



26 June 1998

A4-0258/98

REPORT

on the annual report on the activities of the European Ombudsman in 1997
(C4-0270/98)

Committee on Petitions

Rapporteur: Mr Edward Newman

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PE 226.262/fin.

* Consultation procedure
simple majority

** Cooperation procedure (first reading)
simple majority

**I Cooperation procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to reject or amend the common position.

*** Assent procedure
majority of Parliament's component Members to give assent
but 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
majority of Parliament's component Members to adopt a declaration of intended
rejection of the common position, and/or amend the common position or confirm its rejection

***III Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text

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By letter dated April 1998, the European Ombudsman, Mr Jacob Söderman, forwarded his annual report to the European Parliament, pursuant to Article 138e(1) of the Treaty on European Union and Article 3(8) of the Decision of the European Parliament on the regulations and general conditions governing the performance of the European Ombudsman's duties.

At the sitting of 15 May 1998, the President of the European Parliament announced that he had referred this annual report to the Committee on Petitions as the committee responsible.

At its meeting of 4 and 5 February 1998, the Committee on Petitions appointed Mr Edward Newman rapporteur.

The European Ombudsman presented his report to the Committee on Petitions at its meeting of 20 and 21 April 1998.

At its meetings of 27 and 28 April, 25 and 26 May and 22 and 23 June 1998, the committee considered the annual report of the European Ombudsman and the draft report. At the latter meeting, the committee adopted the motion for a resolution unanimously.

The following took part in the vote: Mr Fontana, chairman, Mr Newman, vice chairman and rapporteur, Mr Ullmann, vice chairman, Mrs Thors, vice chairman, Mr Cassidy (for Mr Perry), Mr Gutiérrez Díaz, Mrs Heinisch, Mr Kellett-Bowman, Mrs Miranda de Lage, Mrs Schmidbauer and Mr Smith.

The report was tabled on 26 June 1998.

The deadline for amendments will be indicated in the draft agenda for the part-session at which the report is to be considered.

A
MOTION FOR A RESOLUTION

Resolution on the annual report on the activities of the European Ombudsman in 1997 (C4-0270/98)

The European Parliament

- having regard to the annual report of the European Ombudsman for 1997 (C4-0270/98),
 - having regard to the Treaty establishing the European Community and especially Articles 8d, second paragraph, and 138e thereof,
 - having regard to the Treaty establishing the European Coal and Steel Community and, in particular, Article 20d thereof,
 - having regard to the Treaty establishing the European Atomic Energy Community and, in particular, Article 107d thereof,
 - having regard to its resolution of 17 November 1993 and its decision on the regulations and general conditions governing the performance of the European Ombudsman's duties adopted by the European Parliament on 9 March 1994 and, in particular, Article 3(8) thereof¹,
 - having regard to the resolution on the role of the European Ombudsman, adopted by the European Parliament on 14 July 1995²,
 - having regard to its resolution of 15 July 1997 on the annual report for 1996 of the European Ombudsman³,
 - having regard to its previous resolutions on petitions, particularly that adopted on 16 July 1998 on the basis of the annual report on the deliberations of the Committee on Petitions during the parliamentary year 1997-1998,⁴
 - having regard to the report of the Committee on Petitions (A4-0258/98),
- A. whereas, pursuant to the Treaty on European Union, the duties of the European Ombudsman are to conduct inquiries for which he finds grounds concerning instances of maladministration in the activities of the Community institutions or bodies, on the basis of complaints submitted to him or on his own initiative, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role,

¹ OJ L 113, 04.05.94, p. 15

² OJ C 249, 25.09.95, p. 200

³ OJ C 222, 21.07.97, p. 3

⁴ PE 226.245/fin. (A4-0250/98), see minutes of 16.07.1998

- B. whereas European citizens and residents clearly wish to be more closely involved in the shaping of the Community by means of their contacts with the Community institutions and bodies, and the functions of the European Ombudsman provide a guide to the actions required to improve the activities of these bodies,
 - C. whereas the public's confidence in the activities of the Community institutions and bodies is largely dependent on their good administration,
 - D. whereas the increase in the number of complaints to the European Ombudsman shows the public's concern for good Community administration,
 - E. whereas the European Ombudsman's own-initiative inquiries can pinpoint administrative irregularities with political implications,
 - F. whereas close cooperation and coordination between the European Parliament and the European Ombudsman is of the utmost importance in safeguarding the rights of citizens and the democratic functioning of the European Union,
1. Congratulates the European Ombudsman on a thorough and comprehensive annual report for 1997;
 2. Welcomes the definition of the term maladministration, as asked for by Parliament after the European Ombudsman's annual report for 1996; the definition and the examples mentioned in the annual report for 1997 give a clear picture as to what lies within the remit of the European Ombudsman;
 3. Notes the European Ombudsman's positive response to the initiative for a code of good administrative behaviour for the European institutions and bodies, and stresses the importance for such a code to be, for reasons of public accessibility and understanding, as identical as possible for all European institutions and bodies;
 4. Supports the efforts undertaken by the European Ombudsman in relation to the infringement procedures pursuant to Article 169 of the Treaty;
 5. Notes that safeguarding the democratic rights of citizens by means of submitting petitions to the European Parliament and complaints to the European Ombudsman necessitates a broadened and deepened cooperation between the European Ombudsman and the Committee on Petitions;
 6. Agrees with the view that for special reports the Committee on Petitions is the committee responsible while opinions might be requested from other parliamentary committees.
 7. Will examine to what extent Parliament's rules and regulations need to be adapted in order to establish clear and adequate relations with the Ombudsman.
 8. Underlines that the satisfactory functioning and cooperation is dependent to a large extent on the allocation of sufficient resources to the European Ombudsman as well as to the Committee on Petitions;

