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REPORT

on the modification of Parliament's decision of 9 March 1994 on the regulations governing performance of the Ombudsman's duties

Committee on Constitutional Affairs

Rapporteur: Teresa Almeida Garrett

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PROCEDURAL PAGE

At the sitting of 17 March 2000 the President of the European Parliament, Mrs Fontaine, announced that she had asked the Committee on Constitutional Affairs, by letter of 15 March 2000, to draw up a report on the modification of Parliament's decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties and asked the Committee on Budgets and the Committee on Petitions for their opinions.

The Committee on Constitutional Affairs appointed Teresa Almeida Garrett rapporteur at its meeting of 17 April 2000.

It considered the draft report at its meetings of 17 April, 24 May, 12 September and 11 October 2000.

At the last meeting it adopted the motion for a resolution by 22 votes to 0, with 1 abstention.

The following were present for the vote: Napolitano, chairman; Johannes Voggenhuber, Ursula Schleicher, Christopher J.P. Beazley, vice-chairmen; Almeida Garrett, rapporteur, Jens-Peter Bonde, Carlos Carnero González, Richard Graham Corbett, Olivier Duhamel, Jo Leinen, Jacques F. Poos (for Dimitrios Tsatsos), Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Olivier Dupuis, Monica Frassoni, José María Gil-Robles Gil-Delgado, Sylvia-Yvonne Kaufmann, Alain Lamassoure (for Cariaco De Mita), Iñigo Méndez de Vigo, Reinhard Rack (for Bayrou), Lennart Sacrédeus, José Ignacio Salafranca Sánchez-Neyra (for Hanja Maij-Weggen) and the Earl of Stockton.

The opinions of the Committee on Budgets and the Committee on Petitions are attached.

The report was tabled on 13 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

Resolution of the European Parliament on the modification of Parliament's decision of 9 March 1994 on the regulations governing performance of the Ombudsman's duties

The European Parliament,

- having regard to the Treaty establishing the European Community and in particular Articles 21, 195 and 279 thereof, and also Article 20D of the ECSC Treaty and Article 107D of the Euratom Treaty,
 - having regard to its decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties,
 - having regard to the budget conciliation meeting of 26 and 27 November 1999 at which a specific section for the European Ombudsman was established within the EU general budget,
 - having regard to Council Regulation (EC, ECSC, EURATOM) No 2673/1999 of 13 December 1999 amending the Financial Regulation of 21 December 1997 applicable to the general budget of the European Communities¹,
 - having regard to the interinstitutional agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation²,
 - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Budgets and the Committee on Petitions (A5-0293/2000),
- A. whereas, pursuant to Article 195(3) of the EC Treaty, the Ombudsman is completely independent in the performance of his duties,
- B. whereas, pursuant to Article 22(5) of the Financial Regulation, the Ombudsman is treated as an institution for the purposes of that regulation,
- C. having noted the provisions of the Council Regulation creating a specific section for the Ombudsman within the EU general budget and the resulting amendments to the provisions of the Financial Regulation which relate to the Ombudsman,
- D. whereas the change made to the nomenclature of the general budget in order to implement the amendments made to the Financial Regulation applies to the 2000 budgetary year,
- E. having regard to the need to bring the decision on the regulations and general conditions governing the performance of the Ombudsman's duties into line with the amendment made to the Financial Regulation,

¹ Council Regulation No 2673/1999 (OJ L 326, 18.12.1999, p. 1).

² OJ C 73, 17.3.1999, p. 1.

1. Proposes that Articles 12¹ and 16² of Parliament's decision of 9 March 1994 be deleted;
2. Instructs its President to forward this resolution to the Council and the Commission in the context of the procedure referred to in Article 195(4) of the EC Treaty and to publish, in the Official Journal, the European Parliament's decision on amendment of the regulations and general conditions governing performance of the Ombudsman's duties, as soon as the Council has given its final approval.

