

Decision on how the European Commission dealt with complaints that Spain breaches EU law in the area of social security by taxing an incapacity pension from another EU Member State (case 607/2022/ABZ)

Decision

Case 607/2022/ABZ - Opened on 22/03/2022 - Decision on 27/09/2022 - Institution concerned European Commission (No maladministration found) |

Dear Mr X,

In February 2022, you made a complaint to the European Ombudsman against the European Commission (Directorate-General for Employment, Social Affairs and Inclusion) concerning how it handled five infringement complaints [1] you submitted between 2020 and 2022.

In your complaints to the Commission, you contend that Spain is in breach of EU law [2] by applying tax to incapacity pensions that you receive originating from other Member States.

In your complaint to the Ombudsman, you argue that the Commission was wrong not to take any action against Spain in relation to your infringement complaints.

We asked the Commission to inform us in writing about how it dealt with your infringement complaints, as well as to provide copies of the relevant documents. Enclosed you may find the Commission's overview of the cases and the exchange of correspondence between you and the Commission.

After careful analysis of all the information obtained in the course of the inquiry, we have decided to close it with the following conclusion:

There was no maladministration by the European Commission [3] .

The Commission has wide discretion in deciding whether and when to commence an infringement procedure [4] , even if it considers that a breach of EU law has occurred. When it comes to complaints about how the Commission has dealt with infringement complaints, the Ombudsman's role is therefore limited. The Ombudsman may seek to ensure that the Commission has explained properly how it has exercised its discretion but cannot interfere in the Commission's exercise of its wide discretion. The Ombudsman will intervene only if there is



an indication of a *manifest error* of assessment by the Commission.

The Commission informed you that it found no breach of EU law. It observed that Spain has not breached the principle of equal treatment and non-discrimination, as it was entitled to assess the equivalence of your foreign incapacity pensions with the characteristics of an incapacity pension that is tax-exempted under national law. The Commission observed that the EU has only limited competence in the area of social security [5] and taxation [6]. It informed you that the applicable EU law only provides for the *coordination* of national social security systems, and that degree of disability was determined under national legislation and thus could differ significantly between Member States. It also noted that Member States could decide on the taxation applicable to incapacity pensions, given their competences in the area of direct taxation. Lastly, the Commission informed you that it could not intervene in individual cases before national courts or decisions of national ombudsman.

We consider that the Commission provided you with clear and reasonable explanations about its position and we find nothing to suggest that it manifestly misinterpreted the facts or the law. The Commission was right to observe that EU has only limited competence in this matter and that the applicable EU law has not eliminated the differences in the area of social security between Member States. Please note that under the principle of equal treatment, you have the same rights and obligations as the nationals of the country whose legislation on social security applies.

In light of the above, the Ombudsman has closed the case.

While I understand that this is not your expected outcome, I hope that you find the above explanations helpful.

Thank you for having contacted the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 27/09/2022

[1] CHAP(2020)02729, CHAP(2021)00141, CHAP(2021)01777, CHAP(2021)03939 and CHAP(2022)00226.

[2] [Regulation 883/2004 \[Link\]](#) of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R0883-20140101> [Link] and



Regulation 987/2009 [Link] of the European Parliament and of the Council of 16 September 2009 on the procedure for implementing Regulation 883/2004, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009R0987> [Link]

[3] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/70707> [Link]

[4] Judgment of the Court (Second Chamber) of 14 February 1989, case 247/87, *Starfruit v*

Commission : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61987CJ0247> [Link].

[5] Art. 4 and Art. 153 Treaty on the Functioning of the European Union.

[6] EU competence in this area is linked mostly to the functioning of the internal market:

<https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation> [Link]