

## **Decision of the European Ombudsman closing his inquiry into complaint 888/2007/VIK against the European Commission**

Decision

**Case 888/2007/VIK - Opened on 14/05/2007 - Decision on 11/01/2010**

### **THE BACKGROUND TO THE COMPLAINT**

1. The complainant is a Bulgarian national who informed the European Commission about what he considered to be a large-scale corruption scheme relating to the restitution and privatisation process in Bulgaria.

2. The complainant stated that he sent a letter with attachments to the President of the Commission describing, in detail, the aforementioned restitution process. More specifically, the letter focused on special instruments entitling Bulgarian citizens to receive compensation for their properties which had been nationalised by the state and could no longer be given back to them. In order to compensate such citizens, the state issued bonds. These bonds were defined by Bulgarian legislation as "*compensatory instruments*". These instruments could be used during the privatisation process to acquire state assets [1]. The complainant submitted that, as of 1 January 2007, all non-liquidated compensatory instruments were officially considered to be a state debt. According to the complainant, the total sum amounted to approximately 700 million Bulgarian Leva [2]. He alleged that the liquidation process of this state debt was corrupt. He requested the Commission to give this matter its attention, and include it in its monitoring process.

3. The complainant stated that the Commission did not reply to his request. He sent a reminder, to which he received a reply on 27 October 2006. In his opinion, this reply was not satisfactory.

4. The present complaint concerns the Commission's alleged failure to provide a timely reply to the complainant's first letter which, according to him, was sent on 25 March 2006, or a satisfactory reply to the problems he identified.

### **THE SUBJECT-MATTER OF THE INQUIRY**



5. The Ombudsman identified the following allegations:

- The Commission failed to answer the complainant's letter of 25 March 2006 in a timely and proper manner.
- The Commission failed to provide a satisfactory reply as regards the substance of his letter.
- The Commission failed to seek a solution to the problems reported in the complainant's letter.

6. The complainant claimed that the Commission should include in its monitoring process:

- the issue relating to the unsettled state debt of over 700 million Bulgarian Leva; and
- Bulgaria's obligation to fight corruption, which includes fighting the corrupt scheme which he described in his letter to the Commission.

7. The complainant also claimed that the Commission should formulate and implement concrete measures to combat corruption in EU Member States. However, he did not appear to have made the appropriate prior administrative approaches to the Commission concerning this claim. On the basis of Article 2(4) of the Statute of the European Ombudsman, therefore, the Ombudsman did not take up this part of the complaint in his inquiry.

## THE INQUIRY

8. On 14 May 2007, the Ombudsman opened an inquiry and asked the Commission to submit an opinion. On 20 September 2007, the Commission sent its opinion in English. A translation into Bulgarian was sent on 15 October 2007, and forwarded to the complainant. The complainant's observations were received on 30 November 2007.

9. On 19 March 2008, the Ombudsman launched further inquiries. He asked the Commission to clarify its position concerning the specific problem identified by the complainant, namely, the alleged corruption scheme relating to the trade of compensatory instruments in Bulgaria. On 4 July 2008, the Commission provided its further reply and the complainant submitted his observations on 30 September 2008.

10. On 31 March 2009, and after careful consideration of the opinion and of the complainant's comments, the Ombudsman submitted to the Commission a proposal for a friendly solution, in accordance with Article 3(5) of his Statute.

11. In a letter dated 28 August 2009, the Commission sent its comments concerning the friendly solution proposal. The translation of the Commission's reply into Bulgarian was provided on 14 September 2009, and forwarded to the complainant for observations, which he sent on 10 November 2009.

## THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

### *Preliminary remarks*



12. In his complaint, the complainant asked the Commission to monitor the above-mentioned matter. The Commission interpreted this to be a new claim for a benchmark to be set concerning Bulgaria's state debt. However, in his letter to the Commission, the complainant requested that " *the issue related to the unsettled state debt of 700 million BGN* " be included in the Commission's monitoring process. The Ombudsman does not, therefore, consider that the complainant's request for the Commission to monitor the said matter constitutes a new claim. It is thus covered by the present inquiry.

13. The Ombudsman points out that it is not within his competence to examine the complainant's allegation of corruption concerning the Bulgarian authorities. The scope of his review is limited to examining whether the Commission's reaction to the complainant's grievances was adequate and in conformity with the principles of good administration.

