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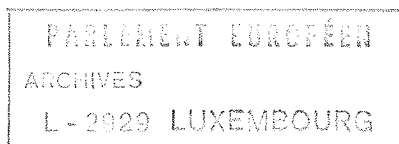
A3-0298/92

REPORT

of the Committee on Institutional Affairs

on the regulations and conditions governing the performance
of the European Ombudsman's duties

Rapporteur: Mrs Rosy BINDI



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A Series: Reports – B Series: Motions for Resolutions, Oral Questions – C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of a majority of the current Members of Parliament

C O N T E N T S

	<u>Page</u>
Procedural page	3
A. MOTION FOR A RESOLUTION	4
DRAFT DECISION	5
B. EXPLANATORY STATEMENT	12
Opinion of the Committee on Civil Liberties and Internal Affairs . . .	19
Opinion of the Committee on Petitions	22

By letter of 30 January 1992 the Committee on Institutional Affairs requested authorization to draw up a report under Rule 121 on the regulations and conditions governing the performance of the Ombudsman's duties.

At the sitting of 9 March 1992 the President of Parliament announced that the Committee had been authorized to report on this subject.

The Committee on Civil Liberties and Internal Affairs and the Committee on Petitions were asked to deliver opinions on 8 June 1992; the Committee on the Rules of Procedure was asked for its opinion on 14 September 1992.

At its meeting of 26 February 1992 the Committee on Institutional Affairs had appointed Mrs Bindi rapporteur, pending authorization.

It considered the draft report at its meetings of 26/27 May, 15-17 June, 8/9 July (hearing) and 8/9 October 1992.

At the last meeting it adopted the motion for a resolution unanimously.

The following took part in the vote: Bru Puron, acting chairman; Bindi, rapporteur; Alber (for Luster), Bocklet, Boissière, Cassanmagnago Cerretti, Cheysson, De Gucht, Duverger, Glinne, Lamanna, Musso, Rothley, Roumeliotis and Schlee (for Blot).

The opinions of the Committee on Civil Liberties and Internal Affairs and of the Committee on Petitions are attached. The opinion of the Committee on the Rules of Procedure will be presented orally in plenary sitting.

The report was tabled on 13 October 1992.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

MOTION FOR A RESOLUTION

on the regulations and conditions governing the performance
of the European Ombudsman's duties

The European Parliament,

- having regard to Article 138e of the EC Treaty, Article 20d of the ECSC Treaty and Article 107d of the EAEC Treaty introduced by the Treaty on European Union of 7 February 1992,
 - having regard to Rule 121 of the Rules of Procedure,
 - having regard to the report of the Committee on Institutional Affairs and the opinions of the Committee on Petitions and the Committee on Civil Liberties and Internal Affairs (A3-0298/92),
- A. whereas the appointment of a European Ombudsman is intended to reinforce the safeguarding of the rights of citizens of the Union and whereas the rules governing the exercise of this right should be adopted so that the regulations may be adopted as soon as the Treaty enters into force, in order that the Ombudsman may be appointed and begin to perform his duties as soon as possible,
- B. whereas Parliament should therefore forthwith adopt the regulations and conditions governing the performance of the Ombudsman's duties, in accordance with the procedure laid down in the above-mentioned articles of the Treaties,
- C. whereas the decision laying down these rules should be submitted to the Commission for an opinion and to the Council for approval,
1. Approves the attached draft decision;
 2. Calls on the Commission to deliver its opinion;
 3. Calls on the Council to approve the draft and forward it in good time to the European Parliament for final adoption to coincide with the entry into force of the Treaty on European Union;
 4. Instructs its President to forward this resolution and the attached decision to the Council, the Commission and the parliaments of the Member States.

DRAFT EUROPEAN PARLIAMENT DECISION
ON THE REGULATIONS GOVERNING THE PERFORMANCE OF THE
EUROPEAN OMBUDSMAN'S DUTIES

THE EUROPEAN PARLIAMENT,

having regard to the treaties establishing the European Communities, in particular Article 138e of the EC Treaty, Article 20d of the ECSC Treaty and Article 107d of the EAEC Treaty,

having regard to the opinion of the Commission,

having regard to the Council's approval,

whereas citizens' confidence in the institutions necessarily depends on the transparency of public administration, and having regard to the importance attached to the complaints procedure, which helps to encourage the democratic operation of the institutions, the creation of this office is a key element in the democratization of European citizenship;

whereas the regulations and conditions governing the performance of the Ombudsman's duties should be established and, in particular, the scope of his powers of inquiry; whereas the scope of these powers covers Community institutions and bodies, which are obliged to provide the Ombudsman with comprehensive information and give him unrestricted access to their files; whereas the Ombudsman's powers of inquiry may not be restricted on grounds of secrecy; whereas the Ombudsman must be bound by the same code of confidentiality as members, officials and other servants of the Community institutions and bodies;

whereas the national authorities are obliged to provide the Ombudsman with any information which could help to clarify cases of maladministration on the part of Community institutions and bodies; whereas this assistance derives from the principle of loyal cooperation between Member States and the Community laid down in Article 5 of the Treaty establishing the European Community;

