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The European Ombudsman: A Resilient Institution in a Turbulent, Evolving Administrative Order

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ABSTRACT

One relatively unstudied development in the European Union's evolving multilayered administrative system is the development of the ombudsman as a core institution of governance. At the national level, nearly all EU Member States have introduced an ombudsman. At the supranational level, there has been a European Ombudsman (EO) since 1995. This chapter sheds light on the strategies with which the EO proves itself able to build its capacity and adjust its institution successfully to the changing politico-administrative context. Drawing on an analysis of documents and a secondary analysis of existing empirical data, this chapter examines the institutional development of the EO over the past two decades. This chapter describes, first, the turbulent expansion of the European Union's administrative system in terms of both administrative and accountability institutions. It then focusses on the EO's development as an institutional ombudsman by examining three elements of its accountability capacity, together with the external, turbulent environment and political context in which it exists. The internal turbulence within the system may be seen in both the way the system is set up (administrative order and accountability landscape) and the way it works (accountability practices).

Introduction[1]

One relatively unstudied development in the evolving order of the European Union's multilayered administrative system is the development of the ombudsman as a core institution of governance. At the national level, nearly all European Union (EU) Member States have introduced an ombudsman. World-wide, hybrid watchdog institutions have been created as 'satellites' of Parliaments (Wilkins 2015), as 'review agencies' (McMillan 2013), and as 'integrity agencies' (Wettenhall 2012). An ombudsman has certain characteristics, such as some formal independence; an ombudsman's main task is to assist with parliamentary control of the executive as well as to act as a guardian of citizens' rights. An ombudsman's powers are non-binding on the executive (Stie 2013; Magnette 2003). At the EU level, there has been a European Ombudsman (EO) since 1995. The multilevel nature of the EU system, we argue, is turbulent, and this makes accountability challenging, particularly since existing accountability mechanisms are imperfectly adapted to such multilevel turbulence. The questions addressed in this chapter are how and why the EO has successfully developed its institutional capacity in the institutional landscape of the EU. What is the impact of the uncertainty and turbulence in the EU context facing the EO, in the way its accountability tasks are carried out? And, how can accountability be safeguarded through the EO when the EU administration is 'embedded in networks across levels of government' (Olsen 2015: 434)? It is argued that the EO's turbulent nature and environment has contributed to – not hampered - the resilience of the institution.

Building successful public institutions is a continuing and long-term goal for the EU, especially in the uncertain conditions found in its turbulent, multilevel administrative settings. The EO has managed to take root and to be reasonably effective in delivering results, earning legitimacy, and developing resilience despite the existence of that multilevel, turbulent politico-administrative system. As an accountability institution, it serves as part of a wider accountability landscape, as we will show, that safeguards accountability as part of a wider political order (Olsen 2015; Wille 2015).

The EO was created by the Maastricht Treaty as part of the provisions on EU citizenship and became operational in 1995. The first EO, Jacob Söderman, was succeeded by Nikiforos Diamandouros in 2003. The third, and current EO, Emily O'Reilly, took office in 2013. Elected by the European Parliament (EP), the EO investigates complaints of maladministration of EU institutions, bodies, and agencies, but also benefits from the power to initiate its own inquiries when appropriate. With the widening role of the executive branch of government in the EU system, it was felt that a separate institution was needed to deal with citizen grievances to ensure proper safeguards against mistake, negligence, and direct abuse of power by EU authorities (Stie 2013: 149).

This chapter sheds light on the strategies with which the EO is able to build its capacity and successfully adjust its institution to meet the changing political-administrative context. Drawing on an analysis of documents and a secondary analysis of existing empirical data, this chapter examines the institutional development of the EO over the past two decades. It describes the turbulent expansion of the European administrative system in terms of administrative and accountability institutions. It then focusses on the institutional development of the EO by examining three elements of its institutional capacity, along with the turbulent external environment and political context in which it exists. We will explain how environmental turbulence is an important driver for the EO's institutional development (see Figure 1). This turbulence may be seen in both the way the system is set up (administrative order and accountability landscape) and the way it works (practices). This chapter concludes by asking to what extent the multilevel nature of the EU political-administrative system is captured by the EO. Whereas the EU political-administrative order is a multilevel system, the EO may capture maladministration and misconduct mostly by EU-level institutions. A key challenge for the EO is, arguably, the EU politico-administrative order that produces turbulence of a scale (see below) that is difficult to manage by either regulators or account holders.

