
EUROPEAN PARLIAMENT

Working Documents

1979 - 1980

6 April 1979

DOCUMENT 29/79

Report

drawn up on behalf of the Legal Affairs Committee

**on the appointment of a Community Ombudsman by the European
Parliament**

Rapporteur: Sir Derek WALKER-SMITH

On 16 March 1978 the Bureau of the European Parliament referred the proposal by the European Conservative Group that the European Parliament should appoint an ombudsman for the European Community to the Legal Affairs Committee as committee responsible and to the Political Affairs Committee and the Committee on the Rules of Procedure and Petitions for their opinions.

The Legal Affairs Committee appointed Sir Derek Walker-Smith rapporteur on 17 April 1978.

On 22 March 1979 the committee examined a draft report and adopted its motion for a resolution and its explanatory statement with 11 votes in favour, 0 against and 1 abstention.

Present: Mr Scelba, acting Chairman; Sir Derek Walker-Smith, rapporteur; Mr Broeks; Mr Calewaert; Mr de GaayFortman; Mr de Keersmaeker; Mr Fletcher-Cooke; Mr Luster; Lord Murray of Gravesend; Mr Pianta; Mr Shaw and Mr Sieglerschmidt.

The opinion of the Political Affairs Committee is attached to this report.

The Committee on the Rules of Procedure and Petitions will be instructed (paragraph 2 of the motion for a resolution) to draw up a report on this matter and so has not given an opinion at this stage in the procedure.

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	6
<u>Annex</u> : Views of National Ombudsmen	14
Opinion of the Political Affairs Committee	20

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the appointment of a Community Ombudsman by the European Parliament

The European Parliament,

- having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 29/79),
 - conscious that Community law increasingly affects the lives of Community citizens,
 - aware that existing means of redress for citizens in respect of action by public authorities in the administration of Community law are not always adequate,
 - noting that experience in many countries has shown that an independent extra-judicial institution such as the Ombudsman can provide a flexible and effective system for controlling the executive, ensuring that the law is justly applied, and protecting the citizen,
 - recognizing that the establishment of a Community Ombudsman would probably require the use of the lengthy procedure for amendment of the Community Treaties and involve considerable delays,
1. Decides that as a matter of principle it is desirable to institute a Parliamentary Commissioner with the task of examining complaints on behalf of the Community citizen and advising him on the means of redress available;
 2. Instructs its Committee on the Rules of Procedure and Petitions to report on the procedure to be followed for the appointment of the Parliamentary Commissioner and on how his responsibilities are to be defined in relation to those of the Committee on Rules of Procedure and Petitions;
 3. Instructs its President to take all appropriate steps to enable Parliament to appoint the Commissioner as soon as possible;
 4. Instructs its President to send this resolution and the report of its committee to the Council and Commission and, for information, to the national ombudsmen, parliaments and governments of the Member States.

EXPLANATORY STATEMENTI. INTRODUCTION

1. In the last twenty years the number of ombudsmen - federal, national and regional - throughout the world has increased greatly. At the time of the signing of the Treaty of Rome there were only a handful; now, nearly fifty. Within the European Community, the first ombudsman was appointed in Denmark, in 1954. Since then offices of a similar kind have been established in the United Kingdom (the 'Parliamentary Commissioner for Administration') and in France (the 'Médiateur'). In the Federal Republic of Germany there is an ombudsman for the Armed Forces at federal level, and one at Land level in Rheinland-Pfalz. In Italy, there are two regional ombudsmen, in Liguria and Tuscany. Proposals to set up similar institutions are also currently being discussed in Belgium, Ireland and Luxembourg.

2. The widespread and rapid increase in the number of ombudsmen over the past twenty years reflects a growing recognition of the need to protect the individual against maladministration and unreasonable action by public authorities. In recent years government regulation of everyday life has increased enormously; this needs to be counterbalanced by suitable means of redress for the individual. It is not enough to ensure the protection of fundamental human rights; there also needs to be the additional guarantee of protection against unwarranted and injurious interference by the executive. Even in countries with a highly developed system of administrative law it has been realised that the traditional judicial remedies do not always prove to be speedy enough to give adequate redress. To assist the individual, what is needed is a system of control which is rapid, flexible and simple.

