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2002/2086(COS)

~~4 June 2002~~15 July 2002

## ~~DRAFT REPORT~~REPORT

on the annual report on the activities of the European Ombudsman for the year  
2001  
(C5-~~00000~~296/0000-2002 – 2002/2086(COS))

Committee on Petitions

Rapporteur: Eurig Wyn



CONTENTS

	Page
<del>PROCEDURAL PAGE</del> .....	<del>4</del>
<del>MOTION FOR A RESOLUTION</del> .....	<del>5</del>
<del>PROCEDURAL PAGE</del> .....	<del>4</del>
<del>MOTION FOR A RESOLUTION</del> .....	<del>5</del>
EXPLANATORY STATEMENT .....	12

## PROCEDURAL PAGE

By letter of ~~8 April~~ ..... 2002, the European Ombudsman, Mr Jacob Söderman, forwarded his Annual Report to ~~the~~ European Parliament, pursuant to Article 195(1) of the Treaty establishing the European Community 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 ..... 1 July 2002 the President of Parliament announced that he had referred this Annual Report to the Committee on Petitions as the committee responsible (C5-~~00000296/00002002~~).

The Committee on Petitions had appointed Eurig Wyn rapporteur at its meeting of 24 January 2002.

~~The European Ombudsman presented his annual report to the committee at the meeting of .....2002.~~

The committee considered the Annual Report of the European Ombudsman and the draft report at its meeting(s) of ~~22 and 23 May 2002, 19 and 20 June 2002 and 9 and 10 July 2002~~.

At the ~~latter~~/last meeting it adopted the motion for a resolution ~~by ... votes to ... , with ... abstention(s)/~~unanimously.

The following were present for the vote: Vitaliano Gemelli, chairman; Roy Perry, vice-chairman, Eurig Wyn, rapporteur; Richard A. Balfe, Herbert Bösch, Felipe Camisón Asensio, Glyn Ford, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, Ioannis Marinos, Bill Newton Dunn (for Astrid Thors pursuant to Rule 153(2)) and the Earl of Stockton.

~~... chairman/acting chairman; ... (and ...), vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and...~~

The report was tabled on ~~15 July 2002~~.

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

## MOTION FOR A RESOLUTION

**European Parliament resolution on the ~~A~~Annual ~~report~~Report on the activities of the European Ombudsman for the year 2001 (C5-~~00000296/00002002~~ – 2002/2086(COS))**

*The European Parliament,*

- having regard to the Annual Report of the European Ombudsman for the year 2001 (C5-~~00000296/00002002~~),
- having regard to Article 43 of the Charter of Fundamental Rights of the European Union,
- having regard to the Treaty establishing the European Community and, in particular, Articles 21 and 195 thereof,
- having regard to the Treaty establishing the European Coal and Steel Community and, in particular, Article 20 thereof,
- having regard to the Treaty establishing the European Atomic Energy Community, and, in particular, Article 107 thereof,
- having regard to its resolution of 17 November 1993 and, in particular, the part thereof concerning the regulations and general conditions governing the performance of the European Ombudsman's duties<sup>1</sup>,
- having regard to its decision 9 March 1994 on the regulations and general conditions governing the performance of the European Ombudsman's duties and, in particular, Article 3(8) thereof<sup>2</sup>,
- having regard to its resolution of 14 July 1995 on the role of the European Ombudsman<sup>3</sup>,
- having regard to its resolution of 6 September on the Annual Report for the year 2000 of the European Ombudsman<sup>4</sup>,
- having regard to its resolution of 6 September 2001 on the deliberations of the Committee on Petitions during the parliamentary year 2000-2001<sup>5</sup>,
- having regard to its resolution of 15 May 2001 on the institution of the petition at the dawn of the 21st century<sup>6</sup>,

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<sup>1</sup> OJ C 329, 6.12.1993, p. 132