Figure 1 offers an overview of the turbulent context of accountability and the institutional capacity of the EO to address citizen grievances. Focus of this chapter is the left and center part of this model.
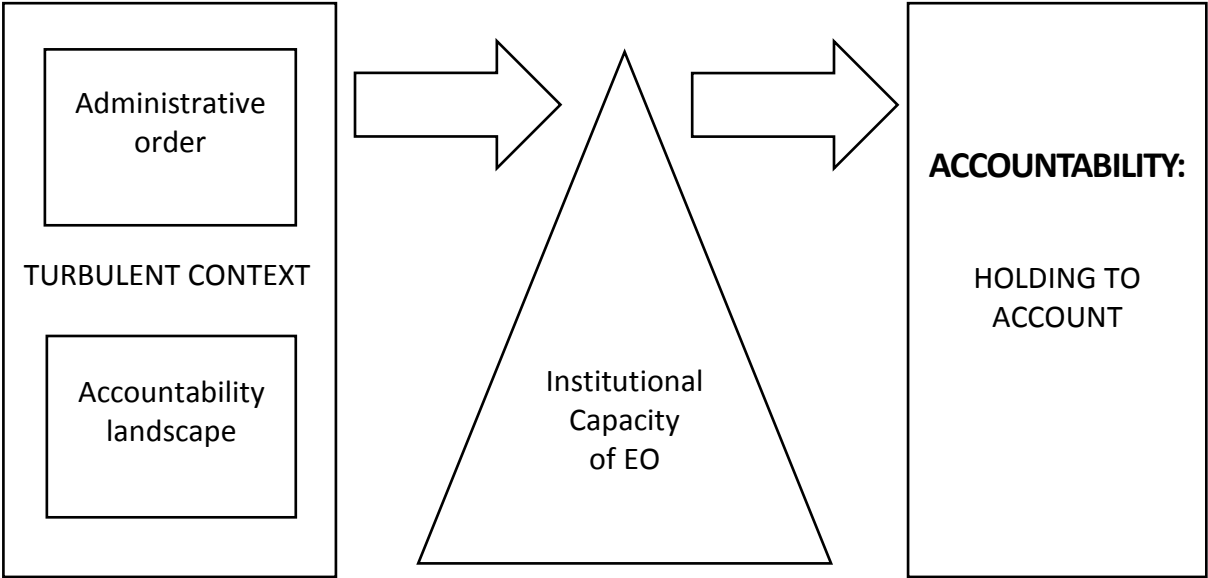

Figure 1: Theoretical Framework

BUILDING ADMINISTRATIVE AND ACCOUNTABILITY INSTITUTIONS IN A TURBULENT CONTEXT

Operating in the present-day EU requires acting within broad and turbulent government networks with multilevel politico-administrative capacities that allow the EU-level institutions to act relatively independently from pre-existing administrative orders and to govern closely with government institutions at the national level. The continuous change of institutionalized practices in the EU implies a situation of great uncertainty for many actors. Actors possessing differing goals and, potentially, conflicting interests make the networks intrinsically heterogeneous. Moreover, the turbulent context of political conflicts (i.e., the politically, economically, and socially fluctuating developments due to both external and internal changes) adds to the difficulty of building stable institutional practices and capacity.

On turbulence

Following recent theorizing regarding turbulence (Ansell et al. 2016), the concept of turbulence refers to four properties related to the interaction of demands for action: variability, consistency, expectation, and unpredictability. Turbulence occurs where the interaction of demands is experienced as highly variable, inconsistent, unexpected, and/or unpredictable. Secondly, turbulence is not just one property; it must be unpacked at three levels, all of which are relevant when discussing the EO:

- **Environmental turbulence:** Turbulence may be brought upon organizations by external factors – such as external actors, expectations, belief structures, shocks, etc.;

- **Turbulent organizations**: Turbulence may be embedded in organizations and institutions through shifting rules, reform of formal structures, staff overhauls, etc.;

- **Turbulence of scale**: Turbulence may arise at the interface between organizations and their environments, which is of particular interest in this chapter: when incongruences appear between regulatory structures and accountability structures. Turbulence of scale appears when governance solutions at one level cause challenges at another level. In effect, 'bad' solutions could be 'good' solutions, and vice versa: there may be unreliable parts in a system that make the system, as a whole, reliable. What is often not realized, for example, is the impossibility of combining tightly-integrated governance solutions at one level of government with tightly-integrated governance solutions across levels (Egeberg and Trondal 2015). The tension between, on the one hand, central steering and policy coordination across levels of government and, on the other, regional/local autonomy and coordination, is a well-known topic in research on federal states

and central-local relations within unitary states (e.g., Pierre and Peters 2005; Fenna 2012).

