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A4-0083/94

## REPORT

on the role of the European Ombudsman appointed by the  
European Parliament

Committee on Petitions

Rapporteur: Mr Edward Newman

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PE 209.768/fin.  
en - Or. de/en

- \* Consultation procedure  
simple majority
- \*\*I Cooperation procedure (first reading)  
simple majority
- \*\*II Cooperation procedure (second reading)  
simple majority to approve the common position  
absolute majority of Parliament's component Members to reject or amend the common position
- \*\*\* Assent procedure  
absolute majority of Parliament's component Members to give assent  
except for simple majority under Articles 8a, 105, 106, 130d and 228 EC
- \*\*\*I Codecision procedure (first reading)  
simple majority
- \*\*\*II Codecision procedure (second reading)  
simple majority to approve the common position  
absolute majority of Parliament's component Members either to adopt a declaration of intent  
to reject the common position, or to amend or confirm the rejection of the common position
- \*\*\*III Codecision procedure (third reading)  
simple majority to approve the joint text  
absolute majority of Parliament's component Members to reject the Council text

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At its meeting of 27 and 28 July 1994 the Committee on Petitions appointed Mr Edward Newman, chairman, rapporteur for a report submitting a recommendation to Parliament for the appointment of the European Ombudsman pursuant to Rule 159(4) of the Rules of Procedure of the European Parliament.

Six nominations for the function of European Ombudsman were forwarded for consideration to the Committee on Petitions by the President of the European Parliament pursuant to Rule 159(3). Subsequently, by letter of 24 October 1994, the Secretary General communicated that the signatures of supporting members had been verified by the service responsible.

The committee heard the candidates, pursuant to Rule 159(3) of the Rules of Procedure, at its meeting of 5 and 6 October 1994.

At its meeting of 10 and 11 October the committee had an exchange of views on the merits of each of the six candidates that had been heard.

After a debate at the same meeting the committee drew up a working document on the procedure to be followed (PE 210.225/fin.) and decided, in implementation of Rules 121 and 159 and following a meeting of the chairman with the President of the Parliament, to table separately a recommendation as to the nominee and a report on the role of the European Ombudsman appointed by the European Parliament. The Committee confirmed its chairman, Mr Edward Newman, rapporteur. Authorization for this report was requested by letter of 13 October 1994.

On 27 October 1994 the Conference of Presidents authorized the committee to report on this subject. This was announced at the sitting of 14 November 1994.

By a separate procedure, the Committee on Petitions will prepare the appointment of the European Ombudsman by the European Parliament.

At its meeting of 23 and 24 November 1994 the committee considered the draft report and unanimously adopted the motion for a resolution.

The following took part in the vote: Newman, chairman and rapporteur; Dimitrakopoulos, vice-chairman; Amadeo, Gutierrez Diaz, Malangré, Miranda de Lage, Palacio Vallelersundi, Papakyriazis, Pex, Pons Grau, Schmidbauer.

The report was tabled on 25 November 1994.

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

A.

MOTION FOR A RESOLUTION

Resolution on the role of the European Ombudsman appointed by the European Parliament

The European Parliament,

- having regard to the Treaty establishing the European Community, and in particular Article 8d, second paragraph, and Article 138e(4) thereof,
- having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 20d(4) thereof,
- having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 107d(4) thereof,
- having regard to the Regulations and general conditions governing the performance of the Ombudsman's duties, adopted by the European Parliament on 9 March 1994, and in particular Article 6 thereof<sup>1</sup>,
- having regard to Rules 148 and 159 of the Rules of Procedure of the European Parliament,
- whereas the European Ombudsman is appointed by the European Parliament after each election and for the duration of the parliamentary term,
- whereas the European Ombudsman shall be chosen from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence and have the acknowledged competence and experience to undertake the duties of Ombudsman,
- whereas the nominations must be supported by at least 26 Members and they must demonstrate that the candidate fulfils the conditions required for the performance of the duties of Ombudsman, and whereas they must also contain a solemn undertaking by the candidate not to engage in any other occupation, whether gainful or not, during his term of office in the event of his being appointed,
- having regard to the call for nominations of 30 July 1994<sup>2</sup>,
- having regard to the nominations forwarded pursuant to Article 6(2) of the Regulations and general conditions governing the performance of the Ombudsman's duties and Rule 159(3) of the Rules of Procedure of the European Parliament,
- having regard to the decision by which the European Ombudsman was appointed by the European Parliament for its current term,