ANNEX

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

(Amendment 1) Article 12

The Ombudsman's budget shall be annexed (delete)
to section 1 (Parliament) of the general
budget of the European Communities.

(Amendment 2) Article 16

The European Parliament shall make (delete)
provision in its budget for the staff and
material facilities required by the first
Ombudsman to perform his duties as soon as
he is appointed.

¹ Article 12: 'The Ombudsman's budget shall be annexed to Section I (Parliament) of the general budget of the European Communities'.

² Article 16: 'The European Parliament shall make provision in its budget for the staff and material facilities required by the first Ombudsman to perform his duties as soon as he is appointed'.

EXPLANATORY STATEMENT

I. Introduction

1. On 13 January 2000, Mr Terry Wynn, chairman of the Committee on Budgets, wrote to Mrs Nicole Fontaine, President, asking her to 'order the necessary steps to be taken to have the conclusions of the conciliation meeting of 26/27 November 1999 implemented as far as the Ombudsman's budget is concerned.'
2. At the above-mentioned Budget conciliation meeting the Council and Parliament's delegation agreed that the conciliation on the 'eighth train-part B' could be closed. The 'eighth train-part B' concerned changes to the Financial Regulation. One of the amendments proposed by Parliament was the creation of a separate budget section in the general budget of the Communities for the budget of the Ombudsman. The Council accepted these amendments and promised to adopt a Regulation in time to allow it to enter into force on 1 January 2000.
3. On 13 December 1999, the Council adopted Regulation No 2673/1999¹ amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities². The Regulation establishes a specific section for the budget of the European Ombudsman in the general budget.
4. Following the pledge given by Parliament's delegation at the conciliation meeting 'to submit as soon as possible a proposal for amending the regulations relating to the Ombudsman'³ and the adoption of the regulation by the Council, the Budget Committee's chairman thought 'it would seem necessary that the responsible committee of Parliament drafts a report on the modification of Parliament's Decision of 9 March 1994⁴'.
5. The President of the European Parliament referred this matter, in the first instance, to the Committee on Petitions. By letter of 17 February 2000 Mr Gemelli, chairman of the Committee on Petitions, asked the Legal Service for its opinion on the procedure to be followed for the purpose of amending the above decision, and in particular Article 12 thereof.
6. The question of the procedure to be applied arose during the Petitions Committee's discussion on the draft report by Mrs González Álvarez on the deletion of Article 12 of the 1994 decision. In this connection the Ombudsman's staff drew the Petitions Committee's attention to Article 195(4) of the EC Treaty, pursuant to which the European Parliament lays down the regulations and general conditions governing the performance of the Ombudsman's duties after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority.

¹ OJ L 326, 18.12.1999, p 1.

² OJ L 356, 31.12.1977, p 1. Regulation last amended by means of Regulation (EC, ECSC, Euratom No 2779/98 (OJ L 347, 23.12.1998, p 3) : consolidated version appearing in OJ C 80, 25.3.1991, p 1.

³ Council doc. SN 241/99 REV 1, p 3.

⁴ Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties (Annex X to the EP-Rules of Procedure).

7. In a detailed report¹ the Legal Service concludes that 'the provision relating to the Ombudsman's budget (...) cannot be repealed other than through application of the procedure laid down for the purpose of adopting that act. The European Parliament is therefore required to seek the Commission's opinion and to secure approval from the Council'.
8. The Legal Service also concludes that 'there does, however, exist a legislative tradition pursuant to which a legal provision which has become obsolete is maintained on a temporary basis and is not repealed until other amendments have to be made to the same text'. Parliament could, therefore, wait until substantive changes need to be made to the regulations and take that opportunity of tidying up the texts².
9. It therefore seems preferable to apply the procedure referred to in Article 195(4) of the EC Treaty. Even if this looks like a case of excessive legal formalism, the Legal Service rightly points out that the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the institutions themselves³.
10. This is why the European Parliament's Committee on Constitutional Affairs chose, as the legal basis, the procedure referred to in Article 195(4) of the EC Treaty⁴ in order to make the necessary amendments to the regulations governing performance of the Ombudsman's duties.
11. The Constitutional Affairs Committee wishes at this stage of the procedure to refrain from substantially modifying the Ombudsman's statute since it will possibly undergo more substantial changes in the not too distant future. Indeed, the report to be drawn up following Mr Söderman's initiative asking for an enlargement of his investigative powers might possibly lead to a substantial change to Article 3 of Parliament's decision of 1994. It is moreover not to be excluded that the discussions on the Commission proposal for a regulation on the right of access to documents of the European Parliament, Council and the Commission, which are taking place in the framework of the codecision procedure, may lead to further changes to the Ombudsman's statute. For these reasons, the numbering of Articles in the revised Statute has not been modified; your rapporteur proposes to implement a thorough and definitive editing of the text in order to enhance the quality of drafting at a later stage.