Turbulence, thus, is not only periodic and temporary exogenous phases that organizations encounter, but also, notably, it is an enduring feature embedded in organizations as well as at the interface between organizations. While implicit recognition of turbulence within organizations has a long historic path, the idea has rarely been explicitly theorized. Turbulence in organizations arises from enduring tensions within and across organizations, which produce ambiguity about what problems, solutions, and consequences to attend to at any time, as well as what actors are deemed legitimate and efficient. As suggested above, organizations and organized systems tend to live with turbulence of various kinds – some of these features are subject to design while others are subject to organizational evolution. Notably, *political organizations* are different than private organizations in this regard. Political organizations are 'created in order to handle conflicts' (Jacobsson et al. 2015: 35) and are, thereby, turbulent by design. Organized democracies have an embedded partisan responsiveness to a host of different, cleavages of conflict (Rokkan 1999) that private organizations clearly do not have. Cyert and March (1963) suggest three mechanisms for how a private organization may resolve conflicts of these kinds: through local rationalities, through acceptable-level decision rules, and through sequential attention to goals. Political organizations, arguably, can never solve such problems, but merely cope with them through organizational design. This is materialized in the organizational fabric of central administrations through the vertical and horizontal specialization of ministerial departments, through procedures for the recruitment of staff, through accountability mechanisms, etc. From 1952 onwards, the EU system has faced shifting hostile and uncertain environments, as well as more or less hostile Member States, and responded by erecting turbulent organizational solutions of various kinds (Wallace 1993). This chapter advocates that studying turbulence opens opportunities to rethink the institutional capacity of the EO when faced with a turbulent EU system.

Linking Turbulence and Resilience

Turbulent organizations may be resilient due to the creation of organizational capacities. Turbulence, thus, is not a deficit that damages organizations (Metcalfe 2000: 834), but a possible avenue for resilience.

Organizational capacities may, for instance, combine components from various organizational forms, making them compound and composite in nature. Such structures typically take the form of 'layering', whereby new forms are laid over existing forms rather than replacing such forms (Thelen 2003). Organizational capacities are observed within nation-states as organizational devices to accommodate administrative dilemmas (see Lægreid et al. 2014: 4). So-called post-NPM reforms are 'seen as supplementary adjustments producing increased complexity in public sector organizations' (Lægreid and Verhoest 2010: 290). Notable examples are organizational duplication, redundancy and overlap, coordination committees, political advisors, and organizational de-coupling. These 'hybrids' can be seen as compensatory measures and organizational capacity-building in practice. For example, building organizational

capacity within ministerial departments that partly overlaps agency staff ('duplication') may strengthen political steering of agencies without integrating agencies into ministries (Egeberg 2012). Another hybrid solution is organizational de-coupling. Loose coupling may create high order sustainability, as a failure at one place does not necessarily travel across all parts of the organizations. 'Bad' solutions may be implemented in parts of organizations but not, thereby, 'ruin it all'. Decoupling of talk, decision, and action (Brunsson 1989) may be seen as a tool for governments to satisfy multiple audiences at different levels. This approach also carefully introduces agency into the analysis. Means-end calculating reformists may carefully de-couple organizations in to parts in order to seek legitimacy from multiple institutional fields and thereby secure long-term organizational sustainability.

In practice, the institutional form of public-sector organizations can vary in their pursuit of specific functions and in the way they cope with the complexity and uncertainty of their turbulent environments (Ostrom 1990; Welsh 2014). Three core outcomes define an institution's adaptive capacity to a turbulent context: results, legitimacy, and resilience (Barma et al. 2014: 6). These three dimensions are deeply intertwined and interdependent. An institution's legitimacy depends not only on rules and on law, but also – at least partly – on its results or its proficiency at achieving important objectives. Likewise, an institution that is seen as legitimate is more likely to be resilient, and similarly, a more resilient institution has a greater opportunity to earn legitimacy and achieve results.

Turbulence in the Evolving European Order

A vast part of the literature on the EU's administrative system has centered on the emergence of a *multilevel* administrative system (Bauer and Trondal 2015; and Trondal and Peters 2013), which has since subdivided into a two-discipline debate. First, there is a political science debate that tries to theoretically and more broadly conceptualize multilevel governance (MLG) (Benz 2012; Hooghe and Marks 2001; and Marks 1993); and, second, a more recent public administration debate has arisen, which tries to understand the EU as a multilevel administrative system (MLA) (Bauer and Trondal 2015; Egeberg 2006; Trondal 2007; Benz 2015). Following the MLA track, Hofmann and Turk (2006) and Hofmann (2008) have conceived of the multilevel nature of the EU system as a nested network-administration, in which institutions at different levels of government 'are linked together in the performance of tasks' (Hofmann and Turk 2006: 583).