9. Calls on the European Ombudsman and all the European institutions and bodies to enhance, in all possible ways, the awareness of citizens in Europe of their right to petition the European Parliament and the possibility to send a complaint to the European Ombudsman, and the formal differences between the two;
10. Recalls the urgent need for the Ombudsman and the Committee on Petitions to share an open and effective computerized database by improving and extending the existing electronic data processing system, whereas consideration should be given to making such data available on the Internet to the citizens of the European Union.
11. Instructs its President to forward this resolution and the report of the Committee on Petitions to the European Ombudsman and to all institutions and bodies of the European Union, to the national parliaments and governments of Member States, to the national Ombudsmen or similar office-holders and the national parliamentary committees which are competent for petitions, or organs of a similar nature in the Member States.

B EXPLANATORY STATEMENT

I. Content of the report

1. The annual report by the European Ombudsman covers the calendar year 1997 and thus represents the second annual report on the activities of the Ombudsman for a full calendar year. Just as the annual report for 1996 was described by the Committee on Petitions as "implementing the general principles developed in the first annual report in 1995"¹, the annual report for 1997 may be described as a refined and concise format for a thorough and comprehensive annual report.

The annual report consists of one part (Chapter 2) outlining the framework for the Ombudsman's work, i.e. the legal basis of the work and how complaints are analysed, dealt with and followed up, one part (Chapter 3) presenting 100 examples of decisions following an inquiry, one part (Chapter 4) presenting the Ombudsman's relations with the European Parliament, the Commission and the Council, one part (Chapter 5) presenting the Ombudsman's relations with national ombudsmen and similar bodies and one part (Chapter 6) presenting the Ombudsman's work in the field of public relations. Statistics on the Ombudsman's work, and notes on expenditure and staff are set out in appendices.

II. Comments on the annual report

Complaints to the Ombudsman (Chapter 2)

2. In the period under review, the Ombudsman received 1,067 complaints from individual citizens, 57 from associations and 38 from companies. 17 complaints were transmitted by Members of the European Parliament and 2 petitions were transmitted to the Ombudsman by the Committee on Petitions to be dealt with as complaints; 227 cases were brought over from the previous period and 4 own-initiative inquiries were opened.

Of the 1,412 cases thus dealt with during 1997, only 27% (368) were within the mandate of the European Ombudsman and of those 63% (230) were deemed admissible; a total of 14% of the cases dealt with lead to initiated inquiries. Only 3% of the cases dealt with led to either a critical remark from the Ombudsman, or a settlement by the institution or a friendly solution.

3. Bearing in mind the general nature of the European Union's administration, as well as much publicised public criticism towards it, it is hard to believe that these figures represent a fair picture of the reality, or, in other words, that the European Union's administration is almost without fault. Hence it is of the utmost importance that the public is given a clear and comprehensive picture of the possibility to complain, as well as the legal basis for the Ombudsman's work and the mandate within which he operates.

¹ P. 7, para 1; Report on the annual report on the activities of the European Ombudsman in 1996; rapporteur: Mr Nikolas Papakyriazis (A4-0211/97).

Defining the term maladministration

4. In its report on the annual report on the activities of the European Ombudsman in 1996², the European Parliament noted that, given that there are no common administrative rules for the European institutions and bodies and that the Member State's administrative traditions are very different, it is important to have a clear definition of what constitutes the maladministration the European Ombudsman is mandated to deal with.

In the annual report under review, the Ombudsman has given a thorough description of what is, in general, meant by the term maladministration and also pointed to the differences between his powers and those of the national ombudsmen and similar bodies. However, based on replies from the national ombudsmen and similar bodies to a request of the meaning given to the term maladministration in their respective Member States, the Ombudsman concluded that the fundamental notion could be defined as follows:

Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.

5. Naturally, this definition can only be seen as a very general description and should not be used as the sole definition of the term maladministration pursuant to Article 138e of the Treaty, as correctly stressed by the Ombudsman in his annual report³. Together with the explanation given in his annual report for 1995 and the practice since developed, there can, however, now be little doubt of what should be understood from the wording of Article 138e.

At the same time, one should not underestimate the difficulties of explaining to the public in what instances a complaint to the European Ombudsman is the appropriate recourse, the problem basically being that people from different countries with different administrative traditions and legislation all have different views of the Ombudsman's responsibilities and possibilities to act.