<sup>2</sup> OJ L 113, 4.5.1994, p. 15

<sup>3</sup> OJ C 249, 25.9.1995, p. 200

<sup>4</sup> OJ C 072E, 21.3.2001, p. 329

<sup>5</sup> OJ C 072E, 21.3.2002, p. 337

<sup>6</sup> OJ C 034E, 7.2.2002, p. 99

- having regard to its resolution of 11 December 2001 on European citizens' right of petition<sup>1</sup>,
  - having regard to its resolution ~~11 December~~ of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour<sup>2</sup>,
  - having regard to its resolution 11 December 2001 on the Special Report to the European Parliament following the draft recommendation to the European Commission in complaint 713/98/IJH<sup>3</sup>,
  - having regard to Rule 47(1) of its Rules of Procedure,
  - having regard to the report of the Committee on Petitions (A5-~~0000~~0267/2002),
- A. whereas the Charter of Fundamental Rights was solemnly proclaimed in Nice on 7 December 2000 by the Presidents of the European Parliament, Council and Commission,
- B. whereas Article 41 (Right to good administration), Chapter V (Citizens' Rights), of the Charter stipulates that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union,
- C. whereas Article 42 of the Charter stipulates that every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has a right of access to European ~~parliament~~Parliament, Council and Commission documents,
- D. whereas Article 43 (Ombudsman) of the Charter stipulates that 'Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union 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',
- E. whereas the Ombudsman's Annual Report was formally presented to the President of the European Parliament on 5 April 2002 and the Ombudsman, Mr Jacob Söderman, presented the report to the Committee on Petitions on 8 April 2002; whereas the Ombudsman addressed, in his speech-, several areas in which the existing co-operation between the Ombudsman's office and the Committee on Petitions and its secretariat could be further developed, including the preliminary examination of the admissibility of petitions when these allege a violation of Community law,

<sup>1</sup> ~~T5-0661/2001~~Text adopted on 11 December 2001, point 15

<sup>2</sup> ~~T5-0662/2001~~OJ C 72E, 21.3.2002, p.331

<sup>3</sup> Text adopted on 11 December 2001, point 16~~T5-0662/2001~~

- F. whereas the Annual Report, as in earlier years, shows the efforts by the Ombudsman to continue developing the network of national and regional Ombudsmen, with a particular emphasis on helping the offices in the applicant countries; whereas the Ombudsman when presenting his report to the Committee on Petitions brought up the possibility for joint activities with the Committee on Petitions regarding networking with national and regional Ombudsmen and Committees on Petitions,
- G. whereas the statistics submitted by the European Ombudsman highlight the success achieved by his office in making all those who are in contact with the European Union administration increasingly aware of their right to make complaints to the Ombudsman; whereas there has been a steady increase in the number of complaints addressed to the Ombudsman,
- H. whereas the aforementioned statistics also show a considerable decrease of both the time necessary for the Ombudsman to complete an inquiry and the number of inquiries remaining open for over a year,
- I. whereas the Annual Report shows the cases where no ~~maladministration~~maladministration was found, where European authorities have complied with the Ombudsman's recommendations once they have been made aware of the complaint and the problem concerned or a friendly solution has been achieved, but also the number of complaints that the Ombudsman has had to close with a critical remark,
- J. whereas the Ombudsman submitted two Special Reports to the European Parliament during the year 2001, one on access to Council documents and one on discrimination on the grounds of sex concerning nationally seconded experts to the Commission; whereas Parliament last year adopted resolutions on two Special Reports from previous years,
- K. whereas the Commission has refused to comply with the recommendation in the Special Report on Complaint 713/98/IJH, adopted as a resolution by the European Parliament on 11 December 2001,<sup>1</sup>
- L. whereas on 6 September 2001 the European Parliament adopted unanimously the European Union Code of Good Administrative Behaviour, recommended in a Special Report by the Ombudsman in 1998; whereas Parliament called on the Commission to submit a legislative proposal on the basis of Article 308 of the EC Treaty in order to bring the code into force as a common administrative law for all EU institutions and bodies<sup>2</sup>; whereas the Commission has not yet presented such a proposal,
- M. whereas the Ombudsman has declared in his annual report for the year 2001 that he will apply the principles of the code in his activities, as called for by the European Parliament in its resolution on the Ombudsman's Annual Report for the year 2000,
- N. whereas the European Parliament and the Council have adopted the regulation<sup>3</sup> on public