3. These characteristics are shared by the different types of institution which are covered by the term 'ombudsman', since the original Swedish model, while widely imitated, has often been substantially adapted in line with the constitutional, legal and social traditions of the country concerned. Sometimes there is a single ombudsman, sometimes several; some respond to complaints from individuals, some must be approached through a member of parliament, some can begin inquiries on their own initiative; some may merely question acts of administration, some may criticize the laws on which these acts are based. Methods of appointment, of reference and powers of investigation also differ widely.

II. THE NEED FOR AN OMBUDSMAN AT COMMUNITY LEVEL

4. In the possible appointment of an Ombudsman for the European Community the initial question must be whether an institution of this kind is in fact needed at Community level. But the next is almost as important - what kind of ombudsman would best answer the particular needs of the Community citizen in his relations with the Community institutions? It is in the light of this basic question as to the role and function of a Community ombudsman that a number of more detailed questions must then be considered: the legal instrument to be used for the creation of the ombudsman; the method of appointment; the ombudsman's powers and duties; the procedure for complaints; the ombudsman's links with the European Parliament. Finally, it will be important to consider the Community ombudsman's relations with his counterparts in the Member States.

5. The creation of a Community ombudsman has been the object of increasing concern over recent years. Interest has been particularly lively within the European Parliament. The matter was raised briefly in a policy document of the European Conservative Group, 'Our Common Cause', in September 1974. Written questions on the subject have been asked by Lord O'Hagan¹, and Mr Dondelinger². On 12 January 1977 Mrs Ewing's question³ to the Commission in Question Time was followed by a brief discussion. The initial answer by the President of the Commission is of particular interest:

"The Commission is fully aware of the importance of dealing sympathetically and effectively with any complaint which touches its actions as they concern individual citizens of the Member States. It therefore attaches higher priority to the manner in which it investigates complaints put to it by individual citizens or by Members of the Parliament. The way in which they have been dealt with in the past has, I believe, been generally satisfactory, but the Commission retains an open mind about possible measures in the future. In such future consideration, the idea of an ombudsman is one which may certainly be taken into account."

1 No.663/74 to the Commission - see OJ No.C 86 of 17.4.75, p.54

2 No.750/76 to the Commission - see OJ No.C 50 of 28.2.77, p.42 and No.751/76 to the Council - see OJ No.C70 of 21.3.77, p.14

3 No.17 - see Debates of the European Parliament for January 1977, p.66

6. The creation of a European ombudsman has also been discussed by the Council of Europe. Following a meeting held with national ombudsmen, the Parliamentary Assembly's Legal Affairs Committee's report¹ mentioned the possibility. Its conclusion was that 'at this stage, an integrated European legislation coupled with an administration to enforce it does not exist - except for the human rights field - among the eighteen Member States of the Council of Europe...However, where and when a European administration or European civil service already exists, e.g. within the European Communities...serious thought might be given to the appointment of an ombudsman by the European Parliament...'

7. In the press there have been a number of articles about a Community ombudsman. More generally there is a widespread feeling that all is not well in Community decision-making, and in particular that many decisions taken are ill-judged because those taking them are not as well-informed as they might be.

8. It should also be remembered that both the chairman and other members of the Legal Affairs Committee have received an increasing number of letters of complaint and enquiries from individuals about the operation of the Community as it affects them. Several, for example, have complained about the way in which the Social Security arrangements have been applied to those who have chosen to take advantage of the freedom (under Article 48 et seq. EEC) to travel from one Member State to another in order to work. These are the sort of complaints which would best be dealt with by an ombudsman.

9. Among those most able to judge the need for a Community ombudsman are undoubtedly the present national ombudsmen in Member States. There are currently four: Mr N. Nielsen in Denmark, Mr A. Paquet in France and Mr C. Clothier, Q.C. in Great Britain, while Northern Ireland's Parliamentary Commissioner is Mr Stephen McGonagle. The rapporteur therefore wrote to them² to ask for their views. Their replies showed that, although none of them had yet received any complaints of specifically Community interest, they were of the view that an ombudsman for the Community might prove valuable and hoped that their relations with such an ombudsman, if appointed, would be on a basis of friendly cooperation. Their letters, which also contain many interesting comments on the role of a Community ombudsman, are to be found in Annex 1.

