements aiming to protect the citizen in its relations with the administration. The principle of good administration is a specific requirement for the administration “to consider with care and impartiality all components of a given case according to the case law of the ECJ” (Azoulai, Clément-Wilz, 2014). Good administration as such refers to an ethic or particular behavior for institutions and their civil servants to adopt (Chevalier, 2014).

Good administration in the EU derives from the duties bestowed upon the European institutions in their relations with the European citizens. Before the ratification of the Lisbon Treaty, good administration had been a concern for the European institutions however each institution had its own way of dealing with it. Therefore a general and harmonious approach to good administration at EU level seemed like wishful thinking.

The situation changed in 2009. As soon as the Treaty of Lisbon entered into force, several references were included in primary EU law about the European administration in addition to good as well as maladministration. Article 226 TFEU mentions the possibility of setting up a temporary Committee of Inquiry to investigate alleged maladministration. The new article 298 TFEU, under section 2 on the “procedures for the adoption of acts and other provisions”, states that “in carrying out their missions, the institutions, the bodies, offices and agencies of the Union shall have support of an open, efficient and independent European administration”. Finally, a new title XXIV was put in the third part of the TFEU on administrative cooperation.

The Charter of Fundamental Rights of the EU, proclaimed in 2000, has been a legal source of the EU since 1 December 2009.

3. CFI, 12 November 2008, *Evropaïki Dynamiki v. Commission*, T-59/05.

Here, the right to good administration is mentioned as a fundamental right of the Union citizenship. The Charter is the first international agreement⁴ referring to good administration as a fundamental right (Soderman, 2005). According to article 41 of the Charter, the right to good administration should mean:

“...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. This right includes: the right of every person to be heard...; the right of every person to have access to his or her file...; the obligation of the administration to give reasons for its decisions; 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... and [linguistic rights].” The Charter also includes the right to “any citizen of the Union, and any natural or legal person residing in a Member State” to refer to the European Ombudsman a case of maladministration (article 43).

We must be clear however, as other scholars have shown (Jacqué, 2011) that inclusion of good administration in EU primary law did not simply happen overnight with the Treaty of Lisbon. This has been a slow and progressive formalization to which the ECJ case law has contributed significantly. In addition, despite the progress made, this codification should not be considered as an end to itself. Good administration also has to be publicized, known to all persons and subsequently relied upon for interactions with the EU institutions.

A Special Eurobarometer⁵ shows that 72% of European citizens are not informed of the Charter of Fundamental Rights of the EU. In some countries, the citizens would know about the Charter but not about its content (see question 1 of the Special Eurobarometer).

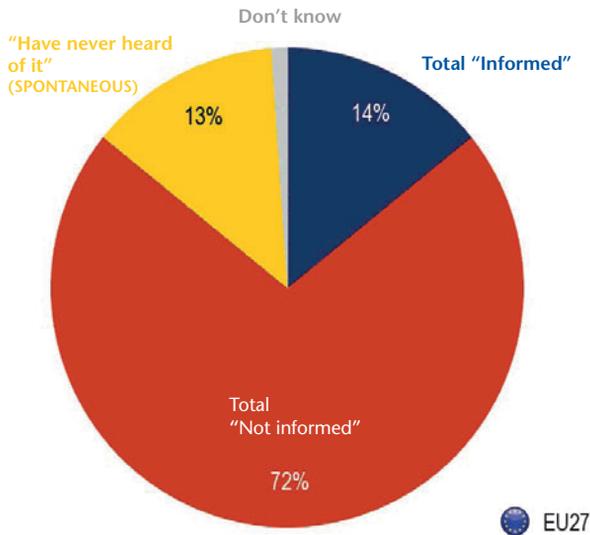
An important and systematic communication has to be made on the Charter of Fundamental Rights, the Citizens' rights and the

4. Resolutions have been adopted by the Council of Europe but no agreement on good administration. Study n° 470/2008 Council of Europe, Commission of Venice, Assessment of « good governance » and « good administration », pt. 46.

5. Special Eurobarometer, done by TNS Opinion & Social on special request of the European Parliament and the European Ombudsman, 7 July 2011, The Ombudsman synthesis on the European Ombudsman and Citizens' Rights <http://www.ombudsman.europa.eu/en/press/statistics.faces>

possible administrative actions open to them. As the European Ombudsman rightly points out “only citizens well informed about their rights and about who to turn in case of a problem can effectively exercise their rights.” Therefore, the Special Eurobarometer should act as an encouragement for the European Ombudsman to better inform the European citizens.

