



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 9 June 2008**

**10424/08**

**OMBUDS 9  
INST 71  
PE 200**

**"I/A" ITEM NOTE**

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from : Working Party on General Affairs  
to : Permanent Representatives Committee (Part 2)/ Council  
Subject : Amendments to the Statute of the Ombudsman

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1. By letter to the President of the European Parliament of 11 July 2006, Mr Diamandouros, the European Ombudsman, requested the European Parliament to initiate a procedure for the amendment of the following provisions of Statute of the Ombudsman<sup>1</sup>:
  - Power to intervene in cases before the European Court of Justice (Article 1(3))<sup>2</sup>;
  - Access to documents held by the institutions(Article 3(2), subparagraph 1);
  - Testimony by officials and others servants of Community institutions (Article 3(2), subparagraph 4);
  - Divulgation of documents received from institutions (Article 4(1));
  - Information concerning possible criminal activities (Article 4(2));
  - Cooperation with other institutions for the promotion and protection of human rights and fundamental rights (Article 5);
  - Removal of certain obsolete references to the Coal and Steel Community Treaty from Articles 1(1) and 4(1) of the Statute.

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<sup>1</sup> Decision 94/262/ECSC, EC, Euratom of 9 March 1994, as commonly known as "Statute of the Ombudsman" (hereinafter: "*the Statute*").

<sup>2</sup> The request by the Ombudsman to intervene in cases before the European Court of Justice was withdrawn by the Ombudsman following discussions in the Committee on Constitutional Affairs of the European Parliament.

2. On 10 March 2008, the Committee on Constitutional Affairs of the European Parliament approved the amendments proposed by the Ombudsman with some modifications. On 22 April 2008, the plenary of the European Parliament adopted a draft decision amending the Statute as proposed by the Committee on Constitutional Affairs. By letter of 22 April 2008 sent on behalf of the President of the Parliament to the Secretary-General of the Council, the Council was invited to inform the Parliament "*of [its] position (...) in accordance with Article 195(4) of the EC Treaty and Article 107 d (4) of the Euratom Treaty*"<sup>1</sup>.
3. According to Article 195 (4) of the EC Treaty, the European Parliament adopts the Statute of the Ombudsman, after seeking an opinion from the Commission and with the approval of the Council acting by qualified majority. The same procedure applies to subsequent modifications of the Statute of the Ombudsman.
4. On 7 May 2008, the Commission adopted its opinion on the amendments voted by the plenary of the European Parliament<sup>2</sup>.
5. The amendments voted by the plenary of the European Parliament have been thoroughly discussed in the Working Party on General Affairs on 25 April, 16 and 30 May. On the basis of these discussions, the Presidency held informal discussions with the European Parliament and the Commission on 20 May and 4 June 2008.
6. During the meeting of 4 June 2008, the representatives of the European Parliament and the Presidency of the Council reached an agreement based on a Presidency compromise proposal.
7. In order to allow the European Parliament to vote the final report and to adopt the resolution modifying the Statute of the Ombudsman, it is suggested to send a letter to the European Parliament informing it that the approval of the Council is given to the amendments to the Statute of the Ombudsman as they appear in the Annex to this letter.

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<sup>1</sup> Document 8735/08.

<sup>2</sup> Document 9209/08.

8. The Committee/Council is accordingly invited to:

- Approve the position of the Council on the amendments to the Statute of the Ombudsman as expressed in the Annex to the draft letter attached to this note;
  - Approve the draft letter to the President of the European Parliament attached to this note.
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**COUNCIL OF  
THE EUROPEAN UNION**

Mr. Hans-Gert PÖTTERING  
President of the European Parliament

Subject : Statute of the European Ombudsman

Dear Mr. Pöttering,

By letter of 22 April 2008 addressed on behalf of the President of the European Parliament to Mr Javier Solana, Secretary-General/High Representative, the European Parliament requested the views of the Council on the amendments to the Statute of the Ombudsman voted the same day by its plenary.