1. Doc.3516 (see also Recommendation 757(1975))

2. In the case of Great Britain, to Mr Clothier's predecessor, Sir Idwal Pugh

10. Finally, attention should be drawn to the opinion of the Political Affairs Committee, adopted on 18-19 October 1978 following its consideration of a working document¹ drawn up by its draftsman, Mr Holst. The section of the opinion on the need for an ombudsman was highly positive in its conclusions:

"Bearing in mind the inadequacy of appeal channels available to individuals within the Community framework, and the symbolic value inherent in the role of ombudsman the members of the Political Affairs Committee felt that it would be legitimate to consider such an appointment within the Community framework.

In fact, apart from the practical value of his work, the ombudsman personifies the state and thus gives it a more human look in the eyes of its citizens; furthermore, in view of his privileged relationship with Parliament, his role is indisputably a democratic one.

In the Community context, these arguments are reinforced by the fact that the process of integration has always been regarded - rightly or wrongly - as essentially technocratic; the direct elections to the European Parliament which are intended to remedy this are a crucial step forward, and every possible effort must be made to ensure that they are successful.

For these reasons, the appointment of an ombudsman seems a particularly appropriate way of contributing to the success of these elections by giving each citizen the chance to establish personal contact with the Parliament that he has helped to elect."

11. All the above indications point to the need for an ombudsman to be appointed.

III. ROLE AND FUNCTIONS OF A COMMUNITY OMBUDSMAN

12. Once the principle of a Community Ombudsman is accepted, it is necessary to consider the role and functions which he should fulfil. For the Community ombudsman must serve the particular needs of the Community citizen. The European Community is unique from a constitutional point of view: the traditional distinction between the legislative and the executive branches of government is difficult to apply to the three political institutions, Commission, Council and Parliament. Moreover, in the application of Community legislation there is a complex administrative structure involving both Community and national authorities. Before examining the Community ombudsman's role it may therefore be appropriate to examine the way in which Community law is administered.

(a) The administration of Community law

13. Community law is administered by both Community and national authorities. The extent to which administrative power is delegated to national authorities

¹ PE 55.506

varies greatly and is laid down in the relevant Community legislation, be it regulation, directive or decision. Broadly speaking, there are four ways in which Community law is administered.

14. First, there are those fields in which the Community institutions directly administer Community law. The most important example is competition policy. It is the Commission which, acting under Article 89 EEC, investigates possible infringements and takes decisions against undertakings found to be in contravention of Articles 85 or 86 EEC. This is, then, the area in which there is the most direct intervention by Community institutions. But even here the Commission may 'authorise Member States to take the measures, the conditions and details of which it shall determine, to remedy the situation.'

15. Member States are more closely involved in the administration of other legislation. In some cases the guidelines laid down at Community level are so detailed that national authorities have virtually no discretion in the way the law is administered. This is particularly the case in the administration of the Customs Union, where tariffs are laid down at Community level but customs duties collected by national customs authorities. The same goes for the administration of agricultural import levies and export refunds. Normally Community legislation provides for national rules on collection and payment to be followed; there are then Community measures designed to ensure uniformity of treatment throughout the Community.

16. In other cases Member States enjoy some discretion in the administration of Community law. Sometimes they act as a sort of filter in selecting applicants to be put forward as possible beneficiaries from Community funds. This is true of the Social Fund, the Regional Fund and the Agricultural Guidance Section of the EAGGF. It is interesting to note that Member States need give no justification for their decisions not to pass on applications for final decision at Community level.

17. Finally, there are those areas in which Member States enjoy a large measure of discretion, both in the implementation and administration of Community policies. This is, for example, true of many directives adopted by the Council on freedom of establishment under Article 54 EEC. Member States first legislate to implement the Community directive; national authorities then ensure that those entitled to enjoy freedom of establishment can do so.

18. Thus, while Community legislation increasingly affects the Community citizen, many of the administrative actions based on Community law about

which he may wish to complain are not taken by Community institutions. At first sight this might suggest that an ombudsman at Community level is unnecessary in that action should be taken at national level against the authorities responsible. But in fact this partial delegation of administrative power only increases the individual's feeling of powerlessness in the face of an anonymous Community. For he often does not know where to go in order to lodge his complaint.

(b) Role and powers of the Community ombudsman

19. The chief role of the Community ombudsman should therefore be to act as a focus for such complaints. The complexities of Community administration as described above also make it difficult to define the functions of a Community ombudsman. If he examines only complaints against direct administration by Community authorities, the vast majority of acts of 'Community' administration (carried out by national authorities) will be outside the range of his investigations. If he also examines complaints against 'Community' administration by national authorities, his jurisdiction will overlap with those of national ombudsmen¹.