The MLA literature makes an important observation: the EU is a turbulent, multilevel administrative system coined by slightly hierarchized EU regulatory networks in which national agencies are 'double-hatted'. In addition to serving their respective parent ministries, such national agencies also find themselves being part of a multilevel EU administration in charge of practicing EU policies and, to some extent, preparing it. National agencies usually deal with the Commission and EU agencies *directly* and not via their parent ministry (Egeberg 2006; Trondal 2011; Bach and Ruffing 2013). The strengthening, and partial hierarchizing, of EU regulatory networks have been shown to affect the national ministry-agency relationship in significant ways: by taking part in such networks, national agencies become more autonomous and

empowered in relation to their respective parent ministries, even in the policy-formulation phase. This even happens in well-resourced national administrations such as the Dutch and German ones (Yesilkagit 2011; Danielsen and Yesilkagit 2014; Bach and Ruffing 2013; Bach et al. 2014; Maggetti 2014). By being part of a multilevel EU administration in charge of transposing EU policies, studies show that the respective ministries usually take the lead, although the relevant agencies are involved to a considerable degree. In the *application phase*, on the other hand, ministries tend to be more detached (Egeberg 2006). The latter seems to be particularly true in situations where the Commission harbors superior capacity and expertise relative to the Member State's administration, which may often be the case as regards *new* Member States (Martens 2008). However, at least in well-resourced administrations, the parent ministry seems to take the lead at the application stage, too, if dossiers become highly *politicized* and contested. The parent ministry also strengthens its role the more its organizational units *duplicate* those of the agency (Egeberg and Trondal 2009; Wockelberg 2014).

Since delegation from the Member States to EU agencies has been more common than delegation from the Commission to such agencies (Dehousse 2008), we are witnessing supra-nationalization of regulatory networks in which EU agencies constitute important nodes. One vital factor indicating a high level of governmental control over EU agencies is the numerical dominance of national government representatives on agencies' management boards (Kelemen 2002; Kelemen and Tarrant 2011). However, studies have revealed that management boards have weaknesses that might undermine such a control function: for example, they meet relatively seldom, they have too many members, and government representatives seem, on average, to be less prepared for the meetings than Commission representatives (Busuioc 2012; Busuioc and Groenleer 2012). In addition, government representatives are typically coming from corresponding national agencies, rather than from ministries (Suvarierol et al. 2013) and are subsequently sheltered from political steering signals (Egeberg 2012). Concomitantly, government representatives are not typically provided instruction from back home (Buess 2015). Other studies have shown that EU agencies have become closely linked to particular Commission departments, which usually see themselves as 'parent' directorates-general (Egeberg et al. 2015). EU agency managers attach more weight to the concerns of the Commission than to those of any other institution and they perceive the Commission as the most influential actor in their task environment (Egeberg and Trondal 2011).

In organizational terms, the underlying principle of specialization for this multilevel administrative system is *purpose* or *sector*; that is, governance is expected to take place via sectorally limited sub-units. This organizational format is likely to trigger sectoral cleavages while simultaneously fostering standardization and uniformity *within* a particular policy field across territorial units. Moreover, a multilevel structure of this kind seems to rest on two institutional conditions (see Egeberg 2006):

– First, vertical specialization of administrative systems: national agencies that are organized at arm's length from their respective parent ministries ('vertical specialization'), make them available for direct coupling to supra-national bodies; and

– Second, capacity-building at the EU level: 'adequate' administrative capacity at the supra-national level (notably within the European Commission) gives supranational executive capacity that may influence the policy-formulation and implementation behavior of national agencies.[2]

The Evolving EU Accountability Landscape: Moving Towards an Ever Denser Union

'Effective oversight relies increasingly on mutually supportive networks of accountability' (Wille 2015: 16). The EU's accountability landscape evolved significantly over the past two decades and included the establishment of several new actors. The accountability landscape is not a static structure; it is slowly changing (Wille 2015; Olsen 2015). Accountability is defined by Bovens (2007: 450) as 'a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences.' An accountability forum, can be a specific person, such as a superior, a minister or a journalist, or it can be an agency, such as parliament, a court or the audit office (Bovens 2007: 450). Building the EU into a polity that appeals to democratic standards of legitimacy implies the institutionalization of a variety of established systems, forums, procedures, and mechanisms prescribing who is accountable to whom for what (Olsen 2013: 450). Alongside the allocation of more power and financial resources within the EU, and the transfer of functions from national to supranational institutions, the political debate about democracy and legitimacy in the EU grew more intense in the late 1990s, raising questions about the accountability of the EU's executive bodies. Developing the institutional landscape of accountability is, thus, part of the struggle to achieve 'good' government at the EU level and the process of legitimization through accountability (cf. Laffan 2003: 77).

