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**THE EUROPEAN OMBUDSMAN: THE KNIGHT OF GOOD ADMINISTRATION AND THE
WATCHDOG OF TRANSPARENCY AND ACCOUNTABILITY OF EU BODIES**

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ABSTRACT

This paper aims at analyzing the role and functions of the European Union Ombudsman, by investigating the relevance assumed by this institution in the development of good administrative governance and in the enhancement of transparency and accountability of EU bodies in the exercise of their functions, acting in this way as a vehicle to advance democracy in the EU.

The unprecedented and hybrid nature of this body at Union level has always made its characterization opaque. Even if the figure of the Ombudsperson has been imported in Europe from nation State traditions, it has assumed unique features when introduced in the multi-level architecture of the Union. Primarily deputed to uncover maladministration issues in EU institutions and bodies, the European Ombudsman has always interpreted broadly its mandate, in this allowed by the absence of a clear notion of 'maladministration' and in the lack of a European Administrative Code.

It will be, therefore, seen how, *de facto*, this institution has always acted in a sufficiently discretionary manner and has mainly served as an instrument to approximate European citizens to the Union's institutions, assuring them a forum for complaints against their action and increasing in the meantime good administration in the Union as well as democratic legitimacy of EU bodies' activity.

KEYWORDS: Ombudsman – good administration – transparency – accountability – *ombudsnoms*
– Article 41 CFR – European Code of Good Administrative Behaviour

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1. Introduction

The figure of the Ombudsman, expression taken from Swedish and meaning ‘representative’¹, was imported from nation States’ tradition to the European landscape in the 90s², after a nearly twenty year-long debate initiated by Sir Derek Walker-Smith’s proposal to appoint a new kind of ‘agent’³ assigned to investigate on maladministration concerns involving the Union bureaucracy⁴. From these long negotiations, initially monopolized by the European Parliament (EP) – until 1985 European Council’s approval of the Adennino Committee’s report providing for the institution of the European Ombudsman (EUO)⁵ – an undefined body emerged, hybrid in nature, in its being a formally parliamentary control body acting *de facto* as quasi-judicial organ⁶.

The functional eclecticism of this newly introduced institution has its rationale in the multiple reasons that encouraged the former Communitarian institutions to its adoption.

In particular, since late 70s, the EP ‘started to recognize the increasing impact of Community laws on individuals’⁷ as well as the different ground of participation in decision-making afforded to them in the multi-level governance architecture of the forming Europe, compared to their national

¹ Magnette Paul, ‘Between parliamentary control and the rule of law: the political role of the Ombudsman in the European Union’ (2003) 10 Journal of European Public Policy 677, p. 678. Fabbriotti Alberta, ‘Ombudsperson’ (2009) MPEPIL available at <https://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e1737?rskey=dIroXK&result=1&prd=OPIL>>, accessed 26 August 2019, para. 1.

² The EUO introduction was provided for in the Maastricht Treaty, but formally adopted with Decision of the European Parliament 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (EUO Statute, subsequently amended in 2008). European Parliament resolution of 18 June 2008 on the adoption of a decision of the European Parliament amending its Decision 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (2006/2223(INI)); Decision of the European Parliament amending Decision 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties OJ C 286E , 27.11.2009, p. 172–176 (EUO Statute). Craig Paul, *EU Administrative Law* (Oxford University Press 2012), p. 742.

³ Magnette, p. 677.

⁴ Craig, p. 739. Friedery Réka, ‘The Role of the European Ombudsman in Dispute Solving’ (2008) 49 Acta Juridica Hungarica 359, p. 365. Nikos Vogiatzis, ‘One Ombudsman (EU) or Many (UK)? Interpreting the Singularity of Actors in the EU’ (2013) 19 European Public Law 739, p. 742-743.

⁵ Craig, p. 740-741.

⁶ Magnette, p. 678. Neuhold Christine and Năstase Andreea, ‘Transparency Watchdog: Guarding the Law and Independent from Politics? The Relationship between the European Ombudsman and the European Parliament’ (2017) 5 Politics and Governance 40, p. 41.

⁷ Reif Linda C., *The Ombudsman, Good Governance and the International Human Rights System* (Martinus Nijhoff Publishers 2004) p. 371.

realities⁸. As a consequence, the need arose to add a new brick in the Community's structure not only to legitimize it before the European citizens and 'to sugar them the pill of further (...) integration'⁹, but also and in particular to provide enhanced protection of their individual rights vis-à-vis communitarian 'expansive apparatus'¹⁰. The EUO was, consequently, depicted as an 'independent'¹¹ mechanism of extra-judicial control over the administrative activities of European executive, easier to attain for citizens compared to Courts¹².

