

Asociación de ciudadanos contra la corrupción y para la defensa del estado de derecho

v

European Ombudsman

Order of the General Court (Second Chamber) of 17 June 2025

(Action for annulment – Decision of the Ombudsman not to open an inquiry following a complaint – Act not open to challenge – Manifest lack of jurisdiction in part – Manifest inadmissibility in part)

*1. Action for annulment – Actionable measures – Concept – Acts producing binding legal effects – Decision of the European Ombudsman to close the examination of a complaint and not to open an inquiry – Excluded*

*(Arts 228 and 263 TFEU; European Parliament Regulation 2021/1163, Arts 2 to 4)*

*(see paragraphs 9-11)*

*2. Action for failure to act – Natural or legal persons – Actionable omissions – Decision of the European Ombudsman not to open an inquiry following a complaint or not to address recommendations – Excluded*

*(Art. 265, third para., TFEU)*

*(see paragraph 14)*

## Résumé

Hearing an action for annulment, which it dismisses in part on the ground of manifest lack of jurisdiction and in part as being manifestly inadmissible, the General Court rules, for the first time since the adoption of the new Statute of the European Ombudsman in 2021, ([1](#)) on whether decisions of the Ombudsman not to open an inquiry following a complaint can be the subject of an action for annulment.

The applicant, the Asociación de ciudadanos contra la corrupción y para la defensa del estado de derecho, is an association under Spanish law, the purpose of which is combating corruption and defending the rule of law.

On 28 August 2024, the applicant submitted a complaint against the European Commission to the Ombudsman. The Ombudsman informed the applicant, by letter of 18 September 2024, that, after examining the complaint, there was insufficient evidence to open an inquiry and that the complaint would be closed. After receiving a request from the applicant, the Ombudsman, by email of 27 September 2024 and by letter of 3 October 2024, reiterated her previous replies and responded to the applicant's request that she launch an inquiry on her own initiative.

The association brought an action for annulment against the decision contained in that letter from the Ombudsman of 3 October 2024.

## ***Findings of the Court***

The Court dismisses that action for annulment as manifestly inadmissible in that the contested decision does not constitute a challengeable act for the purposes of Article 263 TFEU.

In that regard, the Court notes that it follows from Article 228 TFEU and Articles 2 to 4 of Regulation 2021/1163 that the Ombudsman is to investigate complaints she receives in respect of instances of maladministration in the activities of the institutions, bodies, offices or agencies of the European Union and to conduct inquiries for which she finds grounds. ([2](#)) More specifically, the Ombudsman is to

dismiss complaints which are outside the scope of her mandate or which do not comply with certain procedural requirements, ( [3](#) ) where she finds that a complaint is manifestly unfounded, she is to close the file and inform the complainant ( [4](#) ) and, where she finds grounds for it, she may decide to open an inquiry. ( [5](#) ) In that context, she is to inform the complainant as soon as possible of the action taken on the complaint and may propose to the complainant and to the institution, body, office or agency concerned a solution to address the instance of maladministration to which the complaint relates; if that solution is accepted by that EU institution, body, office or agency, she may close the file. ( [6](#) ) Where an instance of maladministration is found following an inquiry, the Ombudsman is to inform the institution, body, office or agency concerned of the findings of the inquiry and, where appropriate, make recommendations. ( [7](#) ) Following that communication, the institution, body, office or agency concerned has three months to send the Ombudsman a detailed opinion, ( [8](#) ) following which the Ombudsman may close the inquiry and forward to the institution, body, office or agency concerned, and in certain cases to the European Parliament, a report in which she may make recommendations. Lastly, the Ombudsman is to inform the complainant of the outcome of the inquiry, the opinion received and any recommendations made in the report. ( [9](#) )

It thus follows from those provisions that the Ombudsman merely informs the complainant as soon as possible of the action taken on his or her complaint and that, where she detects an instance of maladministration, after referring the matter to the institution, body, office or agency concerned, she is simply to inform the complainant of the outcome of the inquiry and of the opinion given by the institution, body, office or agency concerned and of any recommendations that they have made.

In particular, after examining a complaint, the Ombudsman does not have the power to take binding measures and the report which she sends to the institution, body, office or agency concerned where she identifies an instance of maladministration does not, by definition, produce any legal effects vis-à-vis third parties, within the meaning of Article 263 TFEU, nor is it binding on the institution, body, office or agency concerned, which is free to decide, in the exercise of the powers conferred on it by EU law, what action to take in that regard.

The Court concludes from this that the Ombudsman's reasoned decision to close the examination of a complaint by taking no further action on it, including where no inquiry has been opened, does not constitute a challengeable act by means of an action for annulment, since such a decision does not produce legal effects vis-à-vis third parties, within the meaning of Article 263 TFEU.

For the same reasons, the Court notes moreover that assuming that the action seeks a declaration, by way of an action for failure to act based on Article 265 TFEU, that the Ombudsman failed to open an inquiry, or to send a report and recommendations to the Commission, such acts cannot be the subject of an action for failure to act under the third paragraph of Article 265 TFEU. The action for failure to act is intended to penalise the failure to adopt a legally binding act. The Ombudsman does not take binding measures in relation to the complainant, or indeed to the institution, body, office or agency concerned.

---

( [1](#) ) Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom ([OJ 2021, L 253 p. 1](#)).

( [2](#) ) Article 228(1), first and second subparagraphs, TFEU.

( [3](#) ) Article 2(4) of the Ombudsman Statute.

( [4](#) ) Article 2(5) of that statute.

( [5](#) ) Article 2(7) and Article 3(1) of that statute.

( [6](#) ) Article 2(10) of that statute.

( [7](#) ) Article 4(1) of that statute.

( [8](#) ) Article 4(2) of that statute.

( [9](#) ) Article 4(3) of that statute.