¹ SJ-052/00 of 7 March 2000.

² In this context, two developments need to be stressed. First, on 7 December 1999 the President of Parliament and the Ombudsman signed an extension of the agreement relating to prolongation of the cooperation between the two institutions for the year 2000. Second, implementing measures relating to the new budgetary situation created by the Council regulation have been adopted, in particular in Parliament.

³ Court of Justice judgment of 23 February 1988, United Kingdom v Council (Case 68/86, ECJ p. 855, paragraph 38).

⁴ '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.'

II. Conclusions

1. The European Parliament has always upheld the complete independence of the Ombudsman in the performance of his duties and in defending the rights of European citizens in cases of maladministration. It has also recognised that the close links between the Ombudsman and Parliament do not mean that the material and human resources needed for the performance of his duties should be incorporated in an annex to Parliament's budget.
2. The Committee on Constitutional Affairs therefore considers that the agreement reached at the conciliation procedure in November 1999 and the regulation the Council adopted in December 1999, which led to the creation of a specific section in the general budget of the European Communities, are positive steps towards strengthening the autonomy and independence of the European Ombudsman.
3. The Committee on Constitutional Affairs endorses the views expressed in the opinions drafted by Mr Virrankoski on behalf of the Committee on Budgets¹ and by Mrs González Álvarez on behalf of the Committee on Petitions². It therefore proposes deleting Articles 12 and 16 of Parliament's Decision of 9 March 1994.
4. Consequently, the European Parliament's Decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (footnote: OJ L 113, 4.5.1994, p.15) has to be amended, given that Article 12 thereof laid down that the Ombudsman's budget should be annexed to Section I (Parliament) of the general budget. In the same vein, Article 16 should be deleted too.
5. At this point, the decision on the regulations and general conditions governing the performance of the Ombudsman's duties should only undergo minor changes. A more substantial modification should be envisaged at a later stage.

¹ PE 289.549/fin

² PE 294.138/fin.

OPINION

of the Committee on Budgets

for the Committee on Constitutional Affairs

on the modification of Parliament's decision of 9 March 1994 on the regulations governing performance of the Ombudsman's duties

Draftsman: Kyösti Tapio Virrankoski

PROCEDURE

The Committee on Budgets appointed Kyösti Tapio Virrankoski draftsman at its meeting of 19 April 2000.

It considered the draft opinion at its meeting of 6 June 2000.

At this meeting it adopted the conclusions of this opinion.

The following were present for the vote: Terence Wynn, chairman; Reimer Böge, vice-chairman; Kyösti Tapio Virrankoski, draftsman; Joan Colom i Naval, Gianfranco Dell'Alba, Den Dover, Colette Flesch (for Anne Elisabet Jensen), Neena Gill, Catherine Guy-Quint, Jutta D. Haug, Wolfgang Ilgenfritz, Juan Andrés Naranjo Escobar.

INTRODUCTION

On 13 December 1999, the Council adopted Regulation No 2673/1999 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities. The Regulation establishes a specific section for the budget of the European Ombudsman in the general budget. Consequently, the European Parliament's Decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties¹ has to be amended, given that Article 12 thereof laid down that the Ombudsman's budget should be annexed to Section I (Parliament) of the general budget. In the same vein, Article 16 should be deleted too.