The purpose of this work is to analyze the role and functions of the EUO, by investigating the relevance assumed by this institution in the development of good administrative governance and in the enhancement of transparency and accountability of EU bodies in the exercise of their functions, acting in this way as a vehicle to advance democracy in the EU¹³.

In pursuing this aim, the paper will be structured in three sections: Section 1 will provide a general overview on the EUO's mandate, emphasizing the powers conferred upon it and on the difference of its role compared to that pertaining to Courts; Section 2 will be related to the 'mission' of the EUO in promoting good administrative governance and, lastly, Section 3 will address how the EUO helps in filling the 'democratic gap' appropriately of the Union system.

2. Insight on the functions of the EUO

2.1 General overview on EUO's mandate: the notion of 'maladministration'

A general overview on EUO's mandate is presented in Article 2(1) of the Statute of the European Ombudsman: 'the Ombudsman shall help to uncover maladministration in Community institutions and bodies (...) and make recommendations with a view to putting an end to it'¹⁴. Despite the apparently clear wording of this provision, the lack of a consolidated definition of 'maladministration' has always made the identification of EUO's powers debatable¹⁵. In the Annual

⁸ Kostadinova Petia, 'Improving the Transparency and Accountability of EU Institutions: The Impact of the Office of the European Ombudsman' (2015) 53 *Journal of Common Market Studies* 1077, p. 1078. Magnette, p. 677.

⁹ Craig, p. 739.

¹⁰ Peters Anne, 'The European Ombudsman and the European Constitution' (2005) 42 *Common Law Review* 697, p. 699. Friedery, p. 360. Villani Ugo, *Istituzioni di Diritto dell'Unione europea* (5th edn Cacucci 2017).

¹¹ Nikos Vogiatzis, *The European Ombudsman and Good Administration in the European Union* (2018 Palgrave Mac Millan), p. 77: 'The European Ombudsman has to be independent both from the EU institutions and the member states (...). Such independence enhances citizens' trust towards the institution'. EUO Statute, Article 9.

¹² Craig, p. 740. De Leeuw Magdalena Elisabeth, 'The European Ombudsman's Role as Developer of Norms of Good Administration' (2011) 17 *European Public Law* 349, p. 351.

¹³ Kostadinova, p. 1077. Vogiatzis (2018), p. 67 flw.

¹⁴ EUO Statute, Art. 2(1).

¹⁵ Cadeddu Simone, 'The Proceedings of the European Ombudsman' (2004) 68 *Law and Contemporary Problems* 161, p. 174. Vogiatzis (2018), p. 20.

Report (hereinafter AR) of 1997¹⁶, Jacob Söderman, the first elected EUO, tried to delimit the concept of ‘maladministration’ as follows: ‘maladministration occurs where a public authority fails to act in accordance with a rule or principle that is binding upon it’¹⁷. Such conceptualization has been subject to criticisms: even though, in the same report, it was further added that EUO’s ‘first and most essential task’ must be to establish whether a Community institution or body has acted lawfully, meaning ‘in accordance with the Treaties, legally binding provisions of Community legislation, and the whole corpus of judgments of the European Court of Justice’¹⁸, the boundaries of the Ombudsman’s mandate have in practice been notably interpreted as broader than the mere control on the legality of EU bodies’ action¹⁹, including also the observance of non-legal standards²⁰. What has just been said was consolidated by the adoption by the EUO – followed by the EP’s approval – of the 2001 Code of Good Administrative Behaviour²¹, finalized to ‘concretize the rules and principles against which the Ombudsman could assess cases of maladministration’²² and to clarify what was intended, by EU legislator, with ‘right to good administration’ as provided for in Article 41 of the Charter of Fundamental Rights (CFR) (binding since the Treaty of Lisbon). Among the rules provided by the Code and to be applied by EU administrative bodies in their action not to encounter maladministration, on the one side principles involving typical legal standards are enlisted ‘laid down in Community law or in the Court’s case law as general principles of law’²³ (e.g. principles of non-discrimination and equality, right to be heard, substantive principles of proportionality, objectivity, impartiality and independence, duty to state reason, etc.); on the other side, ‘other principles of good administration’ are mentioned that, in the light of their ethical, social and cultural acceptance, constitute a constraint on Institution’s behavior and broaden the field of investigation of the EUO²⁴.