whereas the complaint lodged with the Ombudsman should not affect the time limit set by the Treaty or any other act in respect of legal proceedings;

whereas - where appropriate and having regard to the most effective way of safeguarding the rights of persons lodging complaints - provision should be made for the Ombudsman to refer a complaint to the European Parliament for consideration, within the framework of its powers relating to petitions;

whereas persons appointed to perform the Ombudsman's duties should be appropriately qualified to discharge those duties;

whereas it is necessary to fix the quorum required for the appointment and motion for dismissal of the Ombudsman by the European Parliament;

whereas the Ombudsman must hold the same rank as a judge at the Court of Justice;

whereas the Ombudsman should be provided with the staff necessary for performing his duties and should be given the power, within the framework of the budget of the European Parliament, to propose his own preliminary draft budget;

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

Referral to the Ombudsman

1. The regulations and conditions governing the performance of the Ombudsman's duties are established by this decision in accordance with Article 138e of the EC Treaty, Article 20d of the ECSC Treaty and Article 107d of the EAEC Treaty.
2. Any citizen of the Union or any natural or legal person residing or having his registered office in a Member State of the Union may, directly or through a Member of the European Parliament, refer a complaint to the Ombudsman in respect of an instance of maladministration in the activities of Community institutions or bodies, with the exception of the Court of Justice and of the Court of First Instance acting in their judicial role.
3. Referral must establish the person lodging the complaint and the object of the complaint; the person lodging the complaint may request that his referral remain confidential.
4. The Ombudsman shall without delay inform the person lodging the complaint of the action he intends to take.
5. The Ombudsman may refer any complaint to the European Parliament, in accordance with the procedure relating to petitions. He shall immediately notify the person lodging the complaint of this referral.
6. Complaints submitted to the Ombudsman shall not affect time limits in respect of judicial or administrative proceedings.
7. The Ombudsman shall terminate his action if he learns, after a complaint has been lodged, that the facts to which it refers are the subject of legal proceedings. He may inform the European Parliament of the outcome of his investigations up to that point.
8. As regards cases relating to labour relations between the Community and its officials or other staff, the Ombudsman may refer the matter to the Community institution or body concerned only if the procedures referred to in Article 90(1) and (2) of the Staff Regulations have been used by the person concerned and after the deadline for the appropriate authority's reply has expired.

Article 2

Powers of the Ombudsman

1. Under the conditions and within the limits laid down by the Treaty, the Ombudsman shall have the right to conduct inquiries or investigations which he deems necessary to clarify any possible instance of maladministration in the activities of Community institutions and bodies, on his own initiative, following a complaint or at the request of the European Parliament; he shall inform the institution or body concerned of such action.

2. The Community institutions and organs shall be obliged to supply the Ombudsman with the requested information and give him access to the files concerned, without the right to object on grounds of secrecy. Officials and other staff of the Community may not refuse to comply with the Ombudsman's requests on the grounds of the imperative of confidentiality by which they would otherwise be bound.
3. The authorities in the Member States shall be obliged to provide the European Ombudsman, when so requested, with any information which could help to clarify cases of maladministration on the part of Community institutions and bodies;
4. Where the authorities in the Member States fail to provide the necessary assistance or obstruct his action, the Ombudsman shall inform Parliament, which shall take appropriate action.
5. As far as possible, the Ombudsman shall seek a solution with the institution concerned to eliminate the instance of maladministration and satisfy the request of the person lodging the complaint.
6. If on completion of an inquiry the Ombudsman finds that there has been maladministration, he shall inform the institution or body concerned, where appropriate suggesting ways of remedying the matter; the institution or body so informed shall send the Ombudsman a reasoned opinion within three months.
7. For each case of maladministration found, the Ombudsman shall send a report to the European Parliament and to the institution or body concerned and may propose solutions and, possibly, measures to be taken in the future. The person lodging the complaint shall be informed by the Ombudsman of the outcome of the inquiries and any action taken.

At the end of each year, the Ombudsman shall submit a report to Parliament on the outcome of his inquiries.

Article 3

Obligations

1. The Ombudsman shall be required not to disclose confidential information or documents of which he acquires cognizance in the course of his inquiries. Article 214 of the EC Treaty, Article 194 of the EAEC Treaty and Article 47(2) of the ECSC Treaty shall apply to the Ombudsman. He shall also be required to treat in confidence any information which could harm the person lodging the complaint or any other person involved.
2. If, in the course of his inquiries, he obtains cognizance of facts relating to criminal or disciplinary law, the Ombudsman shall notify the competent authorities at the end of his inquiries. He may also inform them of the facts calling into question the conduct of a member of their staff from a disciplinary point of view.

Article 4

Cooperation with ombudsmen in the Member States

In order to increase the effectiveness of his inquiries and improve the protection of the rights and interests of persons lodging complaints, the European Ombudsman may cooperate with ombudsmen in the Member States and ask them for the necessary assistance. He may also assist them in their inquiries. This cooperation shall be established on a voluntary basis and may be the subject of agreements between ombudsmen. However, under no circumstances may such agreements affect Community or national provisions governing ombudsmen.