<sup>1</sup> Text adopted on 11 December 2001, point 16A5-0423/2001

<sup>2</sup> B5-0131/2002 OJ C 72E, 21.3.2002. p.331

<sup>3</sup> OJ L 145, 31.5.2001, p. 43

access to documents, provided for under Article 255 of the EC Treaty, and whereas the said regulation came into effect in December 2001,

O. whereas the number of complaints to the Ombudsman where citizens have had justified reason to seek remedy to lack of openness and transparency in the functioning of the European institutions and administration is a matter of continuous concern in respect of the democratic legitimacy and accountability of the Union,

P. whereas Parliament has held that ‘data protection rules are primarily concerned with the protection of private and family life, in accordance with the case law on the relationship between Article 8 of the European Convention on Human Rights and the Council of Europe's Data Protection Convention, and emphasises that it is not the purpose of data protection to restrict the information available to citizens about public activities’<sup>1</sup>,

Q. whereas Parliament has considered that the Commission's policy to withhold the investigation of violations of Community law by Member States and the infringement procedure under Article 226 EC from public scrutiny works to the detriment of the effectiveness of Community law,<sup>2</sup>

~~N. whereas the Ombudsman has declared in his annual report for the year **2001** 2001 that he will apply the principles of the code in his activities, as called for by the European Parliament in its resolution on the Ombudsman's Annual Report for the year 2000,~~

~~O. whereas the European Parliament and the Council have adopted the regulation<sup>1</sup> on public access to documents, provided for under Article 255 of the EC Treaty, and whereas the said regulation came into effect in December 2001,~~

~~whereas the number of complaints to the Ombudsman where citizens have had justified reason to seek remedy to lack of openness and transparency in the functioning of the European institutions and administration is a matter of continuous concern in respect of the democratic legitimacy and accountability of the Union,~~

~~whereas Parliament has held that “‘data protection rules are primarily concerned with the protection of private and family life, in accordance with the case law on the relationship between Article 8 of the European Convention on Human Rights and the Council of Europe's Data Protection Convention, and emphasises that it is not the purpose of data protection to restrict the information available to citizens about public activities”<sup>2,3</sup>,~~

~~P. whereas Parliament has considered that the Commission's policy to withhold the investigation of violations of Community law by **member** Member States and the infringement procedure under Article 226 EC from public scrutiny works to the detriment of the effectiveness of Community law<sup>4,5</sup>~~

**Q.R.** whereas the Commission made a unilateral statement to the revised proposal for Regulation 1049/2001 claiming the right to continued confidentiality of the infringement

<sup>1</sup> Text adopted on 14 March 2002 (P5-TA (2992)0111)

<sup>2</sup> Text adopted on 14 March 2002 (P5-TA (2992)0111)



procedure when applying this new regulation on public access to EU documents,

~~R.S.~~ whereas in December 1999, the European Parliament received a request from the European Ombudsman aimed at amending the provisions concerning the Ombudsman's access to documents and the hearing of witnesses; whereas Parliament expressed its support for the Ombudsman's proposals in a resolution of 6 September 2001~~;~~ whereas the Commission presented its Opinion on amendments to the regulations and general conditions governing the performance of the Ombudsman's duties on 6 March 2002,

~~S.T.~~ whereas the Commission's Opinion deviates considerably from the Ombudsman's proposals and Parliament's amendments in that it seeks, i.a., to defend prior authorisation by the Member States as a condition for the Ombudsman's access to documents originating from them and to continue to limit, at least on the level of rules, the right and duty of officials and other servants to give witness to the Ombudsman,

~~T.U.~~ whereas the European Ombudsman, Jacob Söderman, was awarded the 2001 Alexis de Tocqueville Prize, which is awarded every two years by the European Institute of Public Administration (EIPA) to one or more persons whose work and commitment have made a substantial contribution to improving public administration in Europe,