Figure 1. How informed do you feel you are about the Charter of Fundamental Rights of the Eu?



Source: Eurobarometer, 2011.

We strongly recommend the other institutions, bodies and agencies of the EU, especially the European Parliament and the Commission to echo the efforts of the European Ombudsman in communicating about the EU, its missions, the Citizens' rights and also about good administration. It is also vital that the European citizens know about the Charter of Fundamental Rights of the EU and its content.

2. The European Ombudsman: The guardian of good administration

The strongest and most active support for the formalization of good administration in EU primary law comes from the European Ombudsman. Among its missions, the European Ombudsman tries

to find appropriate solutions to the complaints against institution of the EU referred to it. It encourages transparency and defends a culture of service within the administration. Overall, the Ombudsman tries to build greater trust between the citizens and the institutions of the EU by facilitating and mediating dialogue between them and by encouraging the institutions to follow the highest standards when carrying out their tasks (Streho, 2014).

The European Ombudsman is seen as an important intermediary between the citizens and the institutions of the EU. The office contributes to fostering the rights of the former while advancing the democratic functioning of the EU. The right to file a complaint to the European Ombudsman came as a supplement to the other forms of protection of citizens' rights such as petition right,⁶ the right to send a complaint to the Commission or trigger judicial action (Perillo, 2005), or access to documents. The European Ombudsman is supposed to give a human face to the functioning of the European administration. Its existence is closely tied to the emergence of the notion of European citizenship (Streho, 2014).

The European Ombudsman has two main tasks within the EU⁷. Firstly, the office supervises and protects the citizens in their relations with the European administration and secondly, it promotes good administration within the latter. Some scholars point to the important role of the European Ombudsman in introducing moral considerations to the administration's day-to-day activities (Azoulai, Clément-Wilz, 2014).

Therefore, the European Ombudsman contributes very actively to establish good administration within the institutions, organs, agencies and bodies of the EU. The Ombudsman has regularly issued recommendations, critical opinions; own initiative inquiries, annual and special reports as well as the European Code of Good Administrative Behavior.⁸ The European Ombudsman has drafted

6. Petition right was formalized in the European Parliament resolution as early as 1977 but the Petition Committee of the Parliament was set up only ten years later, in 1987 and the legal foundation was given in 1993 in the Maastricht treaty.

7. As underlined by the CFI, 10 April 2002, Franck Lamberts v. European Ombudsman. T-209/00, ECR. p. II-2203, point 77.

8. Resolution of the European Parliament 6 September 2001 approving the European Code of Good Administrative Behavior <http://www.ombudsman.europa.eu/fr/resources/code.faces/en/3510/html.bookmark#/page/1>

the Code in the framework of an inquiry and presented it to the European Parliament as a special report.

A number of figures illustrate the quantitative importance of the European Ombudsman's work. Since 1995, the Ombudsman has replied to 36 000 complaints and has carried out 3800 inquiries.⁹ The office received 2442 complaints in 2012, though only 740 were in its competence and it has closed 390 inquiries.¹⁰ It is worth noting that year after year, complaints originate mainly from European citizens (85%) and other complaints are sent by companies, federations, foundations, NGOs (15%) (Tsadiras, 2006).

Our recommendation for the European Parliament would be to continue to actively and explicitly encourage the work of the European Ombudsman and to make sure the office's budget does not shrink. In our opinion, just like information and communication concerning the Charter of Fundamental Rights, it is especially important that European citizens are able to learn about the European Ombudsman and the position's functions.¹¹

3. Good administration embedded in the European Code for Good Administrative Behavior

An original and ambitious idea of the European Ombudsman was the drafting of the European Code of Good Administrative Behavior in 1999. The Code aimed "to improve the standards of good administration and the relations between the European administration and the public" by codifying "the general principles" in the field and by reminding "the procedural and substantial rights and obligations of EU law" (Mendes, 2009). The European Parliament adopted the Code in 2001 and henceforth it became the cornerstone for implementing good administration. The Code helps the citizens to understand their rights and to invoke them. The Code also promotes public interest in an open, efficient and independent European administration and increases the citizens' awareness as to the behavior they can expect from the European institutions (Streho, 2014).