Article 5

Appointment

1. The Ombudsman shall be elected by the European Parliament. Candidatures shall be submitted by a number of Members to be established under the Rules of Procedure of the European Parliament.
2. The Ombudsman shall be chosen from among persons who are nationals of the Member States, who are in full possession of their civil and political rights, offer every guarantee of independence and who meet the conditions required for the exercise of judicial office or have experience of and acknowledged competence in the exercise of such office.

Article 6

Term of office

1. The Ombudsman shall cease to exercise his duties, other than on completion of his term of office or, where appropriate, of his renewed term of office or in the event of death, resignation or dismissal.
2. The Ombudsman shall remain in office until he is replaced, except in the event of dismissal.
3. In the event of early cessation of duties, a new Ombudsman shall be elected within three months of the office falling vacant, solely for the remainder of the parliamentary term.

Article 7

Dismissal

1. Should the Ombudsman no longer fulfil the conditions required for the performance of his duties or be guilty of serious misconduct, the European Parliament may ask the Court of Justice to dismiss him.

Article 8

Solemn declaration

1. Before taking up his duties, the Ombudsman shall swear before the European Parliament that he will perform his duties impartially and conscientiously in the interests of the Union and its citizens and that during and after his term of office he will fulfil the responsibilities falling to him and the duty of honesty and discretion in accepting duties or benefits after the cessation of his duties.
2. The oath shall be duly recorded and the Ombudsman shall thereby be appointed.

Article 9

Independence and privileges

1. During his term of office, the Ombudsman may not engage in any political or administrative duties, whether gainful or not.

The Ombudsman shall forfeit no right nor suffer any prejudice at Community or national level because of the performance of his duties.

2. The Ombudsman shall have the same rank, in terms of rights, privileges and remuneration, as a judge at the Court of Justice of the European Communities.
3. Articles 12 to 15 and Article 18 of the Protocol on the Privileges and Immunities of the European Communities shall apply to the Ombudsman.

Article 10

Ombudsman's secretariat

1. In the performance of his duties, the Ombudsman shall be assisted by a secretariat.
2. On a proposal from the Ombudsman, the European Parliament shall establish the organigramme of his secretariat.
3. The Ombudsman's secretariat shall be directed by a registrar appointed by the Ombudsman.
4. Persons responsible for carrying out inquiries shall be recruited as temporary staff. Community or national officials appointed to the Ombudsman's secretariat shall be seconded in the interests of the service and guaranteed automatic reinstatement in their service of origin.
5. In all matters concerning his staff, the Ombudsman shall have the same status as the institutions within the meaning of Article 1 of the Staff Regulations of officials of the European Communities.

Article 11

Budget

The Ombudsman's budget shall be attached to the budget of the European Parliament.

The Ombudsman shall, by 1 March of each year, submit his preliminary draft estimate to the European Parliament.

Article 12

Place of work

The Ombudsman and his secretariat shall perform their duties at the place of work of the European Parliament but may in any case carry out the activities required in the performance of their duties in any of the places of work of the Community institutions or bodies.

Article 13

Implementing provisions

On a proposal from the Ombudsman, the European Parliament shall adopt the implementing provisions of this decision.

Article 14

Transitional and final provisions

1. The European Parliament shall make provision in its budget for the staff and material facilities to enable the first elected Ombudsman to perform the duties entrusted to him from the time of his appointment.
2. The first Ombudsman shall be elected by the European Parliament, in accordance with the procedure laid down in this act and for the remainder of the parliamentary term within three months of the entry into force of the Treaty on European Union and in accordance with the provisions of the Rules of Procedure of the European Parliament which expand on and supplement it.

Article 15

Entry into force

This decision shall be published in the Official Journal of the European Communities. It shall enter into force on the date of its publication.

Brussels,

For the European Parliament

(sgd) Egon KLEPSCH

EXPLANATORY STATEMENT

1. INTRODUCTION

The ongoing process of European integration and hence the increased involvement of Community institutions in the life of each country implies a strengthening of the links between them and the people. Quite rightly, one of the main concerns emerging from the debate on the ratification of the Maastricht Treaty is the 'remoteness' of the Community institutions and their 'bureaucratization'. These issues also featured in the debate preceding the adoption of the Treaty, but the progress achieved by that debate is still inadequate. Furthermore, it is true that the Treaty introduces substantially new elements which, if exploited properly, might help to close the gap between the Community institutions and the people. These new points originate in the concept of Union citizenship, which was created in the Treaty itself. One cannot help noting that the ideas contained in it at last go beyond the policy of 'symbols' advocated by European Councils in the early eighties. The new measures - foreshadowed in various Commission proposals on electoral rights and Council decisions on freedom of movement - create genuine rights for European citizens which are linked to citizenship rather than to an economic or professional activity. The time is ripe for a fuller and more profound definition of the relationship between citizens (people in general) and the institutions, but negotiations at diplomatic level have not managed to meet the social demands which have so clearly emerged from the ratification debate.

