

Decision of the European Ombudsman on complaint 3336/2004/(AU)TN against the European Commission

Decision

Case 3336/2004/(AU)TN - Opened on 09/12/2004 - Decision on 15/12/2006

Strasbourg, 15 December 2006

Dear Mr B.,

On 11 November 2004, you made a complaint to the European Ombudsman against the European Commission concerning the proposal for a Directive on the patentability of computer-implemented inventions (2002/0047/COD).

On 9 December 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 11 March 2005 and I forwarded it to you with an invitation to make observations, if you so wished, by 30 April 2005. No observations were received from you by that date.

By letter of 1 July 2005, I informed you that the examination of your file was ongoing, that the Ombudsman's decision is normally made within one year of the complaint, and that every effort would be made to finalise the decision on your complaint earlier if possible.

However, after a further analysis of the case, it appeared that additional information was necessary in order to make a decision. On 25 October 2005, I therefore wrote to the Commission asking for further information. The Commission sent its reply on 6 December 2005 and I forwarded it to you with an invitation to make observations, if you so wished, by 31 January 2006 at the latest. No observations were received by you.

Having analysed the information provided by the Commission in response to my further inquiries, it appeared that further clarifications were necessary in order for me to be able to finalise my inquiry. On 20 June 2006, I therefore wrote to the Commission asking for such clarifications. The Commission sent its reply on 11 September 2006 and I forwarded it to you with an invitation to make observations, if you so wished, by 31 October 2006 at the latest. No observations were received by you.

I am writing now to let you know the results of the inquiries that have been made. I apologise for the time it has taken to deal with your case.



THE COMPLAINT

According to the complainant, the relevant facts are, in summary, the following:

He wished to complain about the fact that the proposal for a Directive on the patentability of computer-implemented inventions (2002/0047/COD) had not been translated into Polish. He also considered the fact that the Polish Parliament had not received the proposal in question, while it had been sent to the parliaments of the "old" Member States in their respective languages, was contrary to the Treaty of Amsterdam.

According to the complainant, the Treaty of Amsterdam provided that all Commission consultation documents (green and white papers as well as communications) should be forwarded directly by the Commission to the Member States' national parliaments upon publication and that all legislative proposals sent to the European Parliament and to the Council of Ministers should simultaneously be sent to the Member States' national parliaments.

The complainant alleged that the Commission had failed to:

- Translate the above proposal into the Polish language;
- Inform the Polish Parliament, as well as the parliaments of the other new Member States, of the above proposal in order for them to express their views on it.

The complainant claimed that the Commission should provide the Polish Parliament and the parliaments of the other new Member States with translations of the proposal into their respective languages.

In his complaint, the complainant also claimed that the European Ombudsman should suspend the procedure leading to the adoption of the Directive until the national parliaments had had a possibility to express their views.

As regards the latter claim, the Ombudsman recalled that the Treaty establishing the European Community and the Statute of the Ombudsman set precise conditions as to the admissibility of a complaint. The Ombudsman can only start an inquiry if these conditions are met.

One of these conditions is:

Article 195 of the Treaty establishing the European Community:

"In accordance with his duties, the European Ombudsman shall conduct inquiries for which he finds grounds (...)".

After a careful examination of the complaint, the Ombudsman concluded that there were no grounds for dealing with the latter claim because the Ombudsman does not have the power to suspend the procedure in question.



However, the Ombudsman decided to open an inquiry into the complainant's allegations and his first claim against the Commission.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made, in summary, the following comments:

The proposal in question was adopted by the Commission on 20 February 2002, sent to Parliament and to the Council on the same day, and published in the Official Journal (1) in the then eleven official languages of the European Union. Parliament delivered its opinion at its first reading on 24 September 2003 and the Council reached a political agreement on the proposal on 18 May 2004.

Given the difficulties which the EU institutions faced in ensuring sufficient translation capacity into the new official languages in the post-enlargement period, that is, following the accession of the ten new Member States on 1 May 2004, it was necessary to put in place transitional arrangements between the three institutions involved in the co-decision legislative procedure.

The interinstitutional co-operation group, known as the Neunreither group, issued guidelines on 13 July 2004, which determined the distribution of the translation work as regards legislative proposals between the institutions. In accordance with these guidelines, Parliament and the Council would be responsible, respectively, for translating co-decision proposals and consultation/assent proposals submitted by the Commission before 1 May 2004, while the Commission would be responsible for translating all proposals submitted after 1 May 2004.