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<sup>1</sup> OJ No. L 113, 4.5.1994, p. 15

<sup>2</sup> OJ No. C 210, 30.7.1994, p. 21

- having regard to the report of the Committee on Petitions (A4-0083/94),
1. Believes that, in order to improve relations between the European citizens and the institutions of the European Community, relations should be based on the respect of the rights of the European citizens, and accordingly takes the view that establishment of the Ombudsman will:
    - a. Protect the rights of the European citizens against maladministration by the European Community bodies and institutions,
    - b. Enhance relations between the institutions and the European citizens;
  2. Is of the opinion that the Committee on Petitions and the Ombudsman together form an effective system of defending the interests of ordinary citizens in areas which are the responsibility of the European Community, thereby improving the democratic functioning of the Community;
  3. Recalls that the duties of the European Ombudsman, pursuant to the Treaty establishing the European Community, consist of investigating maladministration in the activities of the Community institutions and bodies, and that it is the duty of the Committee on Petitions to provide an appropriate response to any complaint, request for an opinion or request for action and to reactions by citizens to resolutions of Parliament or decisions adopted by other Community institutions and bodies which are forwarded to it by natural or legal persons;
  4. Underlines the need to establish close cooperation between the European Ombudsman and Parliament's Committee on Petitions, not only in respect of consideration of the Ombudsman's annual and individual reports, but also with a view to safeguarding the interests of the persons in question or improving the functioning of the Community, thereby guaranteeing the citizens of the European Union a swift and effective response to their complaints and petitions;
  5. Undertakes to support the Ombudsman in his activities by considering his reports and, if deemed necessary by the Committee on Petitions, taking appropriate steps to protect the interests of the persons in question, in particular in instances where support from other Community institutions and bodies has been inadequate;
  6. Calls on all Community institutions and bodies, and in particular the Council and the Commission, to cooperate closely with the Ombudsman and, in particular, to place at his disposal the information and documents he requires for the effective performance of his duties;
  7. Urges the three institutions of the European Union to issue swiftly, pursuant to Article 11 of the Decision of the European Parliament on the Regulations and general conditions governing the performance of the ombudsman's duties, a joint statement setting out guiding principles for the number of staff employed by the Ombudsman, and the status as temporary or contract staff of those carrying out inquiries, in such a way that his independence and efficiency will be ensured;

8. Is concerned by the provision for the Ombudsman's office in the draft general budget of the European Communities for the financial year 1995, Volume 2, section 1 of the European Parliament, which provides that only staff dealing with the inquiries referred to in Article 138e of the Treaty establishing the European Community are to be temporary whereas all other human resources are to be met by the Secretariat General of the European Parliament, and urges that in order to uphold the Ombudsman's independence and efficiency all his staff should be assigned to his office for the duration of the Ombudsman's term of office;
9. Instructs its President to forward this resolution to all institutions and bodies of the Union and to the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

1. This report is put forward in connection with the Committee on Petitions' preparation of the appointment of the European Ombudsman by the European Parliament, as laid down in Rule 159 of the Rules of Procedure.

2. Following the entry into force of the Treaty establishing the European Community on 1 November 1993, every citizen or resident has the right to appeal to the Ombudsman. In accordance with Article 138e of the Treaty, 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. Parliament therefore had a responsibility to draw up and adopt the regulations in question. Its decision of 9 March 1994<sup>1</sup> fulfils this obligation.

The purpose of this new office is to afford citizens protection from the excessive power of the administration without having recourse to costly legal proceedings. This is of particular importance in the light of the continuing debate on the Community's 'remoteness' from its citizens.

3. Parliament has already largely adapted its Rules of Procedure to the requirements stemming from its political responsibility for the activities of the European Ombudsman and the need for close cooperation with him. In doing so, Parliament has been faced with the need to create the conditions for complementarity between the two institutions. It has sought in the first instance to strengthen protection of the citizens from the administration and at the same time to retain political control over its own petitions system. The competent committees are currently considering proposals aimed at improving Rule 161 of the Rules of Procedure of the European Parliament (cf. letter of 17 August 1994 from the Committee on Petitions to the President of the European Parliament seeking permission to deliver an opinion on the report by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities on amending Rule 161 of the Rules of Procedure).

