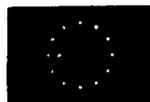


EUROPEAN PARLIAMENT



session documents

ENGLISH EDITION

16 May 1994

A3-0302/94/PART B

REPORT

on amendment of Rule 161 of the European Parliament's Rules of Procedure relating to the Ombudsman of the Rules of Procedure of the European Parliament

Committee on the Rules of Procedure, the Verification of Credentials and Immunities

Rapporteur: Mr Gil Robles

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- * 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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EXPLANATORY STATEMENT

1. On 10 February 1994, the Council of the European Union wrote to the President of the European Parliament as follows:

'Following the Parliament's first revision of its Rules of Procedure there remain three points which need to be singled out given the common concern of the institutions to ensure the independence of the Ombudsman as laid down in the Treaty:

- Rule 160 on the dismissal of the Ombudsman, which introduces a 'dismissal' procedure not provided for in the Treaty, particularly as regards the request sent to the Ombudsman for him to resign;
- Rule 161(1) on the adoption of measures to implement the Decision, which appears to introduce a procedure for the adoption of such measures by the Parliament, whereas Article 14 of the Decision states that these measures are to be adopted by the Ombudsman;
- Rule 161(2) and (3) on the communication of information held by the Ombudsman to Parliament committees and Members States' judicial authorities, which goes beyond the provisions of Articles 3 and 4 of the Decision.'

The Council adds: 'It is self-evident that both the provisions of the Treaty and those of the Decision on the Ombudsman take precedence over any provisions in the Rules of Procedure of an institution, that any provision in those Rules which is contrary to the Treaty or to the Decision could not be applied and that, consequently, the regulations concerning the Ombudsman will be applied in accordance with the Treaty and the Decision.'

2. Consideration should be given to the Council's remarks, bearing in mind that the European Parliament decided at the Interinstitutional Conference on 25 October 1993 that it would make the necessary changes to its Rules of Procedure to make them compatible with the Treaty and the Decision on the Ombudsman.

3. Rule 160 of Parliament's Rules of Procedure does not provide for a dismissal procedure since Parliament's vote is not tantamount to a dismissal but only a requirement that its President apply to the Court of Justice to have the Ombudsman dismissed (see paragraph 4).

Article 138e of the Treaty assigns to Parliament, and to Parliament alone, the power to ask the Court of Justice to dismiss the Ombudsman. The procedure for taking this initiative has not been established either by the Treaty or by the Decision on the Ombudsman. Given the importance of a decision to request the Court of Justice to dismiss the Ombudsman, it is therefore vital for prior provision to be made for this process in the European Parliament's Rules of Procedure.

The Rules of Procedure make no provision for addressing a request to resign to the Ombudsman. The Rules of Procedure do take into account the possibility of the Ombudsman resigning, which is expressly provided for in Article 7 of the Decision on the Ombudsman.

In fact, Article 7 leaves no room for doubt and it is clear that the resignation of the Ombudsman entails, ipso facto, the cessation of his duties. Rule 160 of

the European Parliament's Rules of Procedure draws the logical conclusion, namely that the dismissal procedure is no longer relevant in the event of a resignation.

4. The Council of the European Union appears to be right to draw attention to the contradiction between Article 161(1) of Parliament's Rules of Procedure and Article 14 of the Decision on the Ombudsman. Rule 161(1) should therefore be simply deleted. The Ombudsman is fully competent to adopt the provisions for implementing the regulations governing the performance of his duties.

5. Provision is made expressly in Article 3(7) of the Decision for the Ombudsman to report to Parliament on specific instances of maladministration. However, there is no provision for a parliamentary committee to demand to be informed. Rule 161(2) of Parliament's Rules of Procedure should therefore be amended, leaving it up to the Ombudsman to determine in the light of the state of the inquiries whether to meet any request to this effect.

6. Rule 161(3) should be deleted, bearing in mind that Article 4 of the Decision on the Ombudsman is perfectly adequate for governing relations with the judicial authorities. Any contradictions or disparities in interpretation would thus be avoided.