9. Annual Report 2010.

10. Annual Report 2012.

11. Special Eurobarometer, 2011, *cf. supra*, question 4.

The introductory part of the Code refers to the principles of European administrative law as it derives from the ECJ case law and the legislation of the Member States. The Code has 27 articles, which list the principles the institutions have to respect in relation to the public. Legitimacy, equal treatment, proportionality, no misuse of power, impartiality and independence as well as objectivity, coherence, equity and courtesy are included in the Code. Lastly, the Code refers to the right to file a complaint to the European Ombudsman as stated in article 228 TFEU.¹²

The Code is not legally binding however. In front of the Convention drafting the Charter of Fundamental Rights, the European Ombudsman took the floor to defend the inclusion of good administration in the Charter. The Ombudsman also appealed for a legally binding and uniform code of good administration applicable to all European institutions in their interactions with the public. In practice, the Code drafted by the Ombudsman and then adopted by the European Parliament was not given legal value. The institutions have since adopted their own codes but these are less exhaustive and ambitious in general compared to the Code of the Ombudsman (Mendes, 2009). Another consequence of the lack of legal value of the Code is the multiplication of such codes within the EU (Chevalier, 2014).

Our recommendation would be to encourage the Commission to draft a Regulation on the basis of article 298 of the TFEU and the content of the Code. In the past, the Commission has refused to present such a draft (Mendes, 2009). However, the Code would benefit greatly from being given legal value as it would apply equally to all institutions of the EU, enhance the coherence of European administrative behavior and ensure greater legal certainty in relations between the institutions and the public. An alternative solution would be to pursue the EU administrative procedural codification¹³ and finalize the project under the form of an EU Regulation with article 298 TFEU as its legal basis.

12. Article 26 of the European Code of Good Administrative Behavior.

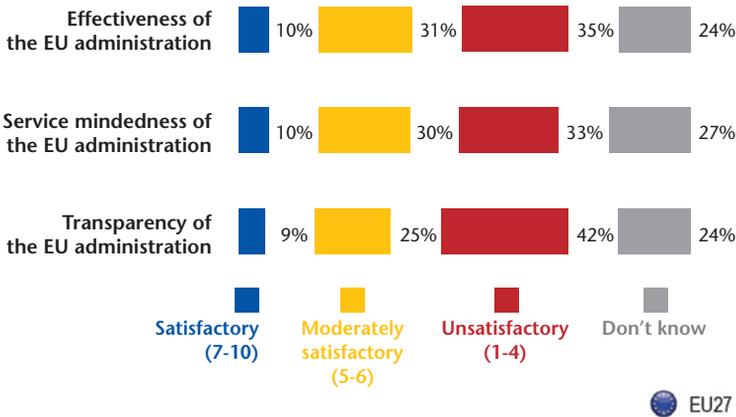
13. European Parliament Resolution, 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure in the EU <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0004+0+DOC+XML+V0//EN>

4. Perceptions and experience of good administration

The previous recommendations are fundamental to the continuation of efforts of the EU institutions, spanning several decades, to respect good administration in their everyday work. In addition to gaining wider trust among citizens it is important to change their perception of the European administration.

The Special Eurobarometer highlights the challenge faced by showing uncertainty among European citizens. Only around 10% of respondents consider that the European administration is efficient, transparent and that it comes across as service minded (see question 2 of the Special Eurobarometer).

Figure 2. Based on what you know and using a scale from 1 to 10, how would you judge the performance of the EU administration in each of the following areas? '1' means that the EU administration's performance in a specific area is "not at all satisfactory" and '10' means that its performance is "very satisfactory"



Source: Eurobarometer, 2011.

In our view, to improve this perception, European citizens have to be better informed about the existence, the role of the institutions, the European Ombudsman and also about the content of the Charter of Fundamental Rights of the EU. They should also be able to locate their interlocutors and the administrative procedure they need, without any difficulty. Indeed, an environment where the actors are informed and relations are fluid, practical and efficient will have a significant impact in the medium and long run on the perception of the citizens of the European administration by building solid and long lasting trust.