4. Article 138e of the Treaty envisages no specific requirements for the person undertaking the duties of the Ombudsman. Nevertheless, a number of criteria need to be laid down to guarantee the impartiality and the requisite specialist knowledge of the Ombudsman.

The Ombudsman must be a citizen of the European Union. He should have the training and appropriate experience to enable him to deal with complex legal questions. Furthermore, in order to guarantee his impartiality the Ombudsman must not, during his term of office, hold any political or administrative office or engage in any other occupation, whether gainful or not. Following his appointment he must renounce all such incompatibilities. All nominations contain solemn undertakings to this effect.

The Ombudsman executes his duties completely independently and for the good of the Community and the citizens of the Union and he must neither seek nor take instructions from any body. On assuming office the Ombudsman must make a solemn

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<sup>1</sup> OJ No. L 113, 4.5.1994, p. 15

declaration before the Court of Justice of the European Communities that he will perform his duties completely independently and impartially.

5. The Ombudsman is appointed by the European Parliament after each election to Parliament and for the duration of the parliamentary term. His duties cease either at the end of his term of office or on his resignation or dismissal. Save in the event of dismissal the Ombudsman remains in office until his successor has been appointed. In the event of early cessation of his duties, a successor is appointed, for the remainder of the parliamentary term, within three months of the office falling vacant. An Ombudsman who no longer fulfils the conditions required for the performance of his duties or who is guilty of serious misconduct can be dismissed by the Court of Justice at the request of the European Parliament.

6. Article 138e(1) and (2) of the Treaty establishing the European Community states that the Ombudsman shall be appointed by a qualified majority after each election of the European Parliament for the duration of its term of office. The appointment of the Ombudsman in plenary sitting required for preparatory work of an extent and nature such that a large part of it has had to be passed on to the Committee on Petitions. In future the Committee will also have to act as the link between the Ombudsman and Parliament. This will involve:

- considering, and assessing the political implications of, the Ombudsman's annual report,
- examining reports on individual cases and submitting proposals for resolving them,
- if necessary, calling the Ombudsman to account and dismissing him from office.

One problem which will arise in the course of cooperation between the two bodies is the distinction to be made between complaints to the Ombudsman and petitions to the European Parliament: under what circumstances should citizens apply to which body?

The Treaties and the Regulations and general conditions governing the performance of the Ombudsman's duties must be taken into consideration. The Ombudsman helps to bring to light maladministration in the activities of Community institutions and bodies. The Committee on Petitions has the obligation to find appropriate responses to any complaint or request for an opinion or request for action and to responses of citizens to resolutions of Parliament or decisions adopted by other Community institutions or bodies which are forwarded to it by natural or legal persons. The right to petition therefore appears to be of a more general nature than the possibility of submitting complaints to the Ombudsman. Such complaints must necessarily be confined to maladministration in the activities of the Community institutions or bodies.

Be that as it may, the creation of the new office must not be an obstacle, but a support, for ordinary citizens, who cannot always be familiar with the internal workings of the Community. In specific instances they may not be aware of the difference between the Committee on Petitions of the European Parliament and the European Ombudsman. Nevertheless, they have the opportunity of putting forward their problems and of expecting the Community institutions to deal with them. It goes without saying therefore that there must be a close link between the Ombudsman and the Committee on Petitions. Petitions which are essentially complaints about maladministration in the activities of the institutions would

be automatically forwarded to the Ombudsman; conversely, the Ombudsman would forward to the Committee on Petitions any other complaints received by him.

7. Parliament has a particular relationship to the European Ombudsman and a great interest in supporting him in every respect. The Community bodies and institutions are obliged to furnish the Ombudsman with the information he requests and to guarantee him access to relevant documents. The authorities of the Member States are also obliged to provide the Ombudsman, at his request and via their Permanent Representatives to the European Communities, with any information which could help to clear up maladministration on the part of the Community institutions or bodies, unless such information is subject to statutory provisions or administrative regulations concerning secrecy or provisions preventing publication.

Should the Ombudsman be refused any information, he himself has no other means of obtaining it. In such instances Parliament will take steps to ensure that all the information and documents requested by him are actually forwarded to him. This applies in particular in instances where the Ombudsman has requested assistance pursuant to Article 3(4) of the Regulations and general conditions governing the performance of the Ombudsman's duties.

8. In order to ensure a continuing exchange of information, the Committee on Petitions will, whenever necessary, invite the European Ombudsman to attend its meetings in order to discuss matters of common interest - of both a general and a specific nature.