

## **Decision of the European Ombudsman on complaint 520/2002/(BB)IJH against the European Commission**

Decision

**Case 520/2002/BB/IJH - Opened on 23/04/2002 - Decision on 28/10/2002**

Strasbourg, 28 October 2002

Dear Mr L.,

On 11 March 2002, you made a complaint to the European Ombudsman against the European Commission concerning the Commission's reply to your letter regarding bank charges on cross-border pension payments from Sweden to Finland.

On 23 April 2002, I forwarded your complaint to the President of the Commission. The Commission sent its opinion on 5 June 2002, and I forwarded it to you with an invitation to make observations, which you sent on 16 July 2002.

I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

The complainant, a Finnish national, complains on behalf of a Finnish association for returning migrants. According to the complainant, the relevant facts are as follows:

On 2 October 2001, the complainant wrote to the Commission concerning Directive 95/5/EC on cross-border transfers (1). The complainant asked for clarification as to whether the originator of a cross-border pension payment, the Swedish Försäkringskassan, is obliged to pay the bank charges for the transfer or whether it is lawful for the beneficiary, that is to say the pensioner, to be burdened with the charges.

The complainant is dissatisfied with the Commission's reply dated 27 November 2001 (DN:o 27.11.01 6708). He alleges that the Commission has failed to investigate whether Directive 95/5/EC discriminates against pensioners.

### **THE INQUIRY**

**The Commission's opinion**



The Commission's opinion made, in summary, the following points:

In its reply to the complainant dated 27 November 2002, the Commission explained to the complainant that the fact that the beneficiary was burdened with banking charges for the execution of a cross-border credit transfer did not in itself constitute a breach of Community law. This letter also clarified that none of the European Community regulations regarding the transfer of salaries or pensions contained any provision on the distribution of banking charges or on the method of payment to be applied. Therefore, the Commission had informed the complainant that Försäkringskassan's decision not to bear the additional costs for a cross-border transaction was not a breach of Community law.

In the opinion to the Ombudsman, the Commission further stated that Directive 97/5/EC covers cross-border transfers in general. According to Article 7 of the Directive, a cross-border credit transfer shall be executed for the full amount unless the originator has specified that the costs of the cross-border transfers are to be borne wholly or partly by the beneficiary. This means that the cross-border credit transfer will, by default "in the absence of any different arrangements between the originator and his bank - be executed as a so-called "OUR transfer", where all the costs are charged by the sending institution to the originator. The beneficiary would have no further costs and receive the full sum transferred. The Directive does not, however, prevent customers from agreeing to other ways of payment: BEN transfers, where the beneficiary pays all the charges, and SHARE transfers, where each party pays its own costs. It appears to the Commission that Försäkringskassan agreed with its bank not to execute the transfer as an "OUR transfer".

The Commission also stated that the Directive applies to the relationship between the customer and the institution executing the transfer, not the relationship between the beneficiary and the originator of the payment. The reasoning by the complainant that he had not made an agreement with Försäkringskassan to share the costs of the transfer is therefore not relevant in this context.

The Commission concludes that Directive 97/5/EC is not relevant to the question of whether pensions paid in a cross-border context have to be made available to pensioners in full, without deduction of transfer costs.

The Commission also examined whether there were any Community social policy rules obliging the schemes paying cross-border pensions to bear the banking charges. It was established that there was no Community legislation containing any provision or rule on the distribution of banking charges or on the use of a specific payment instrument. Försäkringskassan cannot therefore be considered to be in breach of existing Community law in the field of social policy.

The Commission also stated that it considered it unacceptable that prices for cross-border transfers are still significantly higher than for domestic transfers. For this reason, the Commission made a proposal for a Regulation on cross-border payments in euro, which was adopted by the European Parliament and the Council on 19 December 2001 and which aims to reduce charges for cross-border payments in euro. By 1 July 2003 charges for cross-border



payments of up to ≈ 12 500 would be aligned to those for corresponding payments at national level. By 1 January 2006, the upper limit will be raised to ≈ 50 000.