A code of good administrative behaviour

6. Following the annual report of the Committee on Petitions for the parliamentary year 1996-1997⁴, the European Parliament called on the Commission to establish clear standards of service that European citizens are entitled to expect from the Commission. In view of the difficulties in communicating to citizens the responsibilities of the Ombudsman, as well as those of the Committee on Petitions, a clear definition like this would certainly be welcome, not only giving the citizens certain rights towards the institution as such, but also giving a

² Ibid.

³ Annual report 1997, p. 21, para. 2: "...the specific rules and principles which are binding on public bodies vary according to the constitutional, legal and administrative framework of the country concerned. Furthermore the rule and principles are not static. They change and develop as the result of the work of the legislator, the courts, of the ombudsmen and of the administration itself."

⁴ Rapporteur: Mr Roy Perry (A4-0190/97).

clear framework for what type of actions are not good administration, and thus possibly solve a part of the problem illustrated by the high percentage of complaints outside the mandate, or inadmissible complaints, or complaints where, after all, no maladministration was found⁵.

In his annual report, the Ombudsman expresses his satisfaction with the idea of such a clear standard⁶, the work on which has already started within the Commission, but it has to be stressed that the ideal situation for the citizens, for reasons of public accessibility and understanding, would not be different administrative rules for the different institutions and bodies, but a common set of general administrative rules - a universal code - for all institutions and bodies of the European Union. Such a universal code would then have to be supplemented by each institution and body according to the specific nature of their work.

The procedures pursuant to Article 169 of the Treaty

7. Article 155 of the Treaty places an obligation on the Commission to ensure that the provisions of the Treaty and the measures taken by the institutions in accordance with it are applied. In the event of an infringement of Community law, the Commission, in accordance with Article 169 of the Treaty, may open proceedings for failure of a Member State to fulfill a Treaty obligation.

The Ombudsman, as well as Parliament in numerous reports on the annual reports of the Commission on the monitoring and application of Community law, has criticized the Commission for not having equipped itself with the appropriate means of monitoring the application of Community law, but, to a much too large extent, relying on complaints from individuals; this unsatisfactory situation is recognised even by the Commission itself. As pointed out by the Ombudsman, the citizens' confidence in the Commission's dealings with alleged infringements is thus crucial.

Following many complaints concerning the administrative procedures used by the Commission in these cases, the Ombudsman conducted an own initiative inquiry into the matter during 1997⁷. The complaints generally targeted four specific problems:

- * the administrative process taking place before judicial proceedings may begin;
- * the excessive time taken to process complaints;
- * a lack of information about the ongoing treatment of complaints;
- * the failure to produce reasoning as to how the Commission reaches a conclusion that there has not been an infringement of Community law by a Member State.

⁵ In 58% of the inquiries closed with a reasoned decision during 1997, the Ombudsman found no maladministration.

⁶ The subject is further elaborated in the Ombudsman's special report following his own initiative inquiry into public access to documents and the Committee on Petitions' subsequent report; rapporteur: Mrs Astrid Thors.

⁷ Own initiative inquiry 303/97/PD.

8. Without going into any further details of the inquiry, it seems obvious that the Ombudsman's commendable initiative has led to a clear improvement of the citizens' position vis-à-vis the Commission in cases of complaints; the Commission has taken note of the Ombudsman's suggestion to improving citizens' procedural rights in the period before the judicial proceedings may begin and the Commission has the intention of, in all cases except where the complaint is manifestly unfounded or where the complainant appears to have lost interest in the complaint, starting to inform the complainant of its intention to close the file with the reasons therefore.

However good the prospects, the Ombudsman will have to continually monitor the situation to ensure that the Commission keeps to its commitment and that its routines and subsequent relations with the citizens develop according to this commitment and, furthermore, that the new routines, once fully implemented, meet high standards of good administration.

Parliament's treatment of special reports by the Ombudsman

9. On 15 December 1997, the Ombudsman presented to the President of Parliament the first ever special report under the Statute of the European Ombudsman⁸. In relation to this, the Ombudsman proposed that the special report should be dealt with "through a procedure similar to that used for the annual report"⁹.

In the annual report, the Ombudsman stresses that it is of "utmost importance" that the parliamentary committee responsible for relations with the Ombudsman, i.e. pursuant to Annex VI, section XX, of the Rules of Procedure, the Committee on Petitions, is also permanently designated as the committee responsible for dealing with all special reports by the Ombudsman.

10. The Committee on Petitions fully agrees with the Ombudsman's views and points to the routine used for the special report mentioned above: the Committee on Petitions is the committee responsible, while opinions are requested from the committees that possess a special competence and expertise in the questions raised in the special report.

However, as noted by the Ombudsman in the annual report¹⁰, Parliament's Rules of Procedure do not give any guidance in this matter, nor in the matter of other relations with the Ombudsman, such as the treatment of his annual report or his appearing in plenary. It would therefore be commendable to amend the Parliament's Rules of Procedure, to incorporate and codify Parliament's present and possible future relations with the European Ombudsman.

⁸ Supra note 6.

⁹ Introductory letter of 15 December 1997 by the Ombudsman to the President of Parliament.

¹⁰ Annual report, p. 11, para. 3.