20. A similar problem arises in respect of the ombudsman's powers. While it may be politically feasible to empower a Community ombudsman to examine the files of Community institutions, it would be more difficult to give him the power to demand the production of files by national authorities.

21. Finally, it should be noted that the functions and powers which it is decided should be given to the Community ombudsman will determine the legal basis on which the ombudsman should be created (see Chapter IV).

(c) Two possible types of Community ombudsman

22. There are, broadly, two types of ombudsman which could be established for the Community.

23. The first would be an ombudsman along traditional lines, with wide powers of investigation into all forms of Community administration by both Community and national authorities. This would be the ideal solution, for it would give a both effective and speedy means of redress for the Community citizen. But it would in effect involve the creation of a new Community institution. And since the European Parliament does not itself have such powers, it would not be possible for it unilaterally to establish such a body. There would probably need to be an amendment

1. or other bodies empowered to investigate individual's complaints (e.g. Bundestag Petitions Committee)

of the Treaties for this to be done. So the creation of this kind of ombudsman would be a very lengthy process.

24. The second possible method of approach has the advantage of simplicity and minimal delay. This method would involve the appointment of an ombudsman with powers delegated by the European Parliament. Such an ombudsman (who might be given the name of Parliamentary Commissioner) would be able to receive complaints from Community citizens (either directly or via a Member of the European Parliament), investigate the complaints, and report his findings (both to the complainant and to Parliament). Even if he did not formally have wide investigatory powers, it is difficult to see how the authorities concerned would be able to refuse to give the required information. Where appropriate the Parliamentary Commissioner could refer complaints to national ombudsmen for investigation.

IV. LEGAL BASIS OF THE CREATION OF AN OMBUDSMAN

25. As pointed out above, the legal basis required for the creation of a Community ombudsman depends on the powers which are to be given to him. Parliament can appoint an ombudsman itself, in which case his powers will be limited to those which Parliament itself enjoys. Should it be decided to create an ombudsman with different powers, Treaty amendment may be necessary. Parliament would then need to call on the Commission to make proposals.

V. FURTHER WORK IN PREPARATION FOR THE APPOINTMENT OF AN OMBUDSMAN

26. This report is chiefly concerned with the principle that an Ombudsman should be appointed. There will need to be further detailed work, by the Committee on the Rules of Procedure, before an appointment can be made.

VI. CONCLUSIONS

27. The Committee thinks that what is needed at present is for the European Parliament to appoint a Parliamentary Commissioner with a mainly advisory and supervisory role, as summarised in paragraph 24 above. His task would be to find out on behalf of an individual citizen which of the public authorities concerned was responsible for the act of which the individual complained and to advise him how best to follow through his complaint. At a later stage in Community development it may be possible for the Commissioner to recommend that the Commission make proposals for the establishment of an ombudsman institution with wider powers of investigation. Meanwhile there should also be increased awareness of the need for ombudsmen to be set up in all Member States so that all Community citizens have the same opportunities for a speedy and informal investigation of their complaints. This solution would both cover the problem of the danger of the Community ombudsman's jurisdiction overlapping with those of his existing counterparts and go some way to providing equal protection for all Community citizens.

VIEWS OF NATIONAL OMBUDSMEN

1. Letter dated 14 June 1978 from rapporteur to the national ombudsmen in Member States

The European Parliament is at present considering the possibility of the creation of an Ombudsman for the European Community.

The Legal Affairs Committee has appointed me rapporteur on this matter and I would be most grateful for your views. I should be particularly interested to know whether you think that a Community Ombudsman would serve a useful function; how you see a Community Ombudsman's relationship with his counterparts in the Member States; and whether you yourself have had to deal with cases with a European Community aspect. But any comments you may wish to make would be most welcome.

(sgd) Sir Derek WALKER-SMITH

2. Reply dated 22 June 1978 from the Médiateur (France)

As rapporteur on the proposal for the creation of an Ombudsman for the Communities, you ask me for my opinion on the usefulness of such an institution, the relationship likely to be established between this Ombudsman and his national counterparts and, finally, whether I have had to deal with cases with a Community aspect in my capacity as Médiateur.

On the first point, I personally can see no disadvantage in setting up an Ombudsman for the Communities.

You are better placed than I to judge whether the matters dealt with by that Administration of themselves justify such an institution; but if that is the case, such a step is certainly called for in the interest of protecting those administered.