1. Endorses the Annual Report for 2001 submitted by the Ombudsman, which is comprehensive and detailed in its overview of the activities conducted during the year and in particular of the various cases processed;
2. Considers the role of the Ombudsman in enhancing openness and democratic accountability in the decision-making and administration of the European Union as an essential contribution towards a Union in which decisions truly are taken "as openly as possible and as closely as possible to the citizen"; takes the view that the present and first European Ombudsman has established good practices in the exercise of his office, which form a solid base for further developing the role of the Ombudsman in the service of European citizens;
3. Congratulates the Ombudsman, Jacob Söderman, on being awarded the 2001 Alexis de Tocqueville Prize, and notes with pleasure the outstanding way in which Mr Söderman has established the role of European Ombudsman;
4. Commends the efforts and activities by the Ombudsman, including the continuous updating of his website, with a view to making his role known to an ever wider public and to establishing networks of links with regional ombudsmen, in both the Member States and the applicant countries; welcomes the offer by the Ombudsman to develop common activities with the Committee on Petitions in respect to reinforcing the contacts and exchange of experience with national and regional Ombudsmen and Committees on Petitions;
5. Recognises the particular care taken by the Ombudsman in helping over the past year in the establishment of the office of Ombudsman in those countries wishing to join the Union; considers it essential to continue to strengthen the network of national and regional

Ombudsmen in the applicant countries;

6. Commends the success of the Ombudsman over the past year in reducing the time needed for processing complaints; encourages the Ombudsman to continue gradually reducing, where this depends on the Ombudsman's office, the time needed to respond to citizens' complaints; calls on all institutions and bodies to facilitate, on their part, rapid replies to citizens when the Ombudsman has been called upon to investigate an alleged instance of ~~maladministration~~maladministration in their activities;
7. Notes that the majority of inquiries conducted by the Ombudsman, as in previous years, have concerned the Commission, and considers this comprehensible given the role of the Commission in the administration of all Community policies;
8. Notes with satisfaction that in many cases European authorities have taken action to settle a complaint once they are made aware of the problem concerned and that in other cases a friendly solution has been achieved; urges the relevant Community authorities to comply with the Ombudsman's draft recommendations to remedy cases of maladministration following an inquiry and to follow up the Ombudsman's critical remarks in order to prevent similar cases of maladministration arising in the future;
9. Considers that the Ombudsman again has employed sound judgement in using his powers to draw up Special Reports to the European Parliament; takes the view that when an institution refuses to comply with a recommendation in a Special Report submitted by the Ombudsman to Parliament, which Parliament has adopted as a resolution, this raises concerns of institutional balance and loyal co-operation;
10. Supports the Ombudsman in his call on the Council, Commission and Parliament to respect the Charter of Fundamental Rights as proclaimed in Nice in December 2000 and agrees that failure to do so would increase mistrust between the EU and its citizens;
11. Welcomes the Ombudsman's decision to apply the principles in the ~~code~~Code of ~~good-~~Good administrative~~Administrative~~ ~~behaviour~~Behaviour in his activities, as requested by Parliament in its resolution on the Ombudsman's Annual Report for the year 2000;
12. Considers that, in examining cases of maladministration and in enforcing the right of citizens to good administration pursuant to Article 41 of the Charter of Fundamental Rights of the European Union, the principles enshrined in the European Union Code of Good Administrative Behaviour should always be applied, and regrets the failure by the Commission so far to adopt and apply the Code of Good Administrative Behaviour as approved by the Parliament;
13. Reminds the Commission that Parliament has called for a proposal for a general legal act on administrative procedure on the basis of Article 308 of the EC Treaty, which would be binding on all EU institutions and bodies; undertakes, in the absence of such a proposal, to make use of its right under Article 192(2) to take a legislative initiative pursuant to Rule 59 of Parliament's Rules of Procedure based on the Code of Good Administrative Behaviour;