2. THE ROLE OF THE EUROPEAN PARLIAMENT

Within this albeit limited scope the European Parliament has a special role in safeguarding people's political, civil and social rights. By its very nature it is the political representative of the citizens of Europe and by virtue of the provisions of the new Treaty it has become the focus for the non-jurisdictional safeguarding of their rights, including individual rights, vis-à-vis the Community institutions, and not only them. The Treaty both confirms the right of citizens - hitherto recognized only in Parliament's Rules of Procedure - to address petitions to the European Parliament and also establishes the figure of the ombudsman at European level.

The creation of the latter institution, which was first introduced by the Scandinavian countries, is intended to give people a means to defend themselves against administrative abuses, without having to resort to costly legal action, or where legal action is not possible. The right to petition has partly the same function, but, obviously, tends to protect the more clearly political interests of citizens. The combination of these two institutions should therefore, in principle, give citizens a more comprehensive system of protection of their rights outside the courts, provided that the relationship between the Ombudsman and the right to petition is made clear and the two function consistently with one another.

Parliament now has to create the conditions which will ensure that the two institutions are complementary, essentially attempting to give the citizen greater protection vis-à-vis the administration and, at the same time, to maintain political control of its own system of petitions.

Under Article 138e, the European Parliament 'shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties'. It is therefore up to Parliament to draw up and adopt rules in this area, while the other Institutions have to give either an opinion or assent.

From the date on which the Treaty enters into force (1 January 1993, as laid down in the Treaty itself), every citizen or resident will have the right to refer complaints to the Ombudsman; this means that the regulations referred to above must be adopted as soon as it enters into force and the Ombudsman must be appointed as soon as possible.

3. THE PARLIAMENTARY OMBUDSMAN

(a) The type of ombudsman created under the Treaty is a Parliamentary ombudsman. This means that:

- Parliament has exclusive responsibility for appointing the Ombudsman;
- the Ombudsman may be dismissed from office on the initiative of Parliament, although the actual decision is taken by the Court of Justice;
- in each case of maladministration, the Ombudsman reports to Parliament;
- the Ombudsman submits an annual report to Parliament on his activities;
- the regulations and provisions governing the performance of the Ombudsman's duties are drawn up by Parliament, though subject to approval by the Council;
- complaints may also be submitted to the Ombudsman through a Member of the European Parliament.

(b) The other essential aspect is the Ombudsman's independence.

Although appointed by Parliament and reporting to Parliament the Ombudsman must remain entirely independent in the performance of his duties; in particular, he must not receive or seek instructions from any body, including Parliament.

The Ombudsman's independence implies immunity for the activities carried out in the exercise of his duties, even though Article 138e of the Treaty does not stipulate this specifically.

(c) The Ombudsman deals with cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

All citizens and all natural or legal persons residing or having their registered office in a Member State have the right to submit complaints, either individually or in association with one another.

The regulations that we draw up must therefore be such as will simplify and facilitate recourse by the citizen to the Ombudsman. They must avoid formalities and conditions that are foreign to an institution that is, by definition, unbureaucratic; on the other hand, that institution must not be capable of denying existing rights or creating new ones, but only of finding proper solutions to specific cases and denouncing cases of maladministration to Parliament.

Mention should also be made of the problem of Community officials. It will be necessary to coordinate the possibilities of recourse under the Staff Regulations with the possibilities of recourse to the Ombudsman. In any case, an official must not be able to apply to the Ombudsman until all the administrative channels have been exhausted.

4. POWERS OF THE OMBUDSMAN, LEGAL PROCEEDINGS AND THE RIGHT TO PETITION

The question now arises as to how to establish the boundary between the competences of the Ombudsman and those of judicial bodies. The Treaty is explicit in not excluding the possibility of referring to the Ombudsman complaints which could be the subject of legal proceedings, provided such proceedings have not been initiated. The person lodging the complaint therefore has the choice of whether to apply to the Ombudsman or to go to law. However, the second option precludes any recourse to the Ombudsman.

The second question is how to draw the dividing line between a complaint and a petition. Article 138d of the Treaty gives Parliament the right to receive petitions on any matter which comes within the Community's fields of activity and which directly affects the petitioner.

The Ombudsman's sphere of activity coincides exactly with this definition; the subject of possible action by the Ombudsman is, therefore, part of the field of application of the right to petition.

Naturally, the difference between the duties of the Ombudsman and of Parliament will always apply. Political matters will essentially fall to Parliament, as will the political assessment of an instance of maladministration.

Apart from this obvious point there is nothing in the Treaty which helps us to draw a line or which even enables us to establish a way of defining the right to petition and the ability to refer to the Ombudsman.

The best solution would probably be to allow the Ombudsman to carry out his duties to the full and following his report, for Parliament to take any necessary action on its conclusions. Parliament could also forward to the Ombudsman the petitions which it considers could be dealt with more successfully via an informal procedure than via action by Parliament, naturally reserving the right to take action after the Ombudsman's report. The Ombudsman may then consider it advisable to refer a case to Parliament for it to deal with under the petitions procedure; however, this will not be permissible without the complainant's consent.

5. THE OMBUDSMAN'S POWER OF INQUIRY

The Ombudsman has the power to conduct an inquiry on the basis of facts reported by a complainant or on his own initiative, provided of course that the same case is not or has not been the subject of legal proceedings. We should now consider the actual powers at the Ombudsman's disposal.