14. The Ombudsman notes that the complainant argued that the allegations he advanced in the present complaint have their basis in Bulgarian legislation and he is, therefore, unable to seek a judicial remedy at national level. It is important to clarify, in this context, that the European Ombudsman is empowered to review complaints about maladministration in the Union institutions, bodies, services and agencies. He would, therefore, not be entitled to deal with allegations pertaining to the merits of national legislation. Any such grievances, could, however, be addressed to the national legislator - the Bulgarian Parliament.

## A. As regards the complainant's first allegation (the procedural aspect)

### *Arguments presented to the Ombudsman*

15. The complainant alleged that the Commission failed to provide a timely reply to his letter of 25 March 2006. On 4 October 2006, he sent a reminder to the Commission and received a reply on 27 October 2006. According to him, the Commission did not reply to his first letter within a reasonable time-limit, and certainly not within the maximum period of two months foreseen by Article 17 of the European Code of Good Administrative Behaviour [3] ('the Code'). He considered that the Commission also failed to indicate the name and the telephone number of the official who dealt with the matter. He pointed out that this omission breached Article 14 of the Code.

16. In its opinion, the Commission stated that, on the basis of available evidence, the date of the complainant's first letter to the Commission could not be ascertained. In his complaint, the complainant referred to a letter he sent to the Commission on 25 March 2006. However, on 27 October 2006, the Commission's Directorate-General for Enlargement (DG Enlargement) replied to a letter sent by the complainant on 4 October 2006. There was no trace of an earlier letter sent by him. The Commission, therefore, considered that it had not failed to reply to the complainant in a timely and proper manner.

17. In his observations, the complainant explained that he had a meeting with the Commission's



Delegation in Sofia during the spring of 2006. He could not prove the date he sent his first letter to the Commission because he delivered it by hand to the Delegation in Sofia, and the letter was not given a registration number. The complainant emphasised that it was unacceptable for the Commission to argue that it had not received his first letter. In his view, the Delegation in Sofia failed to file the incoming correspondence properly. Since he did not receive a reply to his first letter, he sent a second copy of it, after another meeting with the representatives of the Commission's Delegation.

18. During a telephone conversation with the services of the European Ombudsman on 12 March 2008, the complainant made it clear that he did not wish to pursue the procedural aspect of his complaint any further. He was interested in receiving information only on the Commission's views on the alleged corruption in Bulgaria relating to compensatory instruments. He also wished to know whether the Commission would be willing to monitor this matter.

#### *The Ombudsman's assessment*

19. In view of the above, the Ombudsman considers that no further inquiries into the complainant's first allegation are justified.

## **B. As regards the complainant's second and third allegation and his related claim (the substantive aspect)**

#### *Arguments presented to the Ombudsman*

20. As regards the substance of the present complaint, the complainant argued that the Commission failed to provide a satisfactory reply to his concerns relating to the alleged large-scale corruption scheme linked to compensatory instruments in Bulgaria. He also argued that the Commission failed to seek a solution to the problems he identified, and claimed that it should monitor the matter.

21. More specifically, the complainant informed the Commission that ordinary holders of compensatory instruments in Bulgaria were not given an equal opportunity to liquidate them. He alleged, in this context, that they could not participate in transactions in which these instruments could be used because information in this regard was only available to persons in positions of power. In addition to misusing inside information, the executive authorities were not obliged by Bulgarian legislation to secure the compensatory instruments that were issued. As a result, the selling price for these instruments was significantly lower than their nominal value. The complainant further argued that the absence of a duly specified obligation for the state to pay interest on this unsettled state debt did not create a financial incentive for the executive authorities to finalise the restitution process in the foreseeable future. He argued that this process constituted a " *state financial pyramid* ", which, with its supporting " *pyramidal corruption schemes* ", was ruining the legal order in the country and generating substantial losses for ordinary citizens who could not fully benefit from the compensatory instruments. According to the complainant, the only option for the ordinary holders of compensatory



instruments was to trade them on the stock exchange.

22. In its reply of 27 October 2006, the Commission informed the complainant of the cooperation and verification mechanism that was envisaged in its Communication of 26 September 2006 [4] , and set up by its Decision of 13 December 2006 [5] . The Commission stressed that this mechanism would establish a system to monitor closely Bulgaria's efforts to combat corruption. The monitoring would be implemented on the basis of six benchmarks, which also included measures to assist in the fight against corruption and strengthen the Bulgarian judiciary.