It can be, therefore, said, that the Code of Good Administrative Behavior, despite its non-binding nature, has contributed in ‘enhancing the standard of good administration by advising on the good

¹⁶ The Annual Report consists in an overview of the work conducted by the Ombudsman during the year, to be submitted to the European Parliament and presented at the Petitions’ Committee. See further Vogiatzis (2018), p. 20.

¹⁷ European Ombudsman Annual Report 1997.

¹⁸ De Leeuw, p. 353.

¹⁹ *Ibid*, p. 352.

²⁰ Craig, p. 756: ‘The concept of maladministration is not (...) exhausted in the concept of legality. It also includes rules and principles that for the purpose of Ombudsman’s investigations are considered to restrain the Union administrative behaviour even though they lack any legally binding force’. See also Harlow Carol and Rawlings Richard, ‘Firefighting and Fire-Watching: Courts and Ombudsmen’ in Harlow and Rawlings *Process and Procedure in EU Administration* (Hart Publishing 2014), p. 79.

²¹ European Parliament resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour (C5-0438/2000 - 2000/2212 (COS) OJ C 72E , 21.3.2002, p. 331–336 (European Code of Good Administrative Behavior).

²² Mendes Joana, ‘Good Administration in EU Law and the European Code of Good Administrative Behaviour’ (2009) European University Institute Working Papers LAW 2009/09 available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1554907> accessed 26 August 2019, p. 1.

²³ De Leeuw, p. 355.

²⁴ *Ibid*, p. 352 flw.

rules of conduct²⁵ to be applied by EU institutions. Nonetheless, it has not provided a concrete definition of what has to be intended as ‘maladministration’, consequently still leaving undefined the boundaries of EUO’s mandate.

The openness and unclear delimitation of EUO’s activity, according to some scholars, constitute the reason of the malfunctioning of this body, leading to erroneous overlaps between its prerogatives and those of the European Courts²⁶. According to other authors, on the contrary, it is exactly thanks to absence of a clear definition of the mandate that the EUO has the possibility to act in cooperation with other EU bodies, ‘filling the spaces’ not occupied by the activity of the latter,²⁷ with a sufficient margin of discretion.

It is at this point interesting to analyze the powers that are conferred upon the Ombudsman to identify and settle maladministration concerns.

2.2 The powers of the EUO

These powers are expressly provided by law as enucleated in Article 228 TFEU and can be distinguished in three categories: the power to initiate inquiries, investigative powers and remedial powers.

‘A European Ombudsman (...) shall be empowered to receive complaints from any citizen of the Union or any natural and legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies’²⁸.

That to receive and answer complaints lodged by citizens (term to be interpreted broadly, see Craig on the merit)²⁹, constitutes the Ombudsman’s ‘primary duty’³⁰, so called ‘reactive role’. Those complaints, as marked from section 2 of the 2018 AR, are mainly related to questions of ‘openness, transparency, and public accessibility to the EU institutions’³¹ and in the greatest majority of cases

²⁵ Simoncini Marta, *Administrative Regulation Beyond the Non-Delegation Doctrine* (Hart Publishing 2018), p. 150.

²⁶ Cadeddu, p. 175.

²⁷ *Ibid*, p. 355. Heede Katja, ‘Enhancing the Accountability of Community Institutions and Bodies: The Role of the European Ombudsman’ 3 *European Public Law* 587, p. 604. Vogiatzis (2013), p. 752.

²⁸ Consolidated version of the Treaty on the Functioning of the European Union OJ C 326, 26/10/2012, p. 47–390 (TFEU), Article 228(1).

²⁹ Craig, p. 742-743. Vogiatzis (2018), p. 17-18: ‘The Ombudsman can receive complaints from natural and legal persons. The nationality of a member state – EU citizenship – is not relevant, suffice to demonstrate EU residence at the time of the instance of the alleged maladministration’.

³⁰ *Ibid*, p. 747.

³¹ *Ibid*, p. 746. European Ombudsman Annual Report 2018, p. 7-17. As statistically reported (tab. p. 37), the 24.6% of inquiries closed by the EUO in 2018 are related to transparency and accountability.