Firstly, the Ombudsman must be able to question the officials of the Institution in question, without that Institution having the power to refuse, and without any need for prior authorization or any right on the part of the official not to comply with this obligation.

Secondly, the Ombudsman must have access to any relevant document, which may not be refused on grounds of secrecy. It is therefore essential to impose an obligation of confidentiality on the Ombudsman, in particular to ensure effective compliance with Article 214 of the EEC Treaty.

Finally, the Ombudsman can apply to the national authorities for information regarding action taken by Community institutions or bodies. If the Community or national authorities obstruct the Ombudsman's activities, he will refer the matter to Parliament for appropriate action; the national authorities are required, under Article 5 of the EEC Treaty, to cooperate fully with the Community institutions.

However, the Ombudsman must avoid performing an inquiry function at national level. This is a logical application of the subsidiarity principle. To ensure that citizens' rights are fully protected, close cooperation will need to be established between the Ombudsman and ombudsmen in the Member States at various levels, whilst respecting one another's independence.

6. FOLLOW-UP TO THE INQUIRY

(a) Following an inquiry, where the Ombudsman establishes a case of maladministration, he shall refer the matter to the Institution concerned, which shall have three months in which to reply. The inquiry must therefore establish the existence of a case of maladministration before the Ombudsman can ask for formal explanations or even propose specific solutions to the administration concerned. The administration is required to reply to the Ombudsman's observations.

This is in fact an important stage in the Ombudsman's activities, because it is at this point, provided there is good will on the part of the administration, that it is possible to solve the problem and to restore the injured party's rights or ensure that the administration operates more correctly in the future.

Essentially the Ombudsman's main task will be to seek agreement between the citizen, whilst respecting the citizen's rights, and the administration.

(b) In any case, having ascertained that there has been an instance of maladministration, even though the administration has declared its willingness to put the matter right, the Ombudsman shall forward a report to the administration concerned and to the European Parliament. Even more importantly, the Ombudsman will refer to Parliament in the event of failure to respond sufficiently or failure to respond at all.

At this point Parliament may simply note the report or take action, for example where it has noted that in a certain sector there are repeated instances of maladministration, or where the administration concerned has not followed the Ombudsman's guidelines, or where the instance of maladministration has been particularly serious, or, finally, where the matter in question poses a political problem.

Within Parliament the Committee on Petitions could be given the task of examining the Ombudsman's reports according to a procedure similar to that for petitions.

(c) Finally, the Ombudsman shall send information on the outcome of the inquiry to the person who lodged the complaint. This should be done whatever the follow-up given to the complaint.

7. ANNUAL REPORT

The Ombudsman submits an annual report to Parliament on all his activities. Consideration of this report should enable Parliament to improve its supervision of the operation of the administration of the Community Institutions and give rise to any measures required. The Committee on Petitions should be entitled to draw up a report of its own on the Ombudsman's report.

8. LEGAL RECOURSE

(a) The problem of appeal before the Court of Justice against the acts of the Ombudsman is a difficult one because the Treaty does not provide for any specific possibility of recourse against such acts. Also, national practices differ. In view of the informal nature of complaints addressed to the Ombudsman, it could be said that there is no need to provide for such appeal, particularly since the Ombudsman's activities are controlled (even though a posteriori) by Parliament.

(b) There is also the problem of the Ombudsman's power to refer a matter to the Court of Justice where one of the Institutions is in breach of one of its prerogatives: it would be better if Parliament were responsible for this. (See paragraph 5(a)).

9. REGULATIONS GOVERNING STATUS OF THE OMBUDSMAN

(a) The appointment of the Ombudsman will entail the drawing up of regulations governing his status.

The Ombudsman must, in the exercise of Community duties, take on a role equivalent to that of a judge of the Court and the regulations governing his status should not differ substantially from those applying to judges, while his immunity must be solely of a functional nature.

(b) Appointment of the Ombudsman

Article 138e does not lay down any specific qualifications for the person who may fulfil the role of Ombudsman. However, in establishing the regulations concerning the Ombudsman it is essential to set some criteria which will guarantee the independence referred to above and the necessary competence.

Firstly, the Ombudsman must be a citizen of the Union: this requirement is indispensable given the nature of the office.

Secondly, the Ombudsman must have previous experience and training which guarantee an ability to deal with legally complex matters. Some systems stipulate that the person selected must have training and experience as a lawyer. In our system we could also provide for the alternative of extensive experience in associations for the protection of general rights or the protection of particularly disadvantaged social groups.

Thirdly, in order to guarantee independence, the Ombudsman must not, during his mandate, hold any political office or professional function.

Naturally, these conditions should only apply after appointment: i.e. once appointed, the Ombudsman would have to rectify any incompatibility.

The Ombudsman must be selected in accordance with a transparent and suitably formal procedure.

Firstly (though these decisions must be referred to Parliament's Rules of Procedure) it would be useful to invite applications, to ensure that nominations are not solely those put forward by the political groups. Candidates could be selected by a parliamentary committee (the Committee on Petitions). The selected candidates could be given a hearing in committee, which would then put a name to Parliament in plenary sitting.