Following informal meetings between the representatives of the European Parliament, the Council and the Commission, a draft overall compromise package was agreed today by the Council on the amendments to the Statute of the European Ombudsman proposed by the European Parliament.

In accordance with Article 195(4) of the EC Treaty, the Council gives its approval to the amendments to the Statute of the European Ombudsman in the exact form as set out in the Annex to this letter.

On behalf of the Council I also wish to thank you for your close cooperation which enabled us to reach agreement on this dossier.

Yours sincerely,

President of the Council

Copy :      Mr. Leinen, Chairman of the Committee on Constitutional Affairs of the European Parliament  
                Mrs Jäätteenmäki, member of the Committee on Constitutional Affairs of the European Parliament, rapporteur  
                Mr. Méndez de Vigo, member of the Committee on Constitutional Affairs of the European Parliament  
                Ms Wallstrom, Vice-President of the European Commission

Modifications to the Statute of the Ombudsman<sup>1</sup>

- 1) The first subparagraph of Article 3(2) shall read as follows:

*"The Community institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested from them and give him access to the files concerned. Access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, shall be subject to compliance with the rules on security of the Community institution or body concerned. The institutions and bodies supplying classified information or documents as mentioned in this subparagraph shall inform the Ombudsman of such classification. For the implementation of the rules provided for in this subparagraph, the Ombudsman shall have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy."*

- 2) The fourth subparagraph of Article 3(2) shall read as follows:

*"Officials and other servants of Community institutions and bodies must testify at the request of the Ombudsman; they shall continue to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy."*

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<sup>1</sup> Decision 94/262/ECSC, EC, Euratom of 9 March 1994, as commonly known as "Statute of the Ombudsman" (hereinafter: "*the Statute*").

3) Article 4(1) shall read as follows:

*"The Ombudsman and his staff, to whom Article 287 of the Treaty establishing the European Community and Article 194 of the Treaty establishing the European Atomic Energy Community shall apply, shall be required not to divulge information or documents which they obtain in the course of their inquiries. They shall in particular be required not to divulge any classified information or any document supplied to the Ombudsman, in particular sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, or documents falling within the scope of the Community legislation regarding the protection of personal data, as well as any information which could harm the person lodging the complaint or any other person involved, without prejudice to paragraph 2."*

4) Article 4(2) shall read as follows:

*"If, in the course of inquiries, he learns of facts which he considers might relate to criminal law, the Ombudsman shall immediately notify the competent national authorities via the Permanent Representations of the Member States to the European Communities and, in so far as the case falls within its powers, the competent Community institution, body, or service in charge of combating fraud; if appropriate, the Ombudsman shall also notify the Community institution or body with authority over the official or servant concerned, which may apply the second paragraph of Article 18 of the Protocol on the Privileges and Immunities of the European Communities. The Ombudsman may also inform the Community institution or body concerned of the facts calling into question the conduct of a member of their staff from a disciplinary point of view."*

- 5) A new Article 4A shall be added in the Statute and it shall read as follows:

*"The Ombudsman and his staff shall deal with requests for public access to documents, other than those referred to in Article 4(1), in accordance with the conditions and limits provided for in Regulation no 1049/2001."*

- 6) A new paragraph 2 shall be added to Article 5. It shall read as follows:

*"Within the scope of his functions as laid down in Article 195 of the Treaty establishing the European Community and Article 107 d of the Treaty establishing the European Atomic Energy Community and avoiding any duplications with the activities of the other institutions or bodies, the Ombudsman may, under the same conditions, cooperate with institutions and bodies of Member States in charge of the promotion and protection of fundamental rights."*

- 7) The references to the European Coal and Steel Community Treaty in Articles 1(1) and 4(1) are obsolete and they shall accordingly be deleted.

- 8) The European Parliament shall also provide in its future decision for a 14 days *vacatio legis* between the publication and the entry into force of the modifications to the Statute.