Finally, the Commission pointed out that, as regards the interests of the complainant, the Swedish Parliament is discussing a proposal to extend the scope of the provisions of this Regulation to currencies outside the euro-zone. If the Swedish authorities adopt this proposal, cross-border credit transfers in SEK can no longer be subject to higher charges than domestic transfers within Sweden.

#### **The complainant's observations**

The complainant made, in summary, the following observations:

The complainant's question was whether the pensioner, or the bank transmitting the payment, is the customer of Försäkringskassan. He found it surprising that the Commission considered that the pensioner, who could actually be regarded as the creditor, had no say in the payment situation.

The complainant also referred to the Commission's view that there is no provision or rule of Community law on the distribution of banking charges, or on the use of a specific payment instrument, as regards cross-border transfer of pensions. The complainant observed that, in this case, the existing national law ≈ the Finnish and Swedish Employment Contract Acts ≈ should be applied.

As regards the Commission's reference to the proposal on the reduction of charges for cross-border payments, which is presently under discussion in the Swedish Parliament, the complainant stated that it would make no difference to the returning migrants.

Försäkringskassan had made a deal with Postgirocentralen according to which Postgirocentralen does not charge any costs from Försäkringskassan. Instead, Postgirocentralen and Sampo Bank charge the costs from the pensions which are paid by the Social Insurance Institution of Finland and the Finnish employment pension funds.

The complainant asked whether the activities of the pension societies and the banks form a cartel. The association represented by the complainant had tried to promote competition between the banks. A bank having activities both in Finland and Sweden had offered to make the transfers with no costs to either the originator of the payment or to the beneficiary. However, Försäkringskassan had not even been willing to discuss the question. After this, the complainant had turned to Postgirocentralen which had been willing to discuss the question until it appeared that the bank in question did not have any transfers to be levied in Sweden. The complainant found it surprising that the Commission, as the guardian of free competition in the EU, had not given any attention to these barriers to competition.

## **THE DECISION**

### **1 Alleged failure to investigate whether Directive 95/5/EC discriminates against pensioners**

1.1 The complainant asked the Commission for clarification as to whether the originator of a



cross-border pension payment, the Swedish Försäkringskassan, is obliged to pay the bank charges for the transfer or whether it is lawful for the beneficiary, that is to say the pensioner, to be burdened with the charges. The complainant is dissatisfied with the Commission's reply and alleges that the Commission failed to investigate whether Directive 95/5/EC on cross-border transfers (2) discriminates against pensioners.

1.2 According to the Commission, Directive 97/5/EC is not relevant to the question of whether pensions paid in a cross-border context have to be made available to pensioners in full, without deduction of transfer costs. The Commission also stated that there are no Community social policy rules obliging schemes paying cross-border pensions to bear the banking charges.

1.3 In his observations, the complainant did not challenge the Commission's view that Community law does not prevent banking charges for cross-border pensions being imposed on the pensioners. He argued that in this case the national law of Finland and Sweden should be applied.

The complainant's also asked whether the activities of the pension societies and the banks form a cartel. The complainant provided what he considers to be evidence of barriers to competition, to which the Commission as the guardian of free competition in the EU, should give attention.

1.4 The evidence available to the Ombudsman is that the Commission has addressed itself to the question asked by the complainant and also to the general issue of whether Community law prevents banking charges for cross-border pensions being imposed on pensioners. The Ombudsman notes that the complainant has not contested the Commission's legal analysis.

As regards the complainant's argument that national law should be applied, the Swedish Ombudsman's office has informed the European Ombudsman that the Riksförsäkringsverket (National Insurance Board) is the normal supervisory body for the Försäkringskassan and that this matter may well be something for them. The address of the Riksförsäkringsverket is: SE-10351 Stockholm, Sweden.

As regards the issue of Community competition law raised in the complainant's observations, the Ombudsman points out that the complainant has the possibility to address directly to the Commission a complaint concerning a possible infringement of Community competition law (European Commission, Directorate-General for Competition, B-1049 Brussels).

1.5 In view of the above, there appears to be no maladministration on the part of the Commission.

## **2 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.



Yours sincerely,

Jacob SÖDERMAN

(1) Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, OJ L 043 , 14.02.1997, p. 0025 - 0030.

(2) Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, OJ L 043 , 14.02.1997, p. 0025 - 0030.