There should then be a vote in plenary, by secret ballot. To ensure adequate representation in plenary, it will be necessary to fix a sufficiently high quorum, as an absolute majority of the votes cast is required under Article 141 of the EEC Treaty.

On his appointment, the Ombudsman should be asked to take an oath before Parliament.

(c) Dismissal of the Ombudsman from office

Parliament has the exclusive right of initiative. In order to avoid requests which are irregular or linked to a chance vote of the Assembly, there must be a formal procedure leading to a vote in plenary under the same conditions as for the appointment of the Ombudsman.

The reasons for having the Ombudsman dismissed from office are fairly vague since, apart from the case of serious misconduct, this procedure may be set in motion if the Ombudsman does not maintain the conditions necessary for the performance of his duties.

Finally, the Court of Justice is the Institution responsible for actually dismissing the Ombudsman. The procedures laid down for this purpose must be left to the Court itself to decide, in accordance with the provisions governing the rules of procedure.

10. SECRETARIAT

The Ombudsman must have his own administrative structure, if the independence of the office is not to be called into question. Obviously he should be able to draw upon the Institution's administrative or linguistic services, and

particularly those of Parliament. But the Ombudsman should be able to choose his own direct staff, some of whom at least should therefore be recruited for the duration of the Ombudsman's term of office. In general, these people should be engaged in legal work or have professional experience at a high level. Their independence must be fully safeguarded, in particular by guaranteeing their return to their previous employment and maintenance of their related rights.

11. BUDGET

Expenditure relating to the Ombudsman could be entered in the budget via the procedure hitherto used for the Economic and Social Committee, naturally entering the appropriations in a budget linked to that of Parliament.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Civil Liberties and Internal Affairs

for the Committee on Institutional Affairs

Draftsman: Mr RAMIREZ-HEREDIA

At its meeting of 25 and 26 May 1992 the Committee on Civil Liberties and Internal Affairs appointed Mr Ramirez-Heredia draftsman.

At its meetings of 14 July 1992 and 23 September 1992 it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole unopposed with one abstention.

The following took part in the vote: Turner, chairman; Tsimas, vice-chairman; Ramirez-Heredia, draftsman; André (for Defraigne), Beazley, van den Brink, Cooney, Crawley, De Piccoli, Froment-Meurice, Jarzembowski, Lafuente Lopez, Lambrias, Magnani-Noya (for Salisch), Nordmann, Peters, Piermont, Roth, Samland (for Newman) and Taradash.

The Committee on Civil Liberties and Internal Affairs calls on the committee responsible to incorporate the following amendments in its resolution:

Amendment No. 1

After the first recital, new recital a:

whereas citizens' confidence in the institutions necessarily depends on the transparency of public administration, and having regard to the importance attached to the complaints procedure, which helps to encourage the democratic operation of the institutions, the creation of this office represents a key element in the democratization of European citizenship.

Amendment No. 2

After the first recital, new recital b:

whereas the purpose of this institution, which is rooted in Scandinavian tradition, is to protect the rights and liberties of citizens against the harmful effects of poor administration, and it is based on the legal order laid down by the constitutions and laws and on social justice,

Amendment No. 3

After second recital, new recital a:

whereas the terms 'Ombudsman', 'Médiateur de la République', 'Parliamentary Commissioner', 'Difensore Civico', and 'Defensor del Pueblo' denote the same duty - that of assisting private individuals who are the victims of the faulty operation of the administration, and whereas the existence of this figure in the laws of European countries represents a considerable advance in the protection of citizens' rights,

Amendment No. 4

After the second recital, new recital b:

whereas the European Union can only function properly if it has an effective institutional system with a democratic structure,

Amendment No. 5

After the seventh recital, new recital a:

The Regulation concerning the Ombudsman should clearly define the division of responsibilities between the Ombudsman and the Committee on Petitions, since, in accordance with the principle of his autonomy and independence from the institutions as laid down in Art. 138e of the Treaty on European Union, the Ombudsman shall reach decisions without taking instructions from anyone.

Amendment No. 6

Article 3, paragraph 1

New paragraph 1a

Calls for the option of appealing to the Ombudsman to be introduced in respect of all cases of maladministration based on a Community legal instrument relating to discrimination, defined as any biased, insulting or unjust treatment for reasons connected with race, nationality, ethnic origin, religion or sex, so as to help educate public opinion, and recommends that legal texts and measures to combat discrimination be amended accordingly;

Amendment No. 7

Article 3, paragraph 2

New paragraph 2a:

The European Ombudsman shall maintain a constant dialogue with his national counterparts and joint meetings shall be held periodically, yearly if possible, to permit an exchange of experiences and views.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Petitions

for the Committee on Institutional Affairs

Draftsman: Mr GUTIERREZ DIAZ

At its meeting of 18 May 1992 the Committee on Petitions appointed Mr Gutierrez Diaz draftsman.

At its meetings of 17 June, 13 July and 23 September 1992 it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole unopposed, with one abstention.

The following took part in the vote: Bindi, chairman; Miranda de Lage and Happart, vice-chairmen; Gutierrez Diaz, draftsman; Coimbra Martins, Dillen (for Le Pen), Ernst de la Graete, Maher, Malangre (for Lucas Pires), Patterson and Schmidbauer.