14. Calls on all EU institutions and bodies to implement Regulation 1049/2001 in the spirit of recognising that access to documents held by the European institutions is a fundamental right pursuant to Article 42 of the Charter of Fundamental Rights and with the sincere objective to take decisions "as openly as possible and as closely as possible to the citizen" as required by Article 1(2) of the Treaty on the European Union;
15. Reconfirms its position that data protection rules are primarily concerned with the protection of private and family life, in accordance with the case law on the relationship between Article 8 of the European Convention on Human Rights and the Council of Europe's Data Protection Convention, and emphasises that it is not the purpose of data protection to restrict the information available to citizens about public activities;
16. Reiterates<sup>16</sup> its demand that the Commission should inform the complainant in complaint 713/98/IJH of the names of the delegates of the *Confederation des brasseurs du marché commun* who attended a meeting organised by the Commission on 11 October 1996 and of companies and persons in the 14 categories identified in the complainant's original request for access to documents who made submissions to the Commission under file reference P/93/4490/Y;
17. Welcomes the Communication from the Commission on relations with the complainant in respect of infringements of Community law as an improvement in the administration of the infringement procedure; notes, nevertheless, that the Communication does not address, in substance, the question of access to documents and reiterates, therefore, its call on the Commission to reconsider, when applying Regulation 1049/2001, its interpretation of the "purpose of the infringement procedure";
18. Welcomes the offer by the Ombudsman to bring to the attention of the Convention on the Future of Europe matters of concern to Parliament when dealing with petitions and asks, in this respect, the Ombudsman to propose to the Convention a review of the infringement procedure under Article 226 of the EC Treaty;
19. Takes note of the Commission's Opinion on amendments to the regulations and general conditions governing the performance of the Ombudsman's duties;
20. Calls on the Commission to reconsider its position on the proposed amendments to Article 3(2) of the Ombudsman's Statute, notably, regarding Member States' and third parties' right to deny the Ombudsman and Parliament access to information and regarding the limits defended by the Commission in respect of the right and duty of officials and other servants to give truthful testimony to the Ombudsman in the course of his inquiries;
21. ~~Confirms its resolution<sup>1</sup> to further develop~~ Considers that it would be appropriate to reinforce the necessary ~~the~~ co-operation between ~~its~~ the Committee on ~~Petitions~~ responsible and the Ombudsman,; ~~welcomes the concrete suggestions made by the Ombudsman in this respect when presenting his annual report to Parliament; with due regard for their respective powers, -and undertakes to seek to initiate a review, without delay and at the most appropriate level, of Parliament's~~ its Rules of Procedure and the

<sup>1</sup> Text adopted on 11 December 2001, point 16

Ombudsman's Statute in order to be able to make any changes in these which may be needed by the end of the present legislature ~~with a view to adopting a common statute for complaints to the Ombudsman and petitions to the European Parliament by the end of the present legislature;~~

22. Instructs its President to forward this resolution and the report by the Committee on Petitions to the Commission, the Council, the European Ombudsman, and all European Union institutions and bodies, to the governments and parliaments of the Member States and to the ombudsmen or equivalent bodies in the Member States.

## EXPLANATORY STATEMENT

### Introduction

Citizenship of the Union was established by the Treaty of Maastricht giving the right to petition the European Parliament and the right to complain to a European Ombudsman.

The Amsterdam Treaty contributes to further development of Union citizenship with a restatement of the constitutional principles on which the Union is founded. -Article A of the Union Treaty, as amended, refers to:

*an ever closer union among the peoples of Europe in which decisions are taken as openly as possible and as closely as possible to the citizen.*

There were high expectations ~~in at~~ the Nice Summit 2000 that the new rights for European ~~Citizens-citizens~~ enshrined in the Charter of Fundamental Rights would be incorporated into the Treaty. -Although not incorporated into the Treaty the Council, Parliament and Commission declared their commitment to the principles of the Charter. -Your rapporteur agrees with the Ombudsman that actual compliance with these principles by the European institutions which have proclaimed the Charter is essential for promoting the rule of law and showing respect to the European citizen.