Under these guidelines, the Council would therefore be responsible for drawing up its common position in all the official languages, while Parliament would, in principle, be responsible for translating the Commission's initial proposal into the new languages when it delivered its opinion at its first reading.

These rules should apply to the proposal in question, which was adopted before 1 May 2004. The common position on this proposal was, in any case, expected to be adopted on a date subsequent to the date of enlargement.

On the question of informing the Polish Parliament and the parliaments of the other new Member States, it should be noted that the protocol on national parliaments, annexed to the Treaty of Amsterdam, states that all Commission consultation documents (green and white papers as well as communications) are to be promptly forwarded to the national parliaments of the Member States and that Commission legislative proposals are to be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate. Thus, while the Commission is obliged to forward consultation documents to the national parliaments, it is under no such obligation in relation to legislative proposals. Under the terms of the protocol, it is a matter for the governments of the Member States to forward these proposals in good time to the national parliaments. Consequently, any



complaint about lack of information to a national parliament about a Commission legislative proposal should be addressed to the relevant national government.

Furthermore, the complainant's reference to provisions requiring the Commission to inform national parliaments about legislative proposals was taken from the protocol on the national parliaments annexed to the draft European Constitution, which had not yet entered into force. The Commission did not intend to implement these provisions of the Constitution before its entry into force.

The complainant's observations

The Ombudsman invited the complainant to submit observations on the Commission's opinion. No observations were received from the complainant.

Further inquiries

After careful consideration of the Commission's opinion, it appeared that further inquiries were necessary.

The Ombudsman noted that, in its opinion, the Commission appeared to argue that, as regards the task of translating legislative proposals into the languages of the Member States that joined the European Union on 1 May 2004, it had acted in accordance with the guidelines issued by the Neunreither group on 13 July 2004.

The Ombudsman also noted, however, that these guidelines did not appear to be publicly available. In order to be able to finalise the inquiries into the present complaint, the Ombudsman therefore asked the Commission to provide him with a copy of the guidelines.

The Commission's reply

In reply to the Ombudsman's request, the Commission provided a copy of the guidelines issued by the Neunreither group on 13 July 2004.

The complainant's observations

The complainant was invited to make observations on the Commission's reply and on the above-mentioned guidelines. No observations were received from the complainant.

Second round of further inquiries

Having analysed the guidelines on translation tasks issued by the Neunreither group, it appeared that further clarifications were necessary in order for the Ombudsman to be able to finalise his inquiries into the complaint.

The Commission was therefore asked to specify which institution (if any) had to translate the proposal in question into the new languages or explain why, in its view, no such translations had to be prepared.

The Commission was also asked to provide a copy of the translation, if the proposal had been translated into Polish.

The Commission's reply

In its reply, the Commission made, in summary, the following comments:

The initial proposal of the Directive in question was never translated into Polish. The first complete text in the Polish language concerning this proposal for a Directive that was identified



by the Commission is the Council common position published in Polish in the Official Journal on 14 June 2005 (2) . This translation, which integrates the modifications of the initial proposal approved by the Council, has in all likelihood been made by the linguistic services of the Council. This reflects the guidelines of the Neunreither group, which foresee that files that were awaiting a common position on 1 May 2004 should be translated by the Council. This was the case for the proposal for a Directive in question. For this proposal, the first reading by Parliament took place on 24 September 2003, whereas the common position was adopted only on 7 March 2005.

The Commission recalled that the Neunreither group guidelines were designed to meet the requirements of the legislative procedure in progress. Translations were scheduled taking into account the necessities at the stage of the legislative procedure where the legislative act was at the moment of enlargement. As far as a Council common position is concerned, its publication does not necessitate translating the initial proposal, since the Council common positions are normally presented in summary form. Consequently, if a file was awaiting a Council common position on 1 May 2004, no translation of the initial proposal was foreseen.

A complete retroactive translation into the new languages of all files under examination on 1 May 2004 would have created an overload of work for the institutions' linguistic services. These services were, at the same time, in charge of the translation of the new files for which they were responsible from 1 May 2004 onwards. They were also still facing the challenge of recruiting qualified translators for the new languages in sufficient numbers.