I. INTRODUCTION

1. Article 138e of the Treaty on European Union concluded at Maastricht provides for the institution of an Ombudsman. The same article states: 'The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.' To this end, the Committee on Institutional Affairs has been requested to draw up a report embodying a proposal, to be submitted to the Council and Commission for their opinions, following which Parliament will be enabled to establish the regulations governing the office of Ombudsman.

2. Article 138d states that any citizen of the Union and any natural or legal person residing or having his registered office in a Member State shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him directly.

With respect to instances of maladministration in the activities of the Community institutions or bodies, Article 138e states that the Ombudsman shall be empowered to receive complaints from any citizen.

3. The Treaty on European Union thus provides for the coexistence of two organs empowered to receive complaints from citizens. While this may not yet be the appropriate moment to define the respective areas of competence of the Committee on Petitions and the Ombudsman, it is nonetheless desirable to make a number of points here concerning future relations between the two organs.

First of all, the activities of the Committee on Petitions and the Ombudsman should complement each other. As things stand, the committee frequently receives petitions which fall more appropriately within the scope of a national or regional organ responsible for the protection of citizens' rights (e.g. a national ombudsman or the committee on petition of a national parliament). In such cases, the petitioner is requested to approach the relevant organ; efficient cooperation arrangements have, in fact, been instituted with all the organs concerned. It is not the practice, however, to forward petitions directly to non-Community institutions; this would amount to assuming the right to interpret the wishes of citizens who have approached the Committee on Petitions and who could object to their correspondence being forwarded elsewhere. This principle should not apply, however, in the case of the Ombudsman, since the office will be a Community organ and thus similar in nature, in a sense, to the committee. A principle of 'communicating vessels' could also be established, to the effect that complaints addressed to the Ombudsman which did not fall within his field of competence would be forwarded directly to Parliament and registered as petitions, while petitions falling within his brief would simply be forwarded to be dealt with by him.

4. The regulations governing the office of Ombudsman should codify the appointment of the Ombudsman, the organization and internal functioning of his office and his relations with:

- complainants;
- the institutions he is responsible for scrutinizing;
- the European Parliament, as the institution responsible for appointing him, to which he is obliged to report and which may call for his dismissal.

5. The last-named relationship should, given its nature, be organized with the aid of the Committee on Petitions. The present opinion will therefore confine itself to consideration of this relationship and of the appointment of the Ombudsman, and should be considered as complementing the opinion of the Committee on Petitions for the Committee on Institutional Affairs on the results of the Intergovernmental Conference and the Treaty on European Union (A3-0123/92/Part II/p. 150), adopted at the meeting of the Committee on Petitions on 18 and 19 March 1992.

II. LINKS BETWEEN THE OMBUDSMAN AND PARLIAMENT

6. Article 138e(3) states that the Ombudsman shall be completely independent in the performance of his duties and that he shall neither seek nor take instructions from any body. However, Parliament shall have the following responsibilities:
 - it shall appoint the Ombudsman;
 - it may call for him to be dismissed;
 - it shall receive the Ombudsman's reports on individual instances of maladministration in the activities of the Community institutions or bodies; and
 - it shall receive the Ombudsman's annual report.

III. APPOINTMENT OF THE OMBUDSMAN

7. Article 138e(1) and (2) state that the Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The opinion of the Committee on Petitions referred to above suggests that the decision of appointment should be made by qualified majority vote. The appointment of the Ombudsman in plenary will require preparatory work which, in view of its nature and subject, should be carried out mainly by the Committee on Petitions.
8. An appeal must first be launched for the submission of candidatures, specifying the criteria required for the post of Ombudsman. General criteria should, obviously, be laid down in the regulations governing the office. Without wishing to anticipate a decision on the matter, it may be pointed out here that, in view of the Ombudsman's position in the system of Community organs, only figures of considerable political status with substantial administrative experience could be accepted as candidates. The form of the appeal and the procedure for its publication should be decided by the Committee on Petitions.

Subsequently, a shortlist should be drawn up in committee to enable the Committee on Petitions to present the candidates to Parliament in plenary sitting. The Committee on Petitions has considered several procedures for candidates' preselection and presentation:

- one possibility would be for the Committee on Petitions to have the power to select the two best-qualified candidates, following which

Parliament could select one of the two for election by a qualified majority;

- another possibility would be to ask the Committee on Petitions to draw up a list of candidates fulfilling the criteria laid down in the regulations and to submit it to plenary. Parliament would thus be enabled to choose between various candidates;
- a third possibility would be for the Committee on Petitions to propose one person to the House for appointment as the Ombudsman.

The third option was chosen by the Committee on Petitions.