The majority of complaints to the Ombudsman are made directly by the citizens. -Despite previous criticism about lack of publicity, although there is always room for improvement, it has to be noted that the number of complaints are still on the increase again in 2001, clearly demonstrating that the Ombudsman is reaching more and more circles. -He is now a well recognised established figure within the European Union, and receipt of awards such as the Alexis de Toqueville Prize ~~and the European of the Year award by the European Voice~~ further demonstrates this.

As the present Ombudsman, Jacob Söderman, who has been the first to hold the office, has announced his intention to retire from office in March 2003, there is perhaps also reason to reflect on the role and place of the European Ombudsman in the institutional framework of the Union and on the practices established and principles followed by the Ombudsman in exercise of his duties under the Treaties and his Statute. -Your rapporteur's conclusion would be that the Ombudsman has come to play an important role in the promotion of good administration in all EU institutions and bodies and that the work of Mr Söderman forms a solid basis for further developing the office of the European Ombudsman to the benefit of European citizens and residents.

### General Points of Interest

1. Clarifying the Ombudsman's powers of investigation is essential to his work and would facilitate his ability to resolve cases more quickly in an environment of openness and transparency. -Parliament has considered the matter ~~on at the Ombudsman's~~ request ~~by the Ombudsman~~ and held that the rules governing the Ombudsman's right of access to documents and hearing of witnesses need to be revised.

2. Under Analysis of the Complaints, 77% of complaints leading to an inquiry were, as one might expect, against the Commission but a more interesting factor is the fact that the main types of alleged maladministration ~~was~~ were due to a lack of transparency. -This clearly highlights the need for the Commission to demonstrate its commitment to an open and transparent public administration.
3. As proposed in the ~~BÖSCH~~ Bösch report last September, ~~s~~ there is much support ~~to~~ for developing closer co-operation between the European Ombudsman's office and the Petitions ~~committee~~ Committee. -There is a clear possibility to improve co-operation on ~~non-political~~ non-political issues and the Ombudsman provided excellent examples of how this could be achieved in his speech to the Petitions Committee in April<sup>1</sup>.
4. The example cases ~~eases~~ provided in the report are excellent and perhaps these could be posted on the website to aid those unsure of whether their case falls within the ambit of the Ombudsman's competency. -They would also provide excellent examples as to what should be included when submitting complaints and how to format complaints to the Ombudsman.
5. When cases are deemed inadmissible, the Ombudsman advises the complainant, if possible, of a competent body or forwards the complaint directly. -This is normally done within one month, so that citizens are put in touch rapidly with the body that is best able to help them.

## Points addressed in the conclusions

### ◆ Code of Good Administrative Behaviour

Citizens should have the right to know what their institutions are doing and why. -This would form the basis of a service-minded and accountable administration.

The Ombudsman has noted that "a positive development for the citizens has taken place" in respect to the code. -However, this appears to be largely thanks to the Ombudsman's efforts ~~of the Ombudsman~~ in making the code known and respected. -He has also informed the institutions and bodies that he will, as suggested in the ~~Böesch~~ Bösch report on the Ombudsman's annual report for 2000, start to follow up on the critical remarks that he makes from the beginning of this year.

Still, it seems that without the engagement by Parliament the issue will not lead to the result called for by our committee in the Perry report, that the Commission puts forward a proposal for a legal act on the basis of Article 308 of the Treaty, the legal basis for acts deemed necessary for the development of the Community and Union<sup>2</sup>.

In his presentation of the Annual Report the Ombudsman appealed directly to the Parliament

<sup>1</sup> OJ C 72E, 21.3.2002. p.329

<sup>2</sup> OJ C 72E, 21.3.2002. p.329

and expressed his "hope that the European Parliament takes steps to achieve the ultimate goal, which is a modern EU law on good administration based on the existing Code". -Your rapporteur, therefore, proposes that Parliament could declare that it will use its powers under Article 192 and Rule 59 to draw up a legislative initiative report on the basis of the ~~code~~Code.

- **Openness and access to information:**

In his presentation of the annual report the Ombudsman noted that "on openness, no real changes have been noted in the attitude of the Community institutions. -Their own rules of procedure appear to have a tendency to close rather than to open their activities for the surrounding world and its citizens".

