II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

EUROPEAN PARLIAMENT

DECISION OF THE EUROPEAN PARLIAMENT

of 18 June 2008

amending Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties

(2008/587/EC, Euratom)

THE EUROPEAN PARLIAMENT,

Having regard to the Treaty establishing the European Community, and in particular Article 195(4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 107d(4) thereof,

Having regard to the draft decision approved by the European Parliament on 22 April 2008 [1] and to the resolution adopted and the amendments approved on 18 June 2008 [2],

Having regard to the opinion of the Commission,

With the approval of the Council [3],

Whereas:

(1) The Charter of Fundamental Rights of the European Union recognises the right to good administration as a fundamental right of citizens of the Union.

(2) Citizens' confidence in the capacity of the Ombudsman to conduct thorough and impartial inquiries in alleged cases of maladministration is fundamental to the success of the Ombudsman's action.

(3) It is desirable to adapt the Statute of the Ombudsman in order to eliminate any possible uncertainty concerning the capacity of the Ombudsman to conduct thorough and impartial inquiries in alleged cases of maladministration.

(4) It is desirable to adapt the Statute of the Ombudsman in order to allow for any possible evolution of the legal provisions or of case law concerning the intervention of bodies, offices and agencies of the European Union in cases before the Court of Justice.

(5) It is desirable to adapt the Statute of the Ombudsman to take account of the changes that have occurred in recent years as regards the role of EU institutions and bodies in combating fraud against the financial interests of the European Union, notably the creation of the European Anti-Fraud Office (OLAF), so as to allow the Ombudsman to notify those institutions or bodies of any information falling within their remit.

(6) It is desirable to take steps so as to allow the Ombudsman to develop his or her cooperation with similar institutions at national and international level, as well as with national or international institutions, even where they cover a wider range of activities than the European Ombudsman — such as the protection of human rights — since such cooperation may make a positive contribution towards enhancing the efficiency of the Ombudsman's action.

(7) The Treaty establishing the European Coal and Steel Community expired in 2002,

[1] Not yet published in the Official Journal.
[2] Not yet published in the Official Journal.
[3] Decision of the Council of 12 June 2008.

HAS DECIDED AS FOLLOWS:

Article 1

Amendments to Decision 94/262/ECSC, EC, Euratom

Decision 94/262/ECSC, EC, Euratom of the European Parliament [1] is hereby amended as follows:

1. in Citation 1, the words ', Article 20d(4) of the Treaty establishing the European Coal and Steel Community' shall be deleted;

2. recital 3 shall be replaced by the following:

'Whereas the Ombudsman, who may also act on his own initiative, must have access to all the elements required for the performance of his duties; whereas to that end Community institutions and bodies are obliged to supply the Ombudsman, at his request, with any information which he requests of them and without prejudice to the Ombudsman's obligation not to divulge such information; whereas access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001 (*), should be subject to compliance with the rules on security of the Community institution or body concerned; whereas the institutions or bodies supplying classified information or documents as mentioned in the first subparagraph of Article 3(2) should inform the Ombudsman of such classification; whereas for the implementation of the rules provided for in the first subparagraph of Article 3(2), the Ombudsman should 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; whereas if the Ombudsman finds that the assistance requested is not forthcoming, he shall inform the European Parliament, which shall make appropriate representations;

(*) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).';

3. in Article 1(1), the words ', Article 20d(4) of the Treaty establishing the European Coal and Steel Community' shall be deleted;

4. Article 3(2) shall be replaced by the following:

'2. 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 or bodies supplying classified information or documents as mentioned in the previous subparagraph shall inform the Ombudsman of such classification.

For the implementation of the rules provided for in the first 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.

The institutions or bodies concerned shall give access to documents originating in a Member State and classed as secret by law or regulation only where that Member State has given its prior agreement.

They shall give access to other documents originating in a Member State after having informed the Member State concerned.

In both cases, in accordance with Article 4, the Ombudsman may not divulge the content of such documents.

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.';

5. Article 4 shall be replaced by the following:

'*Article 4*

1. 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 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.

[1] OJ L 113, 4.5.1994, p. 15.

2. 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, insofar 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.';

6. the following Article 4a shall be inserted:

'*Article 4a*

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 (EC) No 1049/2001.';

7. Article 5 shall be replaced by the following:

'*Article 5*

1. Insofar as it may help to make his enquiries more efficient and better safeguard the rights and interests of persons who make complaints to him, the Ombudsman may cooperate with authorities of the same type in certain Member States provided he complies with the national law applicable. The Ombudsman may not by this means demand to see documents to which he would not have access under Article 3.

2. Within the scope of his functions as laid down in Article 195 of the Treaty establishing the European Community and Article 107d of the Treaty establishing the European Atomic Energy Community and avoiding any duplication 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.'.

Article 2

This decision shall be published in the *Official Journal of the European Union*.

Article 3

This decision shall enter into force 14 days after its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 18 June 2008.

For the European Parliament
The President
H.-G. PÖTTERING