As to the relationship which might be established between the Ombudsman of the Communities and his national colleagues, this does not seem to me to raise any problems. Without being institutionalized, it should be on the lines of the practice that has been established between the Chairman of the Bundestag Committee on Petitions in the Federal Republic of Germany and myself.

Our relations, which are extremely cordial, come under the aegies of mutual aid.

Finally, on the last point my answer must be more qualified. Where I have had to deal with cases which have concerned the Communities in certain respects, these were ultimately matters affecting the French Administration, which was the reason why I was called in.

These, very briefly, are the thoughts prompted by your questions.

I should obviously be glad to be kept informed of any action the Communities may decide to take on your report, and meanwhile remain,

Yours sincerely,

(sgd) Aimé PAQUET

3. Reply dated 27 June 1978 from the Parliamentary Commissioner for Administration and Commissioner for Complaints (Northern Ireland)

Thank you for your letter of 14 June about the possibility of the creation of an Ombudsman for the European Community.

I should say for a start that I have not personally had to deal with cases with a European Community aspect, and from my experience I would see a Community Ombudsman's relationship with his counterparts as merely informal and friendly.

However, the main question appears to be what function the Community Ombudsman would be required to carry out. The idea that he would duplicate the functions of national ombudsmen by investigating complaints against the governments or public bodies of individual Member States is presumably not intended. On an international plane, the question of appointing an Ombudsman to assist complainants in petitioning the Commission of Human Rights was raised at the meeting of Ombudsmen in Paris in April 1974 and the decision went against it.

It seems to me that a European Ombudsman should have the task of investigating the administrative actions of bodies which make and implement rules which affect individuals at a trans-national level. The body which comes to mind most readily is the European Commission. Whether there is a volume of potential complaint that the rules of actions of the Commission cause injustice to individuals which would warrant the appointment of such an Ombudsman is a matter outside my experience.

I am sorry that I am not able to help you further, but on the basis of the information conveyed in your letter the issues arising do not seem to come within my field.

(sgd) Stephen MCGONAGLE

4. Reply dated 4 July 1978 from the Parliamentary Commission for Administration (Great Britain)

Thank you for your letter of 14 June about the interesting proposal under consideration by the European Parliament of the possibility of the creation of an Ombudsman for the European Community.

Ombudsmen are very much in fashion these days though there are still relatively few members of the Community which have a 'national' or 'federal' Ombudsman. Perhaps the first aim should be to encourage member states to establish such an institution nationally - perhaps by urging implementation of recommendation No.757 of 1975 of the Parliamentary Assembly of the Council of Europe on this subject.

When it comes to the question of a European Community Ombudsman, it seems to me that there should be a recognition, first, that there is a wide discrepancy between the Constitutional theories and practices of individual States in this matter, so that any arrangements which presupposed a degree of uniformity at the national level would be likely to run into difficulties; and secondly, that a clear analysis of the role and functions of a Community Ombudsman should precede any decision in principle.

As you very well know, the central function of the British Parliamentary Ombudsman is to 'look into the books' of central government departments in order to see how they have dealt administratively with individual citizens of this country. I do not and cannot function except when an individual private citizen is able to show that he or she has been directly affected by administrative action of a Whitehall department relevant specifically to that citizen's rights or obligations, and that there is at least a possibility that such administrative actions could have involved mal-administration causing that citizen to sustain an injustice. If one were looking at it from the British point of view, therefore, the essential question would be whether the Ombudsman will be concerned with the direct effect of administrative actions of an executive on individual private citizens. Until, therefore, we have a European Community executive able to take direct administrative action vis-à-vis any individual citizen anywhere in the Community, without intervention of national executives and administration, I am not sure that I see scope for a Community ombudsman. But other Ombudsmen have different and, on the whole, wider powers and jurisdictions than I do. Some have the power to criticize legislation. I could see a role for a Community Ombudsman in that area. Community policies are on the whole, I believe, expressed in legislative instruments and if some of these, being mandatory on governments, had to be implemented

nationally and were claimed to cause injustice, I can see a possible field of action. No doubt a systematic examination of Community actions as they affect the individual citizen might disclose other similar fields. But an extension of this sort would give citizens of this country greater rights of complaint to the Community Ombudsman than they now have to me.

