CURRENT DEVELOPMENTS

EUROPEAN COMMUNITY LAW

Edited by Karl Newman*

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I. CONSTITUTIONAL ASPECTS

ALTHOUGH these last two years have been relatively quiet in terms of institutional developments, a number of important inter-institutional agreements have been negotiated in order to facilitate the working of some of the powers granted by the Maastricht Treaty, while some other powers were used for the first time: the European Ombudsman has issued his first report, the European Parliament has set up two Committees of Inquiry. Lastly, the European Court of Justice delivered an important opinion as regards the European Convention on Human Rights.

A. Inter-Institutional Agreements

Two inter-institutional agreements were concluded between the Commission, the Council and the European Parliament in January 1995.[1]

The first agreement[2] contains the common accord required by the Treaty for the establishment of Committees of Inquiry.[3] A number of important provisions can be found in this text: for instance, a Committee of Inquiry has 12 months to investigate a given matter and submit its report.[4] This is relatively short, especially if the Committee encounters difficulty in collecting information. The investigatory powers of the Committee also give rise to concern: it has no power of direct investigation. It can only require national governments or Community institutions to send for papers and persons.

* This section covers at half-yearly intervals developments over the preceding two years in selected areas of European Community law. The present notes follow up notes on the same subjects in the July 1995 and January 1996 issues of the I.C.L.Q. (Vol.44, Part 3, pp.700 and 712, and Vol.45, Part 1, pp.213 and 219).

1. A third text, a *modus vivendi* on the implementing measures for acts adopted in accordance with the procedure laid down in Art.189b of the EC Treaty, was also agreed. It deals with the question of implementation of acts taken under the co-decision procedure. The European Parliament argued that it should also have co-decision powers in relation to implementation.
2. Res.95/3 (1995) O.J. C43/37.
3. Art.138e.
4. The European Parliament can extend this period for twice three months.

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The second agreement deals with official codification of Community legislation[5] and sets up a procedure to consolidate legislative texts. The Commission adopts a proposal for codification and it is forwarded for consultation to a working party made up of the legal services of the three institutions. They ensure that no changes of substance are included. The proposal is then adopted by an accelerated procedure in both the Council and the European Parliament. Moreover, if the Commission considers that the substance of the law needs to be modified, it can make the appropriate proposal.

B. The European Ombudsman

After some difficulties in appointing the first Ombudsman, on 12 July 1995 the European Parliament decided on Mr Jacob Söderman.[6] He took up his functions on 27 September 1995.

In accordance with the requirements of the Treaty,[7] the Ombudsman submitted his first report to the European Parliament in April 1996. In the first part of the report some guidelines are given as to the organisation of the Ombudsman's work.[8] A complaint can be made directly or through an MEP. If the complaint is found to be admissible, the Ombudsman undertakes a preliminary enquiry and the institution concerned is allowed three months to give an opinion. If it is found at that stage that there is a *prima facie* case of maladministration, the Ombudsman and the institution concerned search for a satisfactory solution. If after further enquiries the Ombudsman comes to the conclusion that maladministration took place, he makes recommendations. Again, the institution has three months to give its opinion.

The report also summarises the Ombudsman's activities for the first year. Complaints have come in steadily from the beginning; by March 1996 there were already 537 registered complaints. However, the report mentions a worrying aspect: of the 436 complaints already examined, only 20 per cent were found admissible. A great many of the inadmissible complaints concern allegations of breach of Community law by member States. For this reason the European Ombudsman was hoping to create strong links with his national counterparts. Among the admissible complaints, many were concerned with questions of transparency and access to documents.[9]

C. The Committee of Inquiry

Although the inter-institutional agreement for setting up Committees of Inquiry had been adopted on 18 January 1995,[10] the European Parliament took some time

5. Res.95/3 (1995) O.J. C43/41.

6. Söderman was at the time the Finnish Parliamentary Ombudsman (1989–1995). He was elected by 241 votes.

7. Art.138e EC.

8. The office of the European Ombudsman has produced a leaflet, "How to Complain to the European Ombudsman". Among other indications, it gives the conditions for a complaint to be admissible: it must be made within two years of the situation becoming known; it must constitute maladministration; it must have been perpetrated by a Community institution or body; appropriate administrative steps must have been taken first.

9. Recently the Ombudsman has called on all the institutions and bodies of the Community to adopt provisions on access to documents. See *Agence Europe*, p.14.

10. Res.95/3 (1995) O.J. C43/37.

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to adapt its rules of procedures. Therefore, the first Committee was appointed only in December 1995. It was to examine the question of fraud in the transit system. It is clear from the findings of the Committee that large amounts of money are diverted from the Community budget. The preliminary report also shows that, although member States were reluctant at first to part with any information, the Committee managed to investigate the issues very successfully. Moreover, the report is extremely informative and presents all the issues in great depth.

Another Committee of Inquiry, set up in July 1996, was mandated to investigate the handling of the BSE crisis by the Commission. The subject was at the centre of a major political controversy. The report adopted on 19 February 1997 by the European Parliament pointed to important failings in the Commission. More particularly, it was discovered that the veterinary committee which advises the Commission on this type of issue included an unusually high number of British representatives. The President of the Commission accepted the findings of the report and promised that the necessary administrative reorganisation would take place rapidly. A motion of censure was initiated in the European Parliament but failed.[11] However, the Parliament gave the Commission until November 1997 to take the appropriate measures. If these were judged to be insufficient, the Commission could face another motion of censure.[12]

D. Rights of the Citizen

Two important developments took place in the area of citizens' rights: the Court of Justice delivered an opinion on the question of the Community's accession to the European Convention on Human Rights,[13] and the Council took a decision, as required by the Treaty on European Union, on diplomatic protection of European Union citizens.

The Court of Justice was asked to provide an opinion under Article 228(6) of the EC Treaty on the question whether the Treaties permitted the European Community to accede to the European Convention on Human Rights. The Court of Justice answered this point negatively. It stressed that the integration of the Convention in the Community would have an important impact on the constitutional arrangements of both member States and the Community. For this reason a formal Treaty amendment would be necessary.

On 19 December 1995 the Council took the decision required by Article 8c of the Treaty on European Union.[14] Any citizen of the European Union can now call on the consular or diplomatic representations of any other member State of the European Union for assistance or protection.

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11. It was rejected by 326 votes to 118 on 20 Feb. See *Agence Europe*, Friday 21 Feb. 1997.
12. See EP Session News—Directorate for Press and Audiovisual Services—PE 256.698, p.9.
13. Opinion 2/94 *Accession by the Community to the E.C.H.R.* [1996] E.C.R. I-1759.
14. Decision 95/553/EC (1995) O.J. L314/95.

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