23. In his complaint to the Ombudsman, the complainant expressed his dissatisfaction with the Commission's reply, which did not provide any information about the Commission's evaluation of the alleged large-scale corruption scheme he described. He submitted that the Commission did not indicate which parts of his letter it considered to be important. According to him, the Commission's approach breached the principle of objectivity, as defined in Article 9 of the Code.

24. In its opinion, the Commission noted that the complainant's original letter to the President of the Commission was sent in 2006, before Bulgaria joined the EU, and before the Commission adopted the cooperation and verification mechanism.

25. The Commission explained that, in its letter of 27 October 2006, it referred the complainant to the above-mentioned mechanism and provided him with details of the relevant Commission website for further information. It added that its Directorate-General for Enlargement was aware of the discussions the complainant had had with the Commission's Delegation in Sofia concerning this issue. The Commission concluded that its approach "*appear [ed] sufficient*".

26. The Commission further clarified that the mechanism for cooperation and verification was laid down in the Accession Treaty and applied only to Bulgaria and Romania. This was to ensure the timely accession of these countries to the EU on 1 January 2007, and also to address the deficiencies and remaining issues identified in the Commission's 'Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania', of 26 September 2006 [6] . The Commission informed the complainant that it was continuing to assist Bulgaria in its efforts to comply with identified benchmarks in the area of judicial reform, and the fight against corruption and organised crime.

27. The Commission also referred to its first report on Bulgaria's progress on accompanying measures following accession [7] , which was published on 27 June 2007. Chapter 3 of this report addressed Bulgaria's progress in meeting the relevant benchmarks concerning judicial reform and the fight against corruption and organised crime. The Commission explained that its report was compiled from a wide range of sources, including the analysis of Bulgaria's report to the Commission, dated 30 March 2007. An expert mission to assess progress and input from national and international non-governmental organisations also contributed to the process. As regards the fight against corruption, the report concluded that "*the overall progress achieved in the judicial treatment of high-level corruption cases in Bulgaria [was] still insufficient*" (Benchmark 4). The Commission, however, did not consider that the safeguard provisions of the



Accession Treaty should be invoked at this stage.

28. The Commission noted that there was a six-monthly update of its reports on the results of the cooperation and verification mechanism. It added that the next report would be prepared at the beginning of 2008, and another in mid-2008.

29. As regards the allegations of possible corruption inside an EU Member State, the Commission stressed that the EU and the Commission had "*no competence to intervene in such matters*". It pointed out, in this regard, that the powers of the EU and the Commission in the field of criminal justice derive from the Treaty on the European Union, which does not foresee any infringement procedures, contrary to what is foreseen in the Treaty establishing the European Communities. [8] In the Commission's view, such allegations of possible corruption would, therefore, best be pursued via the appropriate national authorities or the Bulgarian court system.

30. The Commission thus rejected the complainant's allegations that it failed to provide a satisfactory reply regarding the substance of his complaint, or to seek a solution to the problems he reported.

31. In his observations, the complainant maintained the view that the Commission failed to provide a satisfactory reply. To that end, he advanced the following arguments.

32. The Commission referred, in general terms, to its system of monitoring the fight against corruption in Bulgaria. However, it failed to comment on the complainant's detailed argumentation concerning the alleged large-scale corruption scheme relating to the liquidation of compensatory instruments. The information provided by the Commission was interesting, but it was not relevant to the substance of the complaint. Moreover, the documents enclosed by the Commission did not contain any reference to the above problem.

33. The fact that the complainant sent his letter before the accession of Bulgaria to the EU did not relieve the Commission of its obligation to take appropriate measures concerning the problem he identified. The Commission, however, failed to take any measures in this respect.

34. In his observations, the complainant further clarified that he did not request the Commission to take concrete action against corrupt individuals. He wanted the Commission to take only the measures which were "*within the framework of its competences*". In doing so, he wanted the Commission to include in its monitoring process the liquidation of the above-mentioned state debt. The complainant also clarified that he never asked the Commission to activate the safeguard clause against Bulgaria, or to take any retroactive measures. He noted, in this context, that the corruption scheme he described in the letter to the Commission in 2006, continued after Bulgaria's accession to the EU in 2007.