Another question is whether there is a need and scope for some kind of coordinating Community Ombudsman to deal with difficulties which individual national Ombudsmen within Member States of the Community may have in satisfactorily investigating and dealing with grievances within their own jurisdictions because the matters they are looking into are substantially affected by actions taken by the Community as such. I have not myself experienced any such difficulties (and so far as I know neither did my predecessor). I do from time to time find myself investigating cases which involve, for example, Community arrangements for reciprocal social security benefits. In doing so I have found indications that possibly there may have been administrative shortcomings in the way authorities in the other party to the particular case have dealt with it. For example, (and my example implies no direct criticism of a particular country), I might find that someone who had been working in Germany and had come over to this country and then applied for social security benefits might have been dealt with adequately by the Department of Health and Social Security here, but that that department might have met with delays and incompetence on the part of the corresponding authorities in Germany which had affected the way they could decide the particular case. As it happens, of course, there is no Ombudsman as such in Germany corresponding to me. But I noticed in the French Médiateur's last Annual Report that he had in fact carried out some informal consultation with the Danish Ombudsman over exactly that kind of case. It is possible that if all Member States of the Community had national ombudsmen such as myself and the Médiateur, such informal consultation between us would be the right solution. On the other hand, one could envisage a system whereby in such a case the matter would be referred to a Community Ombudsman to investigate as such, simultaneously in both countries concerned. I personally should deprecate any such arrangement which would lead to a hierarchy of ombudsmen.

These are, I am afraid, first and rather primitive thoughts. I can see questions which might arise of relationships with the functions of the Human Rights Commission. There is also the question of judicial review in the Community where the general practice is, I suppose, different from ours. But my general feeling is that we should not create a Community Ombudsman just for the sake of doing so: that any hierarchy of ombudsmen would destroy

the basic virtue of the ombudsman as an individual and a 'personal institution'; and that studies of the role of an ombudsman should be directed clearly at areas where the actions of the Community (however defined) cause injustice to the individual which an ombudsman is best fitted to investigate and remedy.

(sgd) Idwal PUGH

5. Reply dated 4 October 1978 from the Folketingets Ombudsmand (Denmark)

I thank you for your kind letter of 14 June 1978 concerning the question about the creation of an Ombudsman for the European Community.

First of all, I have to regret deeply that I have not replied to your letter at a much earlier time. My only excuse is that my load of work has been overwhelming in the last months. The result has been that several things, which I ought to have done at a much earlier time, have been postponed. This, I regret, also applies to the letter of 14 June 1978. However, I must admit that my late reply has also a certain connexion with a feeling of uncertainty towards the problem.

This again has connexion with my reply to your question in your letter whether I have had to deal with cases with a European Community aspect. To my surprise the fact is that I have had practically no cases with such aspects. Therefore my reply must lack a concrete basis of experience. To this must be added that it seems to me that the question, whether an Ombudsman for the European Community should be created, to a pronounced degree is political question, and therefore a question to which a politically neutral Ombudsman in one of the individual states in the Community must feel obliged to take up a cautious attitude.

Therefore my remarks must be of a general character.

I understand that a main reason for a possible creation of an ombudsman in the European Community is the impression that the individual citizen in the Member States may see the Community authorities as bureaucratic and remote, and that therefore among other things a psychological value is attached to the creation of an ombudsman, who may act as an intermediary between the individual citizen and what he sees as a remote and bureaucratic system. To this I can only say that a consideration of this kind presumably corresponds to an important part of the grounds for the ombudsman institutions in the individual Member States. Also, for instance, in Denmark the individual citizen may feel alienated and powerless towards a complicated administrative apparatus, and an ombudsman institution may therefore act

as some kind of catalyst. However, it is obvious that such a function demands certain qualities of the ombudsman institution. It is important that the ombudsman institution is not itself regarded as a bureaucracy, but as concentrated around a certain person, so that he can deal with cases in a considerably informal and quick way, and that he is equipped with the necessary means regarding the investigation of the case; for instance, to be able to demand production of all relevant documents of a case. Most important of all is perhaps that he is - and is regarded as - an independent and neutral person.

It appears to me that the creation of an ombudsman institution in the European Community will require a considerably clear attitude to a number of questions. Here I think - but not only - of the - as far as I can estimate - rather difficult questions about the determination of his more specified competence (regarding sphere of cases and regarding the European Community organs which should be covered by his activity), especially the relationship between the ombudsman and the European Court of Justice - questions on which I do not find that I should express my opinion. I find reason also to point out the importance of a profound consideration and clarification of the relationship between the ombudsman for the European Community and the ombudsmen in the various Member States. In this connection I must point out that there will not be a question about a precise determination of the ombudsmen's mutual competence, but also about a determination of certain forms of cooperation; for instance, so that national ombudsman's decisions in cases which contain European Community aspects are made after a consultation of the ombudsman for the European Community.