Some of the most important actors who make up the landscape are the Court of Justice of the European Union (CJEU), the EP, the European Court of Auditors (ECA), the EO, the European Anti-Fraud Office (OLAF), and the national Parliaments. The demand on these institutions is increasing. Some indicative figures in this regard are presented by Wille (2015) show that between 2006 and 2014, parliamentary questions practically doubled, while special reports from the ECA rose from 11 to 24, its specific annual reports grew from 23 to 51, and its opinions from 8 to 14. At the same time, the number of cases commenced, completed, or pending before the CJEU is more or less stable. The European Parliament, being directly elected by European citizens, enjoys direct democratic legitimacy (Peters 2005) and its empowerment left a mark on the entire landscape of accountability. Furthermore, it is to be noted that the accountability landscape physically expanded and individual institutions are not only working

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[2] A growing body of literature on EU implementation at the application stage indicates that regulatory networks ('sectoral specialization') contribute to harmonizing guidelines and practices across countries (Eberlein and Grande 2005; Egeberg and Trondal 2009; Groenleer et al. 2010; Maggetti and Gilardi 2011; Gulbrandsen 2011; Maggetti 2013; Versluis and Tarr 2013). Such a move is particularly relevant for understanding what happens in the application phase since the national political leadership is partly circumvented in the sectorally based structure.

more and more together among themselves, but also with the political forums at the supranational level as well as administrative and political forums at the national level. This networking trend deepens the influence of the accountability landscape on the democratic nature of the EU.

THE EVOLVING ACCOUNTABILITY CAPACITY OF THE EUROPEAN OMBUDSMAN

One of the major ways for ombudsman institutions to deal with uncertainty and environmental turbulence, is to develop its institutional capacity along three fronts (see Figure 2) (cf. Barma et al. 2014: 6):

a. *Results*: The institution must exhibit sustained improvements in key outputs and outcomes; it has to achieve measurable and gradually improving results with respect to a sizeable portion of its core mandate.

b. *Resilience*. The institution must be durable, sustaining, and enhancing results over time, and able to adapt to changing circumstances, anticipate new challenges, and cope with exogenous turbulence.

c. *Legitimacy*: The institution must derive authority from the political order, actors, and institutions with which it holds meaningful relationships.
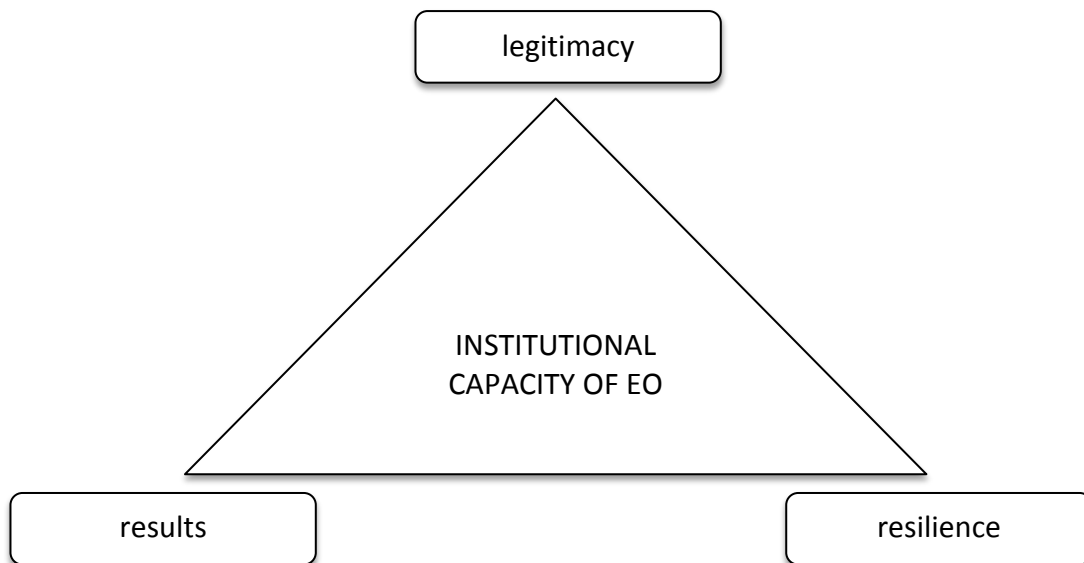

Figure 2: Core elements shaping the accountability capacity of the EO

The next sections describe the development of the EO's institutional capacity in terms of its results, resilience, and legitimacy and we consider the impact of the turbulent context.