35. The complainant further remarked that he could not, as the Commission suggested, address the competent national authorities in charge of fighting corruption, or the national courts regarding this problem. This was because the corruption scheme to which he referred had its



legal basis in Bulgarian legislation. According to the complainant, a number of well-known ministers, prosecutors and judges took advantage of the relevant Bulgarian laws to acquire apartments, factories, and other valuable assets, by paying only 10 % of the price determined by the state, which was not even the market value. This option, however, was not available for ordinary holders of compensatory instruments.

36. The complainant expressed his conviction that the competent national authorities would not take the necessary measures to stop the corruption scheme unless they were monitored by the Commission. The lack of action by the Commission would further the improper enrichment of those in positions of power.

37. The complainant concluded that the Commission's reply was unsatisfactory, since it failed to provide a concrete response to the substance of the issue he raised. Furthermore, the complainant pointed out that the Commission has a duty to state the grounds for its decision (as provided in Article 18 of the Code), which, in his view, it failed to do in the present case.

38. The Ombudsman carefully analysed the information provided to him. He noted that the complainant placed particular emphasis on the alleged large-scale corruption scheme relating to the trading of compensatory instruments in Bulgaria, and on the fact that the Commission did not specifically comment on this issue. He, therefore, asked the Commission to clarify its position regarding this particular matter.

39. In its reply to this request, the Commission again stressed that neither the EU nor the Commission are competent to intervene in matters concerning potential corruption inside an EU Member State, such as the alleged large-scale corruption scheme relating to the trading of compensatory instruments in Bulgaria. Investigatory powers, and other relevant actions in this context remain within the competence of the individual Member States. For this reason, the complainant's allegation could best be pursued through the appropriate Bulgarian authorities or courts. The Commission also provided the complainant with what, at the time, was its most recent interim report [9] (issued in February 2008), on the progress made by Bulgaria under the cooperation and verification mechanism.

40. In his further observations, the complainant submitted that the Commission's further comments were again of a general nature, since they concerned the Commission's approach in general. In the complainant's view, the Commission failed to provide an explanation as to why it considered that no action needed to be taken concerning the issue he raised. The information provided by the Commission could have been obtained by anyone interested in finding it, without having to file complaints with the Ombudsman. The complainant concluded that the Commission's further opinion again failed to provide any concrete explanations or explicit grounds to justify the Commission's lack of action regarding his request that it monitor the alleged corruption scheme.

41. The complainant reiterated that the Commission's advice that he should turn to the national authorities was, in principle, correct. However, it was not applicable in this particular case. The breaches described were being committed on the basis of current Bulgarian legislation, which,



in this context, appeared to breach the Bulgarian Constitution. However, according to the complainant, Bulgarian citizens are not entitled to complain directly to the Bulgarian Constitutional Court.

42. He also remarked that he did not want the Commission to simply " *provide comments* ", but rather to take concrete steps to monitor the above-mentioned corruption scheme.

43. He advanced one further argument. He referred to the fact that the Commission had already included certain requirements in monitoring other issues, which, in his view, were similar to the problems he described. These included, for example, the requirements on measures to be taken to protect whistleblowers [10] , which were included as a sub-section under benchmark 4 in the Commission's report of February 2008. The complainant considered that the subject-matter of his complaint was similar, since it also concerned protecting, just like in the case of whistleblowers, the owners of compensatory instruments in Bulgaria who suffered moral and pecuniary damage as a result of the corruption in question.

44. The complainant proposed that the Commission could also include the corruption he reported as a sub-section under benchmark 4 of the monitoring process. By adopting this approach, he felt that the Commission would clearly show its intention to support Bulgarian efforts to fight corruption, which would, in turn, lead to concrete results. If the Commission were to act on this proposal, it would prevent Bulgarian officials from continuing to use the scheme, since they would fear the consequences of a public scandal. This would also create an opportunity for the Bulgarian prosecution service to launch concrete investigations.

45. Finally, he called upon the Ombudsman to issue a recommendation and to request the Commission to include a subsection under benchmark 4 concerning the subject-matter of his complaint, so as to prevent further corruption in this context.

*The Ombudsman's preliminary assessment leading to a friendly solution proposal*

46. The Ombudsman noted that the Commission provided the complainant with detailed information on the monitoring mechanism established in 2006. It referred to the six benchmarks identified for Bulgaria, and the way in which it collected information for its reports. The Commission also identified the relevant findings concerning efforts made by Bulgaria to fight corruption. It further referred, in this context, to benchmark 4 of the cooperation and verification mechanism, which reads as follows:

*" Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publications of assets of high-level officials " .*

47. The Ombudsman considered useful the general information provided by the Commission on the cooperation and verification mechanism in the context of Bulgaria's obligations to fight against corruption.