Competent European interlocutors for helping, assisting and advising citizens in the EU are numerous. In addition to the institutions and agencies, we have to mention the European Ombudsman, the European Network of National Ombudsmen, and the Petition Committee of the European Parliament, the Data Protection Officer and the European Consumers Center. Each interlocutor operates its own website where the functions and the missions are presented.

A great number of websites and web portals exist already to inform and guide the citizens and companies. The general information website of the EU, “*Europe Direct*”¹⁴ gives the option of information by phone or email about the functioning of the EU and helps the public to find specific interlocutors at the EU level. However, this website is not a tool to help to resolve any problem the public might encounter in the EU.

The SOLVIT¹⁵ network was launched by the European Commission in 2002 and is dedicated to solving problems brought to the attention of the network. The network’s motto is « solutions to problems with your EU rights” and its structure is composed of national centers,¹⁶ which receive the complaints of citizens or businesses for wrong application of EU law by a national administration. Support is then provided within 10 weeks to ensure correct application of EU law. The SOLVIT network is not an information center but a concrete tool to help citizens and businesses facing a problem of EU law within a national administration. Therefore, some Member States link their national web portal to SOLVIT.¹⁷

As of today, the most comprehensive website is “*Your Europe*”¹⁸ however it is mainly for those European citizens and their families that decide to move within the EU. A similar web portal called “*EU Go*”¹⁹ helps citizens and businesses to get information on how to establish themselves or how to provide services in another Member State. The web portal is useful as it is one point of contact for infor-

14. http://europa.eu/europedirect/index_en.htm

15. http://ec.europa.eu/solvit/index_en.htm

16. The national SOLVIT centers are part of each national administration. http://ec.europa.eu/solvit/contact/index_en.htm

17. In France, for example, the website of the administration has a link to SOLVIT <http://vosdroits.service-public.fr/particuliers/R35676.xhtml>

18. http://europa.eu/youreurope/citizens/index_en.htm

19. http://ec.europa.eu/internal_market/eu-go/index_en.htm

mation and enquiries about each Member States in most of the EU official languages. The portal was put in place with the assistance of the national administrations of Member States in the framework of the transposition of the Services Directive.²⁰

All of these web sites and portals are available from the official EU website “*Europa*”,²¹ however finding access to the above mentioned websites and web portals access is not always straight forward and user friendly. Since its creation, the official EU website has changed significantly. Although it now resembles the general website of a national administration, there is room for improvement, since it could still be more user-friendly for the general public.

Our recommendation would be to collect all the relevant information and help for the citizens and businesses found on the various web sites and portals of the EU and link it to a unique and user-friendly platform. Links for the administrative procedures, complaints and enquiries should also be included. This unique and general European administrative portal could be called “*my European Public Service*” and could either be a new EU homepage or be included in each of the existing general national administrative web portals of the Member States.²² The second option would enable the public to get used to navigating between national and European administrative procedures, helping to create what the authors call a European public space (Chevalier, 2014).

5. Conclusions et recommendations

All the recommendations contribute to reinforcing good administration in the EU one way or another. When combined, these could intensify the efforts of all EU actors to respect good administration, which would benefit all citizens, businesses and residents in the EU.

Good administration is of particular importance for those in direct contact with the EU institutions but as we have underlined,

20. Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market, OJ L376, p. 36–68.

21. http://europa.eu/index_fr.htm

22. Like <http://www.service-public.fr/>;

<http://www.guichet.public.lu/home/fr/index.html>; <http://www.belgium.be/fr/> ...

these interactions will only become more frequent as the European integration project advances.

Therefore, it seems vital to consider the following recommendations to advance the cause of good administration in the EU and build wider trust among the institutions and the public:

1. Information and communication on the Charter of Fundamental Rights of the EU and in particular, the right to good administration.
2. Information about the role and function of the European Ombudsman and active support for the Ombudsman's actions.
3. Formalization the European Code of Good Administrative Behavior in a Regulation of the European Parliament and the Council to allow its uniform application to all institutions and civil servants. An alternative recommendation is to carry on with the EU administrative procedural codification and finalize the project under the form of an EU Regulation.
4. More efficient information and access to the European administrative procedures and rights for all citizens from a unique web portal "my European Public Service" which could either be in the form of a new EU homepage or be included in each of the existing general national administrative web portals of the Member States.

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