BACKGROUND

The Regulation is a direct result of an amendment proposed by Parliament in the "8th train" (Part B) of modifications to the Financial Regulation, which called for a separate section in the general budget of the Communities for the budget of the Ombudsman. This is a reasonable approach, not only in the budgetary sense. The Financial Regulation (Art 22(5)) treats the European Ombudsman as an institution ("save otherwise provided") and it has been the position of the Parliament to strengthen the independence of the Ombudsman, but this was not helped by annexing its budget to Parliament's budget. This construction was also questionable in procedural terms: the Ombudsman's budget was restricted basically to one reading, while the Council's examination of the Ombudsman's budget was prevented by the terms of the Gentleman's Agreement of 1970, according to which Parliament and Council undertake not to make any amendments to each others estimates.

At the conciliation meeting of 26/27 November 1999, the Council accepted to take into account Parliament's position and committed itself to amend the Financial Regulation accordingly. The Council Regulation No 2673/1999 of 13 December 1999 is the result thereof.

This development was already reflected in the budget 2000, which now includes Section VIII for the budget of the European Ombudsman. It is worth noting that transfers from the Parliament's budget to the Ombudsman's budget are no longer possible, since the latter has its own section in the general budget (Art 26 Financial Regulation). Therefore, accurate forecasting becomes all the more important in the Ombudsman's budget.

CONCLUSION

The Committee on Budgets recommends deleting Article 12 of Parliament's Decision of 9 March 1994, which stipulated that the Ombudsman's budget should be annexed to Section I (Parliament). In addition, Article 16 should be also deleted, given that the Parliament no longer has to "make provision in its budget for the staff and material facilities required by the first Ombudsman to perform his duties (...)" This Article has become obsolete.

¹ OJ L 113, 4.5.1994, p.15

OPINION

of the Committee on Petitions

for the Committee on Constitutional Affairs

on the modification of the decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties

Draftsman: Laura González Álvarez

PROCEDURE

At its meeting of 21 June 2000 the Committee on Petitions appointed Laura González Álvarez draftsman.

It considered the draft opinion at its meeting of 13 September 2000.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Vitalino Gemelli, chairman; Roy James Perry and Proinsias De Rossa, vice-chairmen; Laura González Álvarez, draftsman; Felipe Camisón Asensio, Jonathan Evans, Margot Keßler, Ioannis Marinos, Astrid Thors and Rainer Wieland.

SHORT JUSTIFICATION

Article 12 of the European Parliament's decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties stipulated that the Ombudsman's budget should be annexed to Section I (Parliament) of the general budget of the European Communities. Consequently, Article 16 of the decision stated that provision would be made in the European Parliament's budget 'for the staff and material facilities required by the first Ombudsman to perform his duties as soon as he is appointed'.

The Ombudsman performs his duties in a fully independent manner in the general interest of the Communities and citizens of the European Union and is treated as an institution.

In order to strengthen this independence, the European Parliament had asked on several occasions for a separate budget to be established for the Ombudsman.

During the conciliation meeting on the eighth series of 26 and 27 November 1999, the Council agreed to a number of amendments by the European Parliament and, in particular, those relating to the establishment of a separate section for the Ombudsman's budget in the general budget of the European Communities. When accepting these amendments, the Council also promised to amend the Financial Regulation accordingly.

On 13 December 1999 the Council adopted Regulation No 2673/1999 amending the Financial Regulation of 21 December 1977 and establishing a specific section for the Ombudsman's budget.

In budgetary terms, this means that transfers from Parliament's budget to the Ombudsman's budget are no longer possible.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its draft resolution:

Under the terms of Annex VI, Section XVII, paragraph 1, of the European Parliament's Rules of Procedure, the Committee on Petitions is therefore proposing that Articles 12 and 16 of Parliament's decision of 9 March 1994 be deleted.