The absence of a translation into Polish of the Commission's proposal of 20 February 2002 for a Directive of the European Parliament and the Council on the patentability of computer-implemented inventions (2002/0047/COD) is thus in accordance with the Neunreither group guidelines. These guidelines established transitory translation arrangements for legislative files pending on 1 May 2004 by drawing up a set of rules based on the principle of coherence and proportionality.

It should also be noted that the proposal in question has finally been rejected by Parliament at its second reading.

The complainant's observations

The complainant was invited to make observations on the Commission's reply. No observations were received from the complainant.

THE DECISION

1 The alleged failure to provide a Polish translation of the proposal for a Directive

1.1 The complaint concerned the European Commission's proposal for a Directive on the patentability of computer-implemented inventions (2002/0047/COD). The complainant alleged that the Commission had failed to translate the proposal into Polish.

1.2 The Commission argued that the proposal in question was adopted by the Commission on 20 February 2002, sent to the European Parliament and to the Council on the same day and



published in the Official Journal (3) in the then eleven official languages of the European Union. Parliament delivered its opinion at its first reading on 24 September 2003 and the Council reached a political agreement on the proposal on 18 May 2004.

Given the difficulties which the EU institutions faced in ensuring sufficient translation capacity into the new official languages in the post-enlargement period, that is, following the accession of the ten new Member States on 1 May 2004, it was necessary to put in place transitional arrangements between the three institutions involved in the co-decision legislative procedure. The interinstitutional co-operation group, known as the Neunreither group, issued guidelines on 13 July 2004, which determined the distribution of the translation work as regards legislative proposals between the institutions.

In accordance with these guidelines, Parliament and the Council would be responsible, respectively, for translating co-decision proposals and consultation/assent proposals submitted by the Commission before 1 May 2004, while the Commission would be responsible for translating all proposals submitted after 1 May 2004. Under these guidelines, the Council would therefore be responsible for drawing up its common position in all the official languages, while Parliament would, in principle, be responsible for translating the Commission's initial proposal into the new languages when it delivered its opinion at its first reading. These rules should apply to the proposal in question, which was adopted before 1 May 2004.

1.3 Following a request from the European Ombudsman, the Commission provided a copy of the guidelines issued by the Neunreither group. However, having analysed these guidelines, it appeared that further clarifications were necessary in order for the Ombudsman to be able to finalise his inquiries into the complaint. The Commission was therefore asked to specify which institution (if any) had to translate the proposal in question into the new languages or explain why, in its view, no such translations had to be prepared. The Commission was also asked to provide a copy of the translation, if the proposal had been translated into Polish.

1.4 In reply to the Ombudsman's request for clarifications, the Commission explained that the initial proposal of the Directive in question was never translated into Polish. The first complete text in the Polish language concerning the proposal for a Directive is the Council common position published in Polish in the Official Journal on 14 June 2005 (4). The Commission recalled that the Neunreither group guidelines were designed to meet the requirements of the legislative procedure in progress. As far as a Council common position is concerned, its publication does not necessitate translating the initial proposal, since the Council common positions are normally presented in summary form. Consequently, if a file was awaiting a Council common position on 1 May 2004, no translation of the initial proposal was foreseen. A complete retroactive translation into the new languages of all files under examination on 1 May 2004 would have created an overload of work for the institutions' linguistic services. The absence of a translation into Polish of the Commission's proposal of 20 February 2002 for a Directive of the European Parliament and the Council on the patentability of computer-implemented inventions (2002/0047/COD) is thus in accordance with the Neunreither group guidelines. These guidelines established transitory translation arrangements for legislative files pending on 1 May 2004 by drawing up a set of rules based on the principle of



coherence and proportionality. The Commission pointed out, however, that the proposal in question was rejected by Parliament at its second reading.

1.5 The Ombudsman notes that, when Polish became an official language of the European Union on 1 May 2004, the proposal in question had been approved with amendments by Parliament at its first reading and was awaiting the Council's adoption of a common position. According to the guidelines issued by the Neunreither group as regards legislative files awaiting the Council's common position following the co-decision procedure, the Council was put in charge of translating its common position into all twenty languages. However, as clarified by the Commission, the Neunreither group guidelines did not foresee a translation of a proposal for a Directive into the languages that became official languages of the European Union on 1 May 2004 if the proposal in question was awaiting a Council common position on that date. A translation into Polish of the proposal in question does not, therefore, exist.