48. It should be noted, however, that the complainant raised a specific allegation of corruption and provided detailed arguments concerning why he considered that this allegation merits the Commission's attention. The Commission did not address the substance of this allegation. Instead, it submitted that it had no competence to intervene in such issues, given that the powers of investigation and other relevant actions remained with the individual Member States, and that the complainant's allegation could thus best be pursued through the appropriate Bulgarian authorities or courts.

49. The Ombudsman noted, however, that the complainant did not ask the Commission itself to investigate the corruption scandal he believed to exist in the area concerned. He asked the Commission only to include the issue in the monitoring process it was carrying out. The above-mentioned argument put forward by the Commission was, therefore, correct, but it did not explain why the Commission felt unable to comply with the complainant's request.

50. The Ombudsman recalled that, in accordance with Article 1 of the Commission's Decision of 13 December 2006, Bulgaria must report to the Commission the progress made under the cooperation and verification mechanism. The Commission may, at any time, gather and exchange information on the relevant benchmarks. These benchmarks were established by the Commission itself. At first sight, it would, therefore, appear that it was for the Commission to decide which issues should be included in the monitoring process.

51. The Ombudsman noted that benchmark 4 of the monitoring process covered "*allegations of high-level corruption*". Accordingly, the complainant's specific allegation concerning the liquidation process of compensatory instruments in Bulgaria could fall within this category. In any event, the Commission's reports on Bulgaria's progress under the monitoring mechanism would seem to indicate that specific aspects of potential corruption were covered by the monitoring. These reports dealt with the control of party-political funding for instance, as well as monitoring conflicts of interest in public procurement in Bulgaria. This would seem to confirm that including the complainant's specific allegation of corruption relating to the trade of compensatory instruments would not be incompatible with the Commission's monitoring process.

52. In order to avoid possible misunderstandings, the Ombudsman considered it useful to point out that he did not consider the Commission to be under an obligation to include in its monitoring process each and every allegation of corruption in Bulgaria as put forward by citizens. However, he took the view that, where the Commission considered that a given allegation should not be included in the monitoring process, it needed to provide a satisfactory explanation for its position.

53. In light of the above, the Ombudsman made the preliminary finding that the Commission failed to provide a satisfactory explanation for its position, and that this was an instance of maladministration. He, therefore, made the following proposal for a friendly solution, in accordance with Article 3(5) of the Statute of the European Ombudsman:

The Commission could reconsider the complainant's request that the alleged corruption



involving compensatory instruments in Bulgaria should be included in the Commission's monitoring process. The Commission could either accept this request or provide a satisfactory explanation as to why it cannot be accepted.

*The arguments presented to the Ombudsman after his friendly solution proposal*

54. In its reply, the Commission agreed with the Ombudsman that it was up to it to decide which issues to monitor under the cooperation and verification mechanism. The Commission explained that the scope of the mechanism to fight against corruption and organised crime was very broad. The Commission, therefore, focuses on the "*most current and relevant problems*". As a result, it monitors issues such as party-political funding, which is widely reported to be a source of corruption, or conflicts of interest, which have, in the past, led to the suspension of EU funds for Bulgaria. The Commission believes that using this up-to-date approach, and setting priorities, ensures that a fair assessment of the current situation in Bulgaria can be achieved.

55. According to information received by the Commission from various sources, the privatisation process in Bulgaria was being phased out. The main waves of privatisation and trade in compensatory instruments took place in the 1990s and at the beginning of this decade, that is to say, mainly prior to Bulgaria's accession to the EU. The Commission stated that it was not aware of any substantiated allegations from experts, NGOs, diplomatic representations, or other sources to indicate that compensatory instruments were at present a major source of corruption in Bulgaria. The number of privatisation transactions was low, unlike during the first years of the transformation process. The number of transactions involving compensatory instruments on the Bulgarian Stock Exchange was almost negligible. In the Commission's view, the matter was a "*marginal issue*" in the overall assessment of how the fight against corruption in Bulgaria was progressing, since compensatory instruments could no longer be considered a substantial source of corruption. Finally, the Commission noted that it assessed the public finance situation in Bulgaria on a regular basis. This included examining the level of public debt within the framework of the Stability and Growth Pact.