There are some indications that especially the Commission, but also the Parliament, intend to use the recently adopted data protection rules to impose more confidentiality on their activities rather than concentrating on the protection of the citizens' right to keep their family and private life out of the public domain.

It is worth noting that Parliament as a political body in plenary has stated in its resolution on the Data Protection Supervisor, and reiterated in its resolution on the implementation of the regulation on public access to documents of the European institutions, that data protection rules are primarily concerned with the protection of private and family life, in accordance with the case law on the relationship between Article 8 of the European Convention on Human Rights and the Council of Europe's Data Protection Convention, and emphasises that it is not the purpose of data protection to restrict the information available to citizens about public activities<sup>1</sup>.

We must also recall that the Committee ~~of~~on Petitions and plenary last year adopted a resolution on the basis of a report by Mrs Lambert, which calls on the Commission to comply with the Ombudsman's recommendation in his Special Report on the complaint by Mr Ronnan, as the Commission so far has refused to disclosed the information sought by the complainant. - This issue, obviously, raises serious questions of institutional balance and loyalty<sup>2</sup>.

- **Fundamental Rights and non-discrimination**

In his foreword the Ombudsman deals with the implementation of the Charter. - The Ombudsman underlines that European citizens have the right to expect the Charter to be followed by those institutions whose presidents solemnly proclaimed it in Nice in December 2000, that is the Council, the Parliament and the Commission, and concluded that if these institutions do not deliver, the Charter will be a further step on the road of mistrust between the EU and its citizens.

Despite positive public statements by the President of the Commission Mr ~~PRODI~~Prodi, the responsible Commissioner Mr ~~VITORINO~~Vitorino and the then President of this Parliament

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<sup>1</sup> Text adopted on 14 March 2001 (P5-TA(2002) 0095)

<sup>2</sup> Text adopted on 11 December 2001, point 16



~~M~~~~mers~~ FONTAINE-Fontaine on the importance for the administration of the Charter in their daily activities, the Ombudsman regrets that this has not been realised ~~on~~at the administrative level, whether it concerns prohibition of discrimination on the basis of age in the recruitment procedure, sex or race. -The same goes for promoting the fundamental right of freedom of expression and the right to parental leave for their own staff.

Here your rapporteur would also like to take the opportunity to congratulate the Ombudsman's success with regard to putting pressure on the EU bodies to eliminate age discrimination from their recruitment procedure. - However, this does not come under the ambit of this report and will undoubtedly be dealt with in detail in next year's report.

- **Article 226 - infringement cases-**

The infringement procedure continues to be the subject of complaints to the Ombudsman. - Citizens, as well as, for instance, the Committee on Petitions, continue to have difficulties with obtaining information on the investigations and correspondence between Commission and Member States, despite such information being necessary already in order to monitor how the Commission uses its discretionary powers whether to take action against a Member State for violation of Community law. -This secrecy naturally leads to speculation as to the reasons for such secrecy: ~~d~~Does the Commission refuse to disclose information because of the fear that the citizens could bring the Commission to court for not bringing the Member State to justice? -It must be said that the Commission on the whole does follow good administrative practices. -Therefore, in theory - and reality -it should not have anything to fear. - The present confidentiality of the procedures leaves the European Commission exposed to take the blame for something the Member States are responsible for. - This of course also discredits the EU institutions for acts which they have not committed. - The possible effects of this on citizens' confidence in the EU and its institutions should not be underestimated.

In this respect I would like to remind the Commission also of the Resolution by Parliament on the implementation of the Regulation on public access to documents held by the EU institutions, which addressed the issue as follows:

*Regrets that the Commission continues to withhold the entire infringement procedure from public scrutiny to the detriment of the effectiveness of Community law; deplores the unilateral statement to the revised proposal for Regulation 1049/2001 made in this respect by the Commission and calls on the Commission to reconsider its interpretation of the purpose of the infringement procedure under Article 226,<sup>1</sup>*

The other problem is the infringement procedure and Article 226 as such. - This, of course, falls outside the scope of the Annual Report of the Ombudsman. - However, the experience of the Committee on Petitions is that the present system is cumbersome, time-consuming and not always very efficient. - The Nice Charter of course introduced the right to good administration as a fundamental right and if incorporated further into the ~~treaty~~Treaty could give rise to a need to reform the infringement procedure. - The Ombudsman has reminded the Committee that he is an observer to the Convention on the future of Europe and expressed his willingness

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<sup>1</sup> Text adopted on 14 March 2002 (P5-TA (2002)011)



to take up the concerns of our committee there.

