

Decision of the European Ombudsman on complaint 138/2004/(PMR)PB against the European Commission

Decision

Case 138/2004/(PMR)PB - Opened on 12/02/2004 - Decision on 15/09/2004

Strasbourg, 15 September 2004

Dear Mr L.,

On 4 January 2004, you made a complaint to the European Ombudsman concerning the Commission's response to your infringement complaint of 15 January 2003.

On 12 February 2004, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 20 April 2004. I forwarded it to you with an invitation to make observations, which you sent on 27 May 2004.

To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

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

THE COMPLAINT

The complaint was submitted by a German citizen living in France. It concerned the Commission's response to an infringement complaint that he had submitted to the European Commission.

The complainant had submitted an infringement complaint to the Commission on 15 January 2003, informing it that he considered it inconsistent with the Internal Market that *LA POSTE*, the French public postal operator, required a form to be filled in for packages that a) weigh more



than two kilos, and b) are destined for other Member States.

On 2 June 2003, the Commission registered an infringement complaint under the complainant's name, and informed the complainant accordingly.

On 6 June 2003, the Commission's DG Internal Market informed the complainant that it did not consider that Community law was being infringed. It made, in summary, the following points:

1) Directive 97/67/EC (1) on Community postal services does not harmonise the conditions under which the national postal services provide their services. In light of this, the information requested by *LA POSTE* does not breach Community law. In the form concerned (*Liasse de transport CP 72*), it is clearly stated that information concerning customs is only requested for packages destined for non-EU countries.

2) As for the requirements for additional information , these do not discriminate, as the information is also required for packages to be sent within France.

On 14 June 2003, the complainant wrote to the Commission again, stating that the Commission's reply failed to address the issue. According to the complainant, *LA POSTE* does require a form to be filled in for packages that weigh more than two kilos for other EU Member States, without requiring this for packages being sent within France.

Thus, the complainant alleged, in his complaint to the European Ombudsman, that the Commission had dealt with his infringement complaint unsatisfactorily, and had failed to take action against *LA POSTE* for a practice that in the complainant's view was inconsistent with the Internal Market.

THE INQUIRY

The Commission's opinion

1. Summary of the facts and legal basis for the complaint

The universal postal service provider in France, *LA POSTE* , requires that a form ("Liasse de transport CP 72") is filled in whenever a parcel of more than two kilos is to be sent to Germany (or other European Union Member States or third countries). When a similar parcel needs to be sent within France, the use of this form is not required.

The complainant had informed the Commission that he considered this requirement to be contrary to internal market principles.

2. The Commission's comments in its letter to the complainant of 6 June 2003

The Commission's reply included, in a brief but complete manner, the reasons why the above-mentioned facts do not infringe European Community Law:



- Existing harmonisation measures in the postal field (Directive 97/67/EC, as amended) do not provide for the harmonisation of the exact conditions for the provision of services by universal service providers, and in particular the way service conditions and details should be registered when sending a parcel (e.g. through a form or otherwise).

- The internal market provisions of the European Community Treaty are respected, since, firstly, the information required for customs purposes in the French form is only required for non-EU consignments, and secondly, the information requirement of *LA POSTE* does not discriminate compared to the information required in the provision of a similar service within France (e.g. sender, addressee, speed of delivery), or is justified by reasons of public interest (i.e. a declaration that the parcel does not contain dangerous goods) in line with Directive 97/67/EC.

The requirement to use a form for intra-Community consignments falls within the scope of the rights of *LA POSTE* as a company to organise the provision of postal services. The differential treatment between international (including intra-Community) and domestic parcels only reflects objective differences in the way the service needs to be provided (i.e. the involvement of one operator in case of domestic provision of the service and several operators in case of cross-border services) as well as international regulations for postal services (as the form used by *LA POSTE* follows the model of the Universal Postal Convention and its Regulations). The requirement to use a form in one case and not in another, as long as the information required is not unnecessary or discriminatory, does not therefore appear to constitute an "obstacle" to the free provision of services, but a minor difference in the way the service is contracted.

In the absence of any new arguments having been introduced by the complainant or otherwise received by the Commission, the case was closed on 16 December 2003. The Commission will inform the complainant of its formal closure of his case.

The Commission considers that it has dealt with the case adequately. The Commission has not received any other complaints or indications that may have justified devoting further resources to this complaint.

The complainant's observations

The complainant remarked that the Commission's opinion was limited to a legal analysis of his complaint, and that he therefore expected the Ombudsman to endorse that analysis without further ado. However, the complainant still considered that the practice described in his complaint was inconsistent with the Internal Market. He stated that what may appear a trifling matter at the EU-level was of some practical importance to him. It concerned, he stated, the removal of unnecessary "red tape". He asked whether he was *"wrong to assume that this belonged to one of the [the Ombudsman's] tasks...?"*.

THE DECISION

1 Introductory remark

1.1 In his observations, the complainant appeared not to contest the legal analysis of the Commission, but asked whether removal of "red tape" was one of the tasks of the Ombudsman.



1.2 In so far as the complainant's question should be understood as a request that the Ombudsman investigate an alleged failure by the Commission to propose new Community measures, the Ombudsman considers it relevant to point out that his mandate is exclusively limited to *maladministration*. The Commission's power to propose new Community legislation does not form part of its administrative activity, but belongs to its political work in respect of which the Ombudsman has no competence. The Ombudsman could therefore not inquire into any alleged failure on the part of the Commission to propose measures to address the facts described by the complainant.

1.3 In so far as the complainant wishes to pursue the matter at the national level, the Ombudsman draws attention to the possibility of contacting the French postal ombudsman, the "*Médiateur du service universel postal*" (2).

2 The Commission's handling of the infringement complaint

2.1 The complainant alleged that the Commission had dealt with his infringement complaint unsatisfactorily, and had failed to take action against *LA POSTE* for a practice that in the complainant's view was inconsistent with the common market.

2.2 In its opinion, the Commission gave an account of its procedural handling of the complainant's infringement complaint, and provided a more detailed clarification of why the practice described by the complainant did not, in the Commission's view, infringe Community law.

2.3 The Ombudsman has thoroughly examined the Commission's opinion and the complainant's observations submitted in the course of the present inquiry.

On the basis of that examination, the Ombudsman considers that the Commission has acted in accordance with its rules on the handling of infringement complaints submitted by individuals (3). The Commission furthermore appears to have provided the complainant with a clear and reasonable explanation for why the practice described in his complaint does not breach Community law. On that basis, the Ombudsman considers that there has been no maladministration on the part of the Commission.

3 Conclusion

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the



improvement of quality of service, OJ 1998, L 15, p 14.

(2) The name and address of the French postal ombudsman are: M. Yann PÉTEL, Médiateur du service universel postal, Médiasup, Tour Gamma A, 193-195, rue de Bercy, 75 572 Paris Cedex 12.

(3) Commission Communication to the European Parliament and the European ombudsman on relations with the complainant in respect of infringements of community law, OJ 2002, C 244, p. 5.