

## **Decision of the European Ombudsman on complaint 2108/2019/MH about the European Commission's reply to correspondence concerning an infringement complaint against Ireland for possible breach of consumer protection and financial services laws**

Decision

**Case** 2108/2019/MH - **Opened on** 16/12/2019 - **Decision on** 16/12/2019 - **Institution concerned** European Commission ( No maladministration found ) |

Dear Mr X,

On 19 November 2019, you submitted a complaint to the European Ombudsman about the European Commission's reply to you of 9 October 2019. That reply concerned your infringement complaint against Ireland (CHAP (2017)01150). The Ombudsman has asked me to deal with your complaint and reply to you on her behalf.

In 2017, you filed an infringement complaint with the Commission concerning possible breaches of EU rules by the Irish Financial Services and Pensions Ombudsman. You had complained to that body in 2012 about potential “ *mis-selling* ” by financial institutions in Ireland.

Your complaint to the Commission was about the Financial Services Ombudsman's decision to discontinue its investigation because alternative means of redress were available before the Irish courts. You considered that that decision was contrary to EU consumer and financial services rules.

You turned to the European Ombudsman because you were not happy with the Commission's response to your infringement complaint. In particular, you consider that the Commission, rather than replying to you on substance, merely referred to the 2013 Directive on Consumer Alternative Dispute Resolution (ADR) [1] . According to you, your infringement complaint did not relate to ADR.

After a careful analysis of all the information you provided with your complaint, we have decided to close the inquiry [2] with the following conclusion:

**There was no maladministration in how the Commission replied to the complainant's infringement complaint against Ireland.**



I understand from your complaint to the European Ombudsman that you do not consider the Commission to have addressed the real concern in your infringement complaint. I do not agree. I also think that your view on how the Commission has dealt with the matter may partly be due to a misunderstanding of its advice to you.

In your infringement complaint, you did not specify *which* EU consumer and financial services rules you considered Ireland to have breached. However, you were **specifically of the view that the Financial Services Ombudsman had not fulfilled its role as an independent and impartial out-of-court dispute resolution body in Ireland**, as it advised you to go to court. It was therefore reasonable for the Commission to base its reply to you on the Consumer ADR Directive. Under that Directive, Member States must ensure that certain types of disputes can be submitted to entities offering impartial and independent dispute resolution procedures. [3] In Ireland, the Financial Services Ombudsman acts as one of these entities. [4] However, the rules based on that Directive were adopted *after* you filed your complaint with the Financial Services Ombudsman. The Commission therefore found no “*questions of a potential infringement*”.

In your complaint to the Ombudsman, you criticise the Commission for suggesting that you contact the Irish authorities, in particular, the Irish Competition and Consumer Protection Commission (CCPC). The CCPC states on its website that it does not investigate individual complaints against financial service providers. You therefore consider that this is in itself evidence that Ireland is not respecting the Consumer ADR Directive.

From the information provided with your complaint, it is clear that the Commission referred you to the CCPC, not because the CCPC is the entity responsible for investigating financial services complaints, but because it is responsible for monitoring the Financial Services Ombudsman (an ADR entity) under the Consumer ADR Directive [5]. As you were specifically of the view that the Financial Services Ombudsman had not fulfilled its role as an independent and impartial out-of-court dispute resolution body, the Commission’s advice to you was reasonable.

You also state that the Commission in its reply of 9 October 2019 “*now refuses to address the fact that the Irish authorities refused to provide an effective remedy*”. However, the Commission *did address* this matter in its email to you of 14 June 2019. It informed you that the markets in financial instruments rules applying at the time (also called, MiFID I [6]) “*encourage[d] the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes*” but “*did not lay down further criteria to be met by those entities.*”

Finally, you expressed to the Ombudsman your disappointment about having been referred to different departments within the Commission and about the time it took to deal with your concerns. The Commission has now apologised for the delay in replying to you and acknowledged that the way it handled things internally may have caused some confusion. We therefore consider that it would serve no useful purpose to inquire further into these aspects.



In light of the above, we consider that the Commission's reply to you was reasonable and on this basis, we close the case with a finding of no maladministration.

We appreciate that this outcome will likely disappoint you. Nonetheless, we hope you find our explanations useful.

Yours sincerely,

Tina Nilsson

Head of Inquiries ▫ Unit 4

Strasbourg, 16/12/2019

[1] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (the Consumer ADR Directive), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0011> [Link].

[2] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link]

[3] Article 5 of the Consumer ADR Directive

[4] See <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2> [Link]

[5] Recital 55 and Articles 18-20 of the Consumer ADR Directive. See <https://www.eccireland.ie/popular-consumer-topics/alternative-dispute-resolution-adr/> [Link].

[6] Article 53 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0039> [Link].