- **Clarifying the Ombudsman's powers of investigation**

Pursuant to Article 195(4) EC *(t)he 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 Ombudsman's duties.*

In a letter dated 13 December 1999, the European Parliament received a request from the European Ombudsman aimed at amending the provisions concerning the Ombudsman's access to documents and the hearing of witnesses. Parliament's Resolution of 6 September 2001<sup>1</sup>, based on the Report drafted for the Committee on Constitutional Affairs by Mrs Almeida Garrett, would give the Ombudsman access to classified information under condition of confidentiality. It also seeks to repeal present provisions according to which officials and other servants of the Community institutions are obliged to follow instructions from their superiors when testifying to the Ombudsman.

The Commission issued an Opinion on 6 March 2002<sup>2</sup> on the amendments to Article 3(2) of the Ombudsman's Statute. However, unfortunately the opinion shows the Commission unwilling to accept real change in respect to the right and duty of officials and other servants to give truthful and independent witness to the Ombudsman in the course of his inquiries. In respect to the Ombudsman's right of access to documents the Commission refers, i.a., to *(t)he principle of obtaining the prior authorisation of the Member State in question is provided for in Article 4(5) of Regulation 1049/2001*, which your rapporteur considers mistaken and misleading. Albeit the Statute is primarily the responsibility of the Committee on Constitutional Affairs, your rapporteur feels that, as a matter of following up Parliament's actions, the matter should also be addressed in Parliament's resolution on the Ombudsman's Annual Report.

- **Co-operation between the Committee on Petitions and the Ombudsman**

Whilst the Committee on Petitions often rightly is critical of the delays in other institutions responding to Parliament, it is important to consider also how the Parliament itself and its Petitions Committee could set a good example through dealing with Petitions swiftly and efficiently. In his speech to the committee the Ombudsman made some concrete proposals in this respect and looked at the possibility of closer co-operation between the European Ombudsman's office and your Committee and its secretariat. The Ombudsman makes it clear that his intention is not that his office would be involved in examining petitions that deal with political questions such as proposing new laws, or criticising existing ones, or requesting changes in the policies of the EU. Obviously, such petitions should at all time and all stages be dealt with solely by the Committee on Petitions and its secretariat. However, the Ombudsman suggests that his office could perform a preliminary examination of the admissibility of petitions when these allege violations of Community law, help in the drafting of adequate and prompt replies to citizens, as well as co-operation in networking with national and regional ombudsmen and petitions committees.

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<sup>1</sup> T5-0455/2001 OJ C 72E, 21.3.2002, p. 336

<sup>2</sup> COM (2002) 133 final

This issue was dealt with already by the resolution on the Ombudsman's Annual Report for last year, adopted on the basis of the ~~BÖSCH~~ Bösch report. -The concrete proposals from the Ombudsman gives the opportunity for practical advancement. -Your rapporteur supports the idea of the Ombudsman to work with a view to havinge a common statute for petitions to the European Parliament and complaints to the Ombudsman ready for the next legislature.

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<sup>1</sup> ~~OJ L 145, 31.5.2001, p. 43~~

<sup>2</sup> ~~B5-0131/2002~~

<sup>3</sup> ~~Text adopted on 14 March 2002 (P5-TA (2002)0111)~~

<sup>4</sup> ~~Text adopted on 14 March 2002 (P5-TA (2002)0111)~~

<sup>5</sup> ~~B5-0131/2002~~

<sup>6</sup> ~~A5-0423/2001~~ Text adopted on 11 December 2001, point 16

<sup>1</sup> ~~A5-0280/2001~~