(58.2%) filed against the European Commission³². Even though it is not necessary for the complainant to prove the personal interest in the subject matter of the case filed, nor to demonstrate eventual benefits depending on investigation's outcome (differently from petitions to the EP)³³, there are, nonetheless, some conditions to be fulfilled in order for complaints to be admissible: *in primis*, the complaint must allow the identification of the person lodging it and of the object; moreover, the complaint must be made 'within two years of the date the facts on which it is based came to the attention of the person lodging' it and 'must be preceded by the appropriate administrative approach to the institution and bodies concerned'³⁴. No complaints can be presented against the CJEU acting in its judicial role, as well as against the political activity of the EP or the action of entities set up by international law³⁵. Moreover, it has to be emphasized that 'the Ombudsman's remit does not extend to national authorities, even when they are implementing Union law'³⁶.

Besides the reactive initiation of inquiries, Article 228(1) TFEU entrusts the EUO with the power to activate its own apparatus on proper volition – so called proactive inquiries – when systemic issues are to be looked into in the public interest or are object of several complaints³⁷. It must be specified that this last function has to be considered as residual to the investigation on complaints-based cases³⁸.

When complaints are deemed as admissible, the EUO has the powers to 'conduct all the enquiries which he considers justified to clarify the suspected maladministration in the activities of Community institutions and bodies'³⁹. Therefore, the investigative powers granted to this office, are sufficiently broad⁴⁰. According to Art. 3(2) of the Statute, when any information or document is requested to Community institutions and body by the EUO, these are obliged to provide him the information/files indicated (some restrictions are specified in the case of sensitive documents). The same happens when information is requested to Member States authorities (Statute, Article 3(3)). If investigations are concluded and the EUO finds that there has been maladministration, 'the Ombudsman must seek to reach a friendly solution with the targeted institution or body in order to rectify the administrative irregularity (...) and satisfy the complainant'⁴¹. The EOU shall, therefore, attempt to settle the problem directly with the institution, making recommendations and, only if an amicable solution cannot be reached, the EUO 'will have to close the matter issuing a critical

³² *Ibid*, p. 36.

³³ Craig, p. 744. Vogiatzis (2018), p. 21.

³⁴ EUO Statute, Art. 2(3)(4)(8). Craig, p. 745-746.

³⁵ Craig, p. 746. Vogiatzis (2018), p. 19.

³⁶ Vogiatzis (2018), p. 18.

³⁷ Craig, p. 747. European Ombudsman Annual Report 2018, p. 32.

³⁸ *Ibid*.

³⁹ EUO Statute, Art. 3(1).

⁴⁰ Vogiatzis (2018), p. 26.

⁴¹ Craig, p. 751.

remark'⁴² to the EP. What must be emphasized is that 'Ombudsman's decisions are not legally binding and do not create enforceable rights for the complainants'⁴³. Consequently, it is up to the concerned body to decide whether or not to accept the recommendations of the EUO.

2.3 Ombudsman and Courts: alternative control-mechanisms?

Exactly the non-binding nature of the EUO's decisions marks one of the most relevant distinctions between Ombudsman and the Courts action. Although the EUO was initially designed as an alternative supervisory non-judicial mechanism to courts – for the review of administrative activities⁴⁴ – and even if *de facto* the Ombudsman operates similarly to courts when dealing with grievances arising from individuals, there are core differences between the *modus operandi* of Courts (meaning in particular the CJEU) and that of the Ombudsman in engaging in the 'reshape' of EU administration's activity, as well as in the outcome of their intervention. This leads to deny the likeliness of their functions⁴⁵. Whilst Courts are only deputed to check on the lawfulness of administrative behavior, 'the essence of Ombudsmanship is (...) to control administrative behavior for compliance with administrative ethics'⁴⁶. In this doing, Courts rely on existing norms and consolidated principles; instead, the EUO, as already emphasized can go beyond the mere control on legality⁴⁷. With regard to methodology, unlike courts, the EUO operates in 'strict cooperation' with EU bodies and agencies: the dialogue between the institutions concerned and the Ombudsman is, therefore, a direct one. As a consequence, the outcome of EUO's intervention is not comparable with that of judgments held before European judiciary. Whilst 'Courts operate through the evolution of general principles embodied in judgments that technically bind administration; ombudsmen operate through soft law recommendations and monitoring'⁴⁸. In this way the EUO succeeds in promoting new standards of good administrative governance that result effective, despite their non-binding nature. This is due not only to the ethical shared value of the standards *sic* elaborated, but also to the control on the compliance exercised by the same Ombudsman subsequently to his intervention. It is worthy to, conclusively, highlight that in the AR the EUO is called upon to report a follow-up on investigations conducted in the year, emphasizing also on how institutions reacted

⁴² *Ibid*, p. 752-753. EUO Statute, Art. 3(5-7).