IV. PROCEDURE FOR DISMISSAL OF THE OMBUDSMAN

9. The nature of the complaints which could lead to dismissal of the Ombudsman by the Court of Justice at the request of Parliament is only vaguely evoked in the Treaty on European Union. Such an action will be possible where the Ombudsman no longer fulfils the conditions required for the performance of his duties or where he is guilty of serious misconduct (cf. Article 138e(2)). Given the imprecise nature of these criteria, it must be insisted that any action intended to secure the dismissal of the Ombudsman be preceded by a statement of the facts and a detailed legal analysis, so as to prevent abusive requests for dismissal.
10. Any such analysis should be carried out by the Committee on Petitions, which, given its experience in the examination of petitions, is more competent than any other organ of Parliament to assess whether the Ombudsman has committed a grave error in the handling of petitions or whether he no longer fulfils the conditions required for the performance of his duties.

V. REPORTS BY THE OMBUDSMAN CONCERNING INSTANCES OF MALADMINISTRATION IN THE ACTIVITIES OF THE COMMUNITY INSTITUTIONS OR BODIES

11. Citizens' complaints are of great importance for Parliament's political activities, since they often point up the existence of problems in the application of Community law in particular and the activities of the Communities in general. In addition, petitions enable Parliament to establish a dialogue with the citizen, thus reinforcing public confidence in the Community's workings.
12. The institution of the office of Ombudsman and the allocation to that office of functions hitherto carried out by the Committee on Petitions entail the risk that contact between Parliament and the public will no longer be so close. To avoid such a situation, Article 138e(1) states (in the third sentence of the second subparagraph) that where the Ombudsman establishes an instance of maladministration in the activities of the Community institutions or bodies he shall forward a report to Parliament. This report concerning maladministration should be examined at parliamentary level by the competent committee, i.e. the Committee on Petitions. The committee should be enabled to employ, with a view to taking adequate political action, the full range of measures provided for in Rules 128 and 129 of the Rules of Procedure and confirmed by established use, as in the case of its action on petitions. These include:

- a decision to draw up a report or to deliver an opinion in any other form on the subject concerned;
- a decision to forward the matter for information or action to another committee of Parliament, or else to request the opinion of another committee, pursuant to Rule 120;
- a decision to request the Commission to provide information, to supply documentation or to permit access to its services;
- a decision to request the President of Parliament to forward its opinion to the Commission or the Council;
- a decision to request the President of Parliament to make representations to the competent institution or organ with a view to reaching an amicable solution.

13. With a view to enhancing cooperation between the Committee on Petitions and the Ombudsman and preparing the above-mentioned actions, the committee should have the right to ask the Ombudsman to attend its meetings.

VI. THE OMBUDSMAN'S ANNUAL REPORT

14. Article 138e(1) states (in the third subparagraph) that the Ombudsman shall submit an annual report. This provision recalls Rule 129(5) of the Rules of Procedure of Parliament. The annual report is to be submitted to Parliament. To enable Parliament to examine the subjects raised in petitions and prepare any resultant political action, the report should, in all cases, contain statistical data concerning the number of petitions, their breakdown by subject, the nationality of the complainants, the Member States concerned, the duration of the Ombudsman's investigation and the number of cases in which the Ombudsman was able to resolve the complainants' problems.
15. It would obviously not be sufficient were Parliament to confine itself to noting the Ombudsman's annual report without drawing the necessary conclusions and taking the appropriate action. The annual report must be considered in a framework even wider than that applying to the circumstantial reports referred to above (see paragraph V), and should have the role of enabling Parliament to detect certain shortcomings and gaps in Community law. The Committee on Petitions should also have the opportunity of preparing a political response to the report, possibly by itself submitting a report in plenary.

VII. CONCLUSIONS

The Committee on Petitions notes the modifications embodied in Articles 138d and 138e of the Maastricht Treaty on European Union.

With a view to taking account of these modifications, it calls on the committee responsible to call on Parliament to decide:

- that the appointment of the Ombudsman by Parliament be prepared by the Committee on Petitions, which shall propose to the plenary one candidate for appointment;
- that any decision to call for the Ombudsman's dismissal be taken on the basis of a report by the Committee on Petitions (see paragraphs 9 and 10 above);

- that the Ombudsman be guaranteed access to the officials and documents of all the Community institutions and organs and all bodies in the Member States acting on behalf of the Community;
- that reports on instances of maladministration in the activities of the Community institutions or bodies should be examined by the Committee on Petitions, which should be able to employ all the measures provided for in the Rules of Procedure and confirmed by established use for the consideration of petitions (see paragraphs 11, 12 and 13 above);
- that the Ombudsman's annual report should be referred to the Committee on Petitions, which should be responsible for examining it and for submitting, if necessary, a report to Parliament (see paragraphs 14 and 15 above);
- that complaints addressed to the Ombudsman in areas which do not fall within his field of competence should be forwarded by him directly to Parliament where the subject falls within Parliament's field of competence and provided the complainant agrees, and registered as petitions; and that petitions falling within the Ombudsman's field of competence should be forwarded to him by the Committee on Petitions when it considers this desirable;
- that the draft regulations governing the internal functioning of the office of Ombudsman, drawn up by the Ombudsman himself, should be forwarded to the Committee on Petitions, which shall submit the report in question with a view to the approval of the regulations by Parliament;
- that provision be included in the establishment plan and budget of Parliament for the necessary staffing and funding allocations for the exercise of the activities of the Ombudsman, on a proposal by the latter.