56. In view of the above, the Commission submitted that it did not consider the possible corruption involving compensatory instruments to be a relevant indicator for measuring progress under the cooperation and verification mechanism. Consequently, the Commission did not consider it appropriate to include it in its monitoring process.

57. In his further observations, the complainant expressed his disappointment at the Commission's negative reply to the Ombudsman's friendly solution proposal.

58. He submitted that, in its reply, the Commission wrongly referred to the "*mass privatisation process in Bulgaria*". The complainant pointed out that, in accordance with Bulgarian legislation on privatisation, there were three types of privatisation in the country; 'mass' privatisation, 'cash' privatisation and 'workers-managers' privatisation. According to the complainant, his complaint concerned exclusively the second category, namely, 'cash' privatisation. The fact that the Commission made a factual mistake when referring to the 'mass' privatisation process, indicated, in his view, that it was not well-informed about the privatisation process in Bulgaria.



Consequently, insufficient knowledge of the substance prevented the Commission from making a correct decision with regard to the present complaint.

59. The complainant considered that the Commission's decision to "*prioritise*" certain issues in its monitoring process constituted a subjective interpretation of its powers and obligations. In his view, the institution should, in the framework of its powers, constantly monitor the situation in the country. It should not, therefore, focus only on the "*most current and relevant problems*". The complainant underlined that the level of corruption related to the issue he identified was sufficiently serious to be investigated. The complainant pointed out that the turnover in compensatory instruments used in privatisation contracts in Bulgaria amounts to 3 billion BGL, which represents more than 80% of all privatisation deals.

60. The complainant argued that the Commission failed to give adequate reasons for its decision, and that such failure was contrary to Article 41(2) of the EU Charter of Fundamental Rights. In particular, the Commission did not identify which public interest it was defending by refusing to include corruption involving compensatory instruments in its monitoring process.

61. The complainant acknowledged the Commission's fight against corruption. He, therefore, expected the institution to include the matter in question in its monitoring process. The Commission's refusal to do so would detract from its aim of making the monitoring process more transparent and publicly controlled, and this would ultimately result in a failure to reduce activity involving the corrupt trading of compensatory instruments.

62. The complainant accepted that the Commission rightly concluded that the privatisation process in Bulgaria was being phased out. He also agreed with the Commission's statement that "*compensatory instruments can no longer be considered a substantial source of corruption*". In his view, the instruments, in themselves, were certainly not a source of corruption. It was the way in which they were being liquidated that was corrupt. The fact that the market for compensatory instruments was almost negligible was not a valid ground, in the complainant's view, for the Commission to refuse to monitor the process. On the contrary, the lack of dynamism on that market should prompt the Commission to become active.

63. According to the complainant, a considerable number of compensatory instruments were still in the possession of Bulgarian citizens. They could not, however, make use of them due to the Bulgarian Government's failure to act. The complainant argued that the Bulgarian Government failed to approve a plan of action to liquidate these instruments which form the basis of the continuing corrupt practices. The complainant drew attention to the fact that the trading of compensatory instruments on the stock exchange remains insignificant. This is due to the fact that, if the owners of these instruments wanted to sell them on the stock exchange, they would get approximately only 25 % of their nominal value. Anyone with inside information, however, could make a profit of approximately 75 %. The complainant expressed his firm belief that access to information as to when and what can be privatised using compensatory instruments is available only to insiders, and not ordinary citizens. This, in the complainant's view, is a clear breach of the citizen's right to property, enshrined in Article 17 of the EU Charter of Fundamental Rights.



64. The complainant finally commented on the Commission's use of the word 'marginal'. He submitted that it was offensive to consider the problem as being 'insignificant'. To illustrate his argument, the complainant pointed out that compensatory instruments granted in lieu of a house which was nationalised decades ago, would not produce enough of a return to buy even a dog's kennel.

65. The complainant finally noted that the Commission's statement that it assessed the public finance situation in Bulgaria on a regular basis, including the level of public debt, within the framework of the Stability and Growth Pact, was correct, but irrelevant. This, he claimed, was due to the fact that the public debt statistics did not include the number of non-liquidated compensatory instruments in Bulgaria.