In consideration of my limited basis of experience and the political character of the question I have found that I should limit myself to these few remarks - and once again I regret that I have not sent you these remarks at a much earlier time.

(sgd) Nordskov NIELSEN

OPINION OF THE POLITICAL AFFAIRS COMMITTEE

Letter from the Chairman of the Committee to Sir Derek WALKER-SMITH, chairman of the Legal Affairs committee

Luxembourg, 25 October 1978

Dear Mr Chairman,

At its meeting of 18 and 19 October 1978, the Political Affairs Committee debated the advisability of appointing a mediator (ombudsman), on the basis of a working document (PE 53.447) drawn up by its rapporteur, Mr HOLST:

The Political Affairs Committee had in fact been asked for an opinion on this subject for your committee on 16 March 1978.

The members of the Political Affairs Committee note that, as a result of the growing complexity and consequent impersonality of administrative measures in the countries of Europe there have been a number of attempts to make the pervasive administrative processes on which the individual is becoming increasingly dependent more personal and more human.

Of these endeavours, the ombudsman has proved to be an extremely flexible instrument, providing an original means of remedying the problems resulting from the considerable increase in government activity and the impossibility of covering, in provisions of a general nature, all the specific cases in which the exercise of citizens' rights may be affected, without any appropriate legal remedy being available to them.

Bearing in mind the inadequacy of appeal channels available to individuals within the Community framework, and the symbolic value inherent in the role of ombudsman, the members of the Political Affairs Committee felt that it would be legitimate to consider such an appointment within the Community framework.

In fact, apart from the practical value of his work, the ombudsman personifies the state and thus gives it a more human look in the eyes of its citizens; furthermore, in view of his privileged relationship with Parliament, his role is indisputably a democratic one.

In the Community context, these arguments are reinforced by the fact that the process of integration has always been regarded - rightly or wrongly - as essentially technocratic; the direct elections to the European Parliament which are intended to remedy this are a crucial step forward, and every possible effort must be made to ensure that they are successful.

For these reasons, the appointment of an ombudsman seems a particularly appropriate way of contributing to the success of these elections by giving each citizen the chance to establish personal contact with the Parliament that he has helped to elect.

However, since the term 'ombudsman' is used to describe a wide variety of institutions, it is not enough to acknowledge the political advisability of establishing such an institution. Since it has to attain certain objectives, the basic methods to be employed, i.e. those which have political implications, must also be defined.

Obviously, the Political Affairs Committee should not usurp the position of the committee responsible by considering the legal conditions for the appointment of a European ombudsman; its task is simply to define the aspects which relate directly to the political objectives that the appointment is designed to achieve.

As regards the scope of an ombudsman's powers, these should be as flexible as possible in order to avoid the formal appeals procedure that this institution is specifically designed to counteract and to ensure that the disparity between national systems which may affect Community matters does not place the citizens of the various Member States on an unequal footing vis-à-vis the ombudsman.

Bearing these requirements in mind, it will be essential also to ensure that, if the ombudsman is appointed on a Community basis, he carries out his duties independently of any national influence.

Since the ombudsman will be appointed by the European Parliament, his role will be essentially a political one and must not be restricted by technical considerations.

However, in view of the imminence of direct elections to the European Parliament and the necessary link between an ombudsman and the parliament by which he is appointed, the members of the Political Affairs Committee discussed the advisability of making such an appointment immediately, when the essential aspects of such an institution might well be open to review as a result of elections.

In this regard they decided, by 10 votes in favour and one abstention,¹ that, without prejudice to the freedom of action of the directly-elected European Parliament, and in order to activate the appointment of an ombudsman, it would be advisable to undertake studies to this end without delay.

Yours sincerely,

(sgd) A. BERTRAND

¹ Present: Mr A. Bertrand, Chairman; Mr Radoux and Mr Brugha, vice-chairmen; Mr Holst, draftsman of the opinion; Mr Galluzzi (deputizing for Mr Amendola), Mr Hamilton, Mr Klepsch, Mr Mitchell, Mr Rippon, Mr Vergeer.

Luxembourg
P.O.B. 1601