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Results: Shaping the Standards and Safeguarding Good Administration and Transparency

Over the years, the EO has dealt with an increasing number of complaints (Wille 2015). The EO had a record number of inquiries opened (465) and closed (390) in 2012. The 465 inquiries opened constituted an 18% increase when compared to 2011, and 390 inquiries closed (then a new record) increased by 23% compared to 2011. Although not displayed in the figure, most inquiries opened by the EO in 2012 concerned the European Commission (245 inquiries or 53% of the total).

The large number of inquiries allows the Office of the EO to detect systemic failures. The key to its success, according to Magnette (2003), is the hybrid nature of the EO: '[t]he powers of the [European] Ombudsman, limited as they are, give him the opportunity to combine the instruments of parliamentary scrutiny and judicial control [*sic*: review] in an original way'. On the one hand, acting like a court, the EO addresses individual complainants by defining and applying 'general principles' to solve the inquiries it receives (and, through its interpretations, by building a body of examples of 'good administration'). The EO is *safeguarding* certain principles or standards. On the other hand, acting as a parliamentary organ, with the strong support of the EP, the EO uses its powers of inquiry and proposition to suggest wide-ranging reforms of EU governance (and, in doing so, promotes the principles of transparency, participation, and explanation). It is, thereby, *shaping* the standards.

The Treaty that established the European Economic Community (now, the Treaty on the Functioning of the EU, TFEU) empowered the EO to act upon 'instances of maladministration in the activities of the community institution and bodies', but it did not define what maladministration actually entailed (Vogiatzis 2014). The EO then worked hard to get the broadest possible definition adopted (Vogiatzis 2014), given that 'the open ended [*sic*] nature of the term is one of the things that distinguishes the role of the Ombudsman from that of a judge' (European Ombudsman, Annual Report 1995). Two years later, the EO wrote that 'maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it' (European Ombudsman Annual Report (EOAR) 1997: 23). This is the definition most cited in subsequent EO reports and elsewhere (Vogiatzis 2014).

General patterns of neglect can be addressed through the development of standards (cf. Abraham 2011). If, for instance, the EO feels that the reactions to the issues the EO raises can improve, the EO may consider developing standards. From early on, the EO took the role of promoter for the principles of transparency and accountability that it considers inherent to the concept of 'good administrative practices' (European Ombudsman 1995: 5). With that, it was clear that the very first EO would go beyond the mere handling of cases of maladministration (Magnette 2003: 681). In the years following his tenure, also carry marks of the same principles and, in recent years, the EO has provided several examples of 'standard setting', by developing the Public Service Principles (2012) and the new Code of Good Administrative Behaviour (2013).

From the very early years of the office's inception, the EO particularly stressed the value of transparency in the EU. Ombudsman Jacob Söderman gained a reputation for promoting norms for openness in the EU (Magnette 2003; Erkkilä 2012: 65). With the strong support of the EP, the EO uses its power to investigate and to suggest wide-ranging reforms in European governance (European Ombudsman and Authors 2010: 122). The Office of the EO has successfully promoted principles of transparency, participation, and explanation. One example is its work regarding the accessibility of documents from the Community/EU institutions and bodies. Such accessibility has been the subject of intense lobbying by the EO. Several inquiries initiated by the EO, itself, and EO Special Reports have been dedicated to this subject.

Results, standard-setting, and safeguarding have contributed to the generic adaptive capacity of the EO to change its operating environment. The influence of the EO, to a large extent, is based on soft (non-regulatory) power that is fed by a solid track record handling complaints, with the knowledge that not only do such complaints form the basis for detecting systemic failure, but also the basis for thoroughly substantiated recommendations.

Resilience – Network Integration

If the EO has moved, over time, towards establishing networks for its continuing operation, that arguably contributes to its resilience. The search for enhanced accountability in the EU has contributed to the emergence of links to and forms of social organization among the EO and different forums in the EU accountability landscape. These networks are emerging horizontally between the political and administrative forums at the supranational level and, vertically, ombudsmen cut across the different levels of governance.