⁴³ *Ibid*.

⁴⁴ And not for the review of legislative ones. It is, indeed, undisputed that the final word on the interpretation of EU law only remains with the CJEU. Vogiatzis (2018), p. 52.

⁴⁵ De Leeuw, p. 358-359. Harlow and Rawlings, p. 64-65, 91.

⁴⁶ *Ibid*, p. 359

⁴⁷ Craig, p. 757-758.

⁴⁸ Harlow and Rawlings, p. 91.

to the conducted investigations: this fact, furthermore, clearly encourage EU bodies to conform with EUO's recommendation⁴⁹.

3. The role of the EUO in the development of good administrative governance: source of soft-law?

It is, then, possible to affirm that the Ombudsman promotes good administration not only through the 'control and redress'⁵⁰ of European administrative apparatus (corrective function in response to maladministration concerns), but also through the development of '*ombudsnorms*'⁵¹? This issue has been harshly debated among scholars. If some authors in the years have contested the 'norms-developing role' of the Ombudsman, considering the lack of a sufficient democratic legitimacy of the EUO to engage in good-governance and standard-setting activities⁵², other authors, oppositely, identified in the Parliamentary nomination and control over the Ombudsman⁵³, as well as in the 'soft' nature (not comparable with legal norms developed by the legislator and the judiciary) of its 'behavioral norms' sufficient grounds to justify para-normative activity⁵⁴. In 2000, Bonnor stressed that, as with national Ombudsmen, also in the case of the EUO 'practice shows that the rule-making and educative function (...) are often prevailing features' in his mandate, more relevant than redress⁵⁵.

It can be, once again, reissued that the lack of a precise 'EU administrative code' indirectly confers autonomy to the Ombudsman in permitting him to consider his mandate – finalized to the promotion good administrative governance – not limited to the sole supervision of European bodies⁵⁶.

Furthermore, the standards elaborated by the EUO, as assessed, have solid basis in ethical behavioral norms generally accepted by EU institutions: 'hence the Ombudsman does not create norms that are alien to the historical, ethical and legal context in which he operates'⁵⁷.

Therefore, it does not sound incorrect to rely on that part of the doctrine considering the legitimacy of EUO's standard-setting role.

⁴⁹ *Ibid*, p. 81 and 91.

⁵⁰ In a definition of De Leeuw, p. 350: 'Control is when the supervisor seeks to influence policy for the benefit of the citizens as a whole, whereas redress is when the supervisor seeks to remedy to individual's grievance'.

⁵¹ *Ibid*, p. 358.

⁵² Leino Päivi, 'The Wind is in the North: The First European Ombudsman' (2004) 10 European Public Law 333, p. 363-364.

⁵³ EUO Stature, Art. 6, 8.

⁵⁴ Leino, p. 364.

⁵⁵ De Leeuw, p. 350. Taking from Bonnor Peter, 'The European Ombudsman: A Novel Source of Soft-Law in the European Union' (2000) 25 European Law Review 39, p. 39.

⁵⁶ *Ibid*, p. 364.

⁵⁷ *Ibid*.

4. The EUO as a vehicle to enhance democracy in the Union system: the ‘smiling face’ ensuring transparency and accountability to the impersonal EU architecture

A conclusive reflection to the analysis insofar conducted needs to be made with regard to the role of the Ombudsman in enhancing democracy of the Union system.

As anticipated in the introduction, ‘the creation of the European Ombudsman was a response to the concern that Community institutions are non-democratic, bureaucratic, opaque and remote from EU citizens’⁵⁸.

In systems of governance in which it is not only the nation State to exercise public power, openness, accountability and transparency permit those who are governed to maintain a ‘democratic check’ upon the action of those who exercise the power⁵⁹. Hence, to have a democratic system, information and other public administration services needed to be accessible to citizens and they must be granted broad participation in decision-making⁶⁰.

As shown in the detailed analysis on ‘EU’s democratic dilemma’, conducted by Petia Kostadinova in 2015, the primary problem of European multilevel governance stands exactly in the ‘limited channels for direct participation and representation of individual citizens’ to EU policy making as well as the lack of transparency and accountability in EU bodies’ action⁶¹.