1.6 The Ombudsman thus concludes that the absence of a translation of the proposal into the languages that became official languages of the European Union on 1 May 2004 appears to be in accordance with the guidelines of the interinstitutional co-operation group, also referred to as the Neunreither group. However, this finding does not answer the question whether the failure to provide such translations was compatible with principles of good administration. The Ombudsman considers that citizens are entitled to obtain information about the legislative proposals the Commission submits to the Community legislator. In order to ensure that such information is accessible to all interested citizens, it would therefore not be unreasonable to assume that it should be available in all Community languages. As regards the present case, however, the Ombudsman notes that according to the information provided by the Commission the proposal in question was in the end rejected by Parliament. In view of this fact, and taking into account the fact that the complainant has made no observations on the Commission's submissions, the Ombudsman considers that there are no grounds for further inquiries into this issue in the present case.

2 The alleged failure to inform the Polish Parliament

2.1 The complainant considered that the fact that the Polish Parliament had not received the proposal in question, while it had been sent to the parliaments of the "old" Member States in their respective languages, was contrary to the Treaty of Amsterdam. According to the complainant, the Treaty of Amsterdam provided that all Commission consultation documents (green and white papers as well as communications) should be forwarded directly by the Commission to the Member States' national parliaments upon publication and that all legislative proposals sent to Parliament and to the Council of Ministers shall simultaneously be sent to the Member States' national parliaments. The complainant alleged that the Commission had failed to inform the Polish Parliament, as well as the parliaments of the other new Member States, of the above proposal in order for them to express their views on it.

2.2 The Commission argued that the protocol on national parliaments, annexed to the Treaty of Amsterdam, states that all Commission consultation documents (green and white papers as well as communications) are to be promptly forwarded to the national parliaments of the Member States and that Commission legislative proposals are to be made available in good time so that the government of each Member State may ensure that its own national parliament receives



them as appropriate. Thus, while the Commission is obliged to forward consultation documents to the national parliaments, it is under no such obligation in relation to legislative proposals. Under the terms of the protocol, it is a matter for the governments of the Member States to forward these proposals in good time to the national parliaments. Consequently, any complaint about lack of information to a national parliament about a Commission legislative proposal should be addressed to the relevant national government. Furthermore, the complainant's reference to provisions requiring the Commission to inform national parliaments about legislative proposals was taken from the protocol on the national parliaments annexed to the draft European Constitution, which had not yet entered into force. The Commission did not intend to implement these provisions of the Constitution before its entry into force.

2.3 The Ombudsman notes that point I.2 of the Protocol on the role of national parliaments in the European Union, annexed to the Treaty on European Union and the Treaty establishing the European Community, stipulates that Commission proposals for legislation shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate. The Ombudsman therefore considers it to be clear that the Commission is not responsible for the forwarding of legislative proposals to national parliaments. The Ombudsman further recalls that the proposal in question was made before Poland and nine other European states became members of the European Union on 1 May 2004. Accordingly, at the time when the proposal was made, the national parliaments of the ten states that later joined the Union had no right of information under the Protocol. The Ombudsman further notes that the complainant's statement that the Commission had to send its legislative proposals to national parliaments at the same time as sending them to Parliament and to the Council, appears to be based on Article 2 of the version of the protocol set out in Annex 1 to the draft Treaty establishing a Constitution for Europe, which has not yet entered into force.

2.4 On the basis of the above, the Ombudsman finds no maladministration by the Commission as regards this aspect of the complaint.

3 The complainant's claim

3.1 The complainant claimed that the Commission should provide the Polish Parliament and the parliaments of the other new Member States with translations of the proposal into their respective languages.

3.2 The Ombudsman considers that, in view of the above findings (see point 2.4), the complainant's claim must fail.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, the Ombudsman considers that there are no grounds further to pursue the issue of the Commission's alleged failure to translate the proposal for a Directive into Polish. As regards the alleged failure to inform the Polish parliament of the proposal in question, 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,

P. Nikiforos DIAMANDOUROS

(1) OJ 2002 E 151, p. 129.

(2) OJ 2005 C 144 E, p. 9.

(3) OJ 2002 E 151, p. 129.

(4) OJ 2005 C 144 E, p. 9.