Horizontal relationships are those that are between political and administrative forums at the supranational level (Wille 2015). The growing cooperation of the ECA, the EO, and the EP can be perceived as part of a wider attempt to enhance the democratic fabric of the EU. The strategy called 'Towards 2019' explicitly states that the mission of the EO is to serve democracy by working with the EU institutions to create more effective, accountable, transparent, and ethical administration (EOAR 2014). To be more effective, institutions addressing legal, political, financial, or administrative accountability are increasingly working closer together and closer together with the political forums. An example is the collaboration between the EO, the EP, and the ECA. Another example is the collaboration between the EO and the CJEU with a view to interpret, influence, and apply law and principles. While the exchanges with the CJEU may somehow be more indirect, the interpretation of law and principles is a subject on which both institutions wish to exchange thoughts (Diamondouros 2005: 236).

One aspect of the environmental turbulence of the EO is the 'parliamentarization' of the EU (Wille 2015), from which emerged mechanisms that guard democratic accountability in the EU. This has made the horizontal networks relevant. The strongest ally of the EO, horizontally, is the EP. The EO, a formal parliamentary body, maintains strong relations with the EP that, over the years, has been significantly empowered. This empowerment of the EP and the EO are perceived to be signs that the accountability landscape is firming up more and more around the

institutions and bodies that make up the EU (Wille 2015). In a sense, the increased weight of the EP has also positively reflected on the work of the EO.

Vertically, there is a multilevel network called the European Network of Ombudsmen (Network), which Network was also mentioned in the EO's strategy as a priority under the visibility objective (EOAR 2014). The implementation of EU Law falls, in many instances, within the mandate of national authorities and alleged infringements cannot, therefore, be addressed by the EO. Instead, complaints from EU citizens regarding a possible breach of EU Law, as implemented by national authorities, have to be referred to the relevant national ombudsmen. It is in the EO's interest, because it frequently receives complaints that should be addressed to national ombudsmen, to further develop 'an effective and close system of cooperation to safeguard the rights of European citizens' (EOAR, 1996).

The first step was to set up the Network: by the end of 2000, the online version of the network, called the EUOMB, was launched. Since 2002, the membership of the EUOMB Summit has included the national ombudsmen in countries applying for EU membership (EOAR 2002). The EUOMB was replaced by a new forum, called Extranet, in 2011 (EOAR 2011).

Ten years after inception, the EO reported to the EP that '[t]he network has steadily developed into a powerful collaboration tool for ombudsmen and their staff and serves as an effective mechanism for cooperation on case handling. Experiences and best practices are shared via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service' (EOAR 2013: 117). In terms of case handling, the numbers illustrate the developments described above. In 1997, a year after the launch of the Network, the EO aided two national ombudsmen with queries related to the national implementation of EC Law. Similarly, the EO referred, with the consent of the complainants, three complaints concerning issues with national authorities to the respective national or regional ombudsmen or similar bodies (EOAR 1997). In 2005, 91 cases were directly referred to national or regional ombudsmen, whereas another 945 complainants were advised to take up the matter with their national or regional ombudsman (EOAR 2005). In 2013, the number of cases referred to national or regional ombudsman or similar bodies was as high as 662 (EOAR 2013).

Signs of institutional maturation can be seen from an institution's agenda, membership, and documentation articulating its intentions. The agenda of the Network seminars not only focuses on sharing experiences, case handling, communication, and Network visibility, but also on substantive matters, such as the code for good administration and the role of ombudsmen in the protection of human rights (EOAR 2006–2013). The Network opens its biannual seminars to new participants, including representatives from countries applying for membership in the EU, but arrangements have also been made for regional ombudsmen to meet and interact with the EO. Seen as a key step in building a clearer public identity for the Network, the member ombudsmen, during the Network's Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries, adopted a statement that informs citizens and other potential users of ombudsmen services of 'the benefits that they can expect to obtain when they turn to

a member of the Network about a matter that falls within the scope of EU law' (EOAR 2007: 103).

The ever-stronger Network represents a 'verticalization' of relationships. This has also happened in other parts of the EU's accountability landscape. Increasingly, in light of the expanding mandate, the institutions and bodies making up the EU's accountability landscape interact on multiple governmental levels, including supranational, inter-governmental, regional, and national levels. An example is the development of the Public Service Principles that were published to guide the conduct of EU civil servants. Before their publication in 2012, these principles were discussed within the Network and, thus, take into account best practices from the Member States (EOAR 2012). Bearing in mind the expansion of this verticalization trend, it is even more pertinent today, given the large number of new Member States that have recently joined the EU.

Given the turbulence of scale in which the administration continues to evolve, these vertical relationships between institutions have become essential. The development of the Network fits this context. The Network can be seen as a manifestation of verticalization on the part of the EO. In its quest for more democracy and accountability, the EO seems to have carved out a role for itself as the coordinator of standardization processes concerning good administrative behavior and fundamental rights promotion and observance in the EU.