The Ombudsman office, enabling individual citizens and residents to lodge complaints against the action of EU institutions, for sure, helps in attenuating this gap⁶². The EUO not only helps citizens to have access to documents not publicly available, permitting them to take part in the administrative proceeding (therefore, enhancing transparency and openness of EU structure), but through his investigations and follow-up actions – when maladministration concerns are identified – forces also EU bodies to provide explanations and justifications for their decisions, actions and policies, granting accountability for their institutional behavior⁶³. It has already been reported that the majority of complaints presented before the EUO have, indeed, as object issues related to openness, transparency, and accessibility to EU bodies and that, despite the non-binding nature of EUO’s recommendations, other institutions tend to conform their action according to his indications. In this

⁵⁸ Reif, p. 391. See also Vogiatzis (2018), p. 14: ‘The creation of this institutional novelty for the EU was fueled by the prospects of an incomplete political Union, whereby European citizenship would be established containing a number of rights, and also by discussion of ‘competence creep’, democratic deficit, and the need to bring citizens closer to the EU’.

⁵⁹ Peers Steve and Costa Marios, ‘Accountability for Delegated and Implementing Acts after the Treaty of Lisbon’ (2012) 18 European Law Journal 427, p. 427-428. See also Peters, p. 733: ‘Transparency is an indispensable condition of a functioning democracy. Without transparency, citizens cannot give an informed consent to government action’.

⁶⁰ Alemanno Alberto, ‘Unpacking the Principle of Openness in EU Law Transparency, Participation and Democracy’ (2013) HEC Paris Research Paper No. LAW-2013-1003 available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2303644> accessed 27 August 2019, p. 22.

⁶¹ Kostadinova, p. 1079.

⁶² *Ibid.* Reif, p. 391. Magnette, p. 689. Vogiatzis (2018), p. 58.

⁶³ Kostadinova, p. 1081-1083.

way the EUO endorses new standards of good administration at the same time, promoting democracy⁶⁴.

Moreover, the fact that the Commission is the institution involved in the highest majority of complaints is not by chance: The Commission has always been identified as the European executive body *par excellence*, in the exercise of its role of ‘guardian of the treaties’. Before the appointment of the EUO, ‘there was no legal means in the Community system for individuals to ‘guard the guardians’’⁶⁵, meaning to challenge the Commission’s action. As a consequence, permitting individuals to participate in the Commission’s activities and making this more transparent, the EUO helps in filling the democratic gap that has traditionally represented the Communitarian architecture⁶⁶.

It can be conclusively highlighted that, according to some authors – among these Nikos Vogiatzis – the promotion of democracy and the reduction of the democratic deficit in Europe has been the effective ‘constitutional priority’ leading to the adoption of the EUO Office in Europe, priority not identifiable in the mere necessity to improve the administrative efficiency in defeating cases of maladministration⁶⁷.

5. Conclusions

In light of the conducted analysis, it emerges how relevant the functions of the EUO are in the architecture of the Union. The Ombudsman is a key figure in understanding what the principle of good administration requires and to ensure the enforceability of the right consecrated in Article 41 of the CFR⁶⁸. Moreover, it has been addressed on the key prominence of his activity in promoting transparency and accountability of EU’s bodies action, serving in this way as a vehicle to enhance democracy in the Union⁶⁹.

Nevertheless, it cannot be said that the potentialities of the EUO have been insofar fully exploited: that of the Ombudsman is a young institution that ‘could be more active than it currently is’ if considered the broad margin of action it has in the absence of a positive EU administrative code⁷⁰. The yearly increasing number of complaints and investigations conducted by the institution – as evident from the 2018 AR – expresses the growing common knowledge and consciousness on the

⁶⁴ *Ibid*, p. 1089.

⁶⁵ Magonette, p. 686.

⁶⁶ *Ibid*.

⁶⁷ Vogiatzis (2013), p. 748.

⁶⁸ De Leeuw, p. 360.

⁶⁹ Vogiatzis (2018), p. 67 flw.

⁷⁰ *Ibid*, p. 293. De Leeuw, p. 360.

existence of this body; but the EUO should also benefit more in depth on the opportunity it has to ‘create (new) norms of good administration which might (...) one day crystallize into legal norms’⁷¹.

⁷¹ *Ibid.*