Legitimacy – A Pillar of Administrative Justice

It is crucial to the accountability capacity of the EO that it garners legitimacy. The legitimacy of the ombudsman is best understood and conceptualized through the recognition that ombudsman institutions all over the world are central part of achieving 'administrative justice' (Gill 2014). There are generally two ways for ombudsman institutions to prevent maladministration giving rise to injustice: fire-fighting and fire-watching, on the one hand, and fire-prevention, on the other hand (Stuhmcke 2012). The first orientation is a reactive one and represents the traditional functions of most 'classical' ombudsmen. A second orientation, in addition to the core, classical complaint handling function, is an fire-prevention role in which monitoring and sometimes advising on reforms and administrative improvement represents a move towards a system-fixing understanding of the role of the ombudsman (Stuhmcke 2012).

The EO plays both roles. It ensures that European administrative bodies and those who exercise administrative functions make fair and just decisions. The EO's role as a complaint handler continues to be its core function: it is the main mechanism for providing redress when things go wrong. In this fire-fighting role the EO acts as a provider of individual administrative justice, assuring both minimal legal standards (the rule of law) and going beyond them (good administration) in protecting citizens from abuses of power.

But, the EO also operates more and more as a system-fixer. Using the knowledge that the EO draws from handling complaints, it develops alternative initiatives to improve administration by EU institutions and bodies. With an expanding case load, and with an interest in reducing or

even avoiding future complaints of a nature already addressed, such alternative initiatives have, over time, become larger in scope. In a sense, this is where the EO started fire watching and fire preventing in addition to firefighting.

- One EO initiative shares lessons learned from earlier cases, by publishing 'star cases' in the EO's Annual Reports. These 'star cases' highlight best practices that show 'how best to react to issues that the Ombudsman raises' (EOAR 2009).

- Another EO initiative develops codes or principles, such as the Public Service Principles (2012) and the Code of Good Administrative Behaviour (2013).

- A third EO initiative pertains to the EO's pro-active advocacy for such published principles, as well as for matters, such as making the Charter of Fundamental Rights legally binding, in order to firm up the principles of good administration by establishing a 'right to good administration'.

The 20-year trend, which indicates that the EO uses its discretion to refer complaints back to EU bodies while concentrating on systemic work, may raise concerns about the way in which that trend might affect the core role of the ombudsman. One of the perils is that the ability of the EO to resolve disputes and safeguard administrative justice through redress of complaints is, potentially, compromised by the EO's shift of emphasis. A strong focus on quality improvement may mean that the EO will run the risk of failing to protect individual complainants and, thus, remove an important mechanism available for the provision of redress for individual citizens. The move toward fire prevention or the system-fix approach bears the risk, according to Gill (2014: 670), that the EO is 'no longer a "citizen's defender" oriented towards citizens and focused on settling their disputes', but comes too close to being part of the EU machinery.

CONCLUSION

The turbulence in the evolving EU administrative has arguably turned the EO into a resilient institution. In terms of achieving administrative accountability, the EO has increasingly developed standards for good practice with an emphasis on transparency and principles of good administrative behavior, while also using its networks to further improve swift and accurate complaint handling. Its contribution to the overall accountability landscape lies in this observation. Indeed, as the expanding EU accountability landscape has evolved over the past years, so has the EO. The accountability landscape 'verticalized' significantly as the EO engaged in multilevel governance networks. The multilevel European Network of Ombudsmen has matured over the past two decades and the EO has tried to build institutional capacity to operate in that multilevel administrative order. Moreover, environmental turbulence has been an important driver for the growth of the EO's institutional development (see Figure 1). This turbulence is seen in both the way the system is set up (administrative order and accountability landscape) and the way it works (practices). The question, however, remains as to the extent to

which the multilevel nature of the EU politico-administrative system is captured by the EO. Whereas the EU politico-administrative order is a multilevel system, the EO may capture maladministration and misconduct mostly by EU-level institutions. One key challenge for the EO is, arguably, that the EU politico-administrative order produces turbulence of scale that is difficult to manage either by regulators or by account holders.

With the strong encouragement of the EP, the EO develops its capacity to be both an effective fire watcher and fire preventer. It is true that the EO's recommendations are not legally binding and it is not a formal lawmaker. Still, the EO's soft power seems to have a broad reach and has already shown itself to be able of instigating governance and legal reform. With its evolving networks, both horizontal and vertical, it is expected that such soft power will expand faster and will have a greater impact on administration at the national level.

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