*The Ombudsman's assessment after his friendly solution proposal*

66. Since the Commission does not consider it appropriate for its monitoring process to include investigating the alleged corrupt trading of compensatory instruments in Bulgaria, the Ombudsman must examine whether the institution's reply to his friendly solution proposal contains a satisfactory explanation with regard to its position.

67. The Commission explained that, in view of the broad scope of the mechanism, it focused on the " *most current and relevant problems* ". The Ombudsman points out in this context that the purpose of the Commission's monitoring mechanism is to assess progress made by Bulgaria in addressing the specific benchmarks in the area of judicial reform and the fight against corruption and organised crime. In the Ombudsman's view, it is clear that such an assessment could not be carried out meaningfully, if the Commission had to consider each and every problem in Bulgaria that could, potentially, fall within the relevant benchmarks. The Ombudsman, therefore, considers that the Commission acted reasonably by focusing on the most important issues.

68. It remains to be examined, therefore, whether the alleged corruption involving compensatory instruments in Bulgaria should be considered a sufficiently serious problem to merit being included in the cooperation and verification mechanism.

69. In order to do so, the precise nature of the problem highlighted by the complainant needs to be ascertained. The Ombudsman notes that, in his observations on the Commission's detailed opinion, the complainant essentially advanced the following arguments to show that corrupt trading practices linked to compensatory instruments continue to exist in Bulgaria: (i) the Bulgarian Government has failed to provide enough objects for privatisation in respect of which compensatory instruments could be used, and to approve a plan of action for the liquidation of these instruments; (ii) the price of these instruments on the Bulgarian Stock Exchange is currently approximately only a quarter of their nominal value; (iii) certain owners of compensatory instruments, with access to inside information as to when, and what will be privatised, are able to make a considerable profit.

70. The Ombudsman considers that the first argument concerns a policy decision of the



Bulgarian authorities regarding the privatisation process, and does not appear to raise any issue of corruption. The same conclusion applies to the second argument. The complainant did not, in fact, establish that the current low value of compensatory instruments on the Bulgarian Stock Exchange is the result of corruption.

71. In so far as the complainant's third argument is concerned, however, the Ombudsman agrees that granting inside information to certain persons, thereby placing them in a position to use the compensatory instruments they hold in order to conclude advantageous deals within the framework of the privatisation process, is a serious issue, which could, indeed, be linked to specific practices involving corruption.

72. The Ombudsman notes, however, that the Commission explained that the privatisation process in Bulgaria is being phased out, and that trade in compensatory instruments on the Bulgarian Stock Exchange is almost negligible. The complainant did not dispute these statements. It appears reasonable, therefore, for the Commission to conclude that the problem highlighted by the complainant cannot, at present, be considered to be a major source of corruption in Bulgaria.

73. The Commission pointed out that its attention had not been drawn to the problem raised by the complainant by any of the sources the Commission had consulted when drawing up its monitoring reports for Bulgaria. Those sources included experts, NGOs and diplomatic representations.

74. In view of the above, the Ombudsman takes the view that the Commission provided a satisfactory explanation as to why it considers that the issue raised should not be included in its monitoring process.

75. Having said that, the Ombudsman notes that the complainant argued that a considerable number of compensatory instruments are still held by Bulgarian citizens. The situation may, therefore, change, particularly if major new privatisation projects were to be carried out in future. If such a situation arises, the complainant could then renew his efforts to draw the Commission's attention to the problem he identified, and request the institution to consider the matter.

76. In view of the foregoing, the Ombudsman considers that, following his friendly solution proposal, the Commission provided a satisfactory explanation with regard to its position. However, the complainant made it clear that he remained dissatisfied. It is, therefore, clear that no friendly solution could be brought about in this case. However, given that the Commission's explanation is reasonable, the Ombudsman takes the view that there is no need for further inquiries regarding the substance of the present complaint.

77. Finally, it should be noted that the complainant requested the Ombudsman to advise him on what else he could do to get a new benchmark included in the Commission's monitoring mechanism with regard to the substance of his complaint. In reply to this question, the Ombudsman would like to note that the complainant remains free to address himself to the



European Parliament, if he wishes the EU to adopt a different policy as regards the monitoring of corruption in Bulgaria.

## C. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

No further inquiries into the complainant's allegations and claim are needed.

The complainant and the Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 11 January 2010

[1] The compensatory instruments are currently traded on a regulated securities market.

[2] 700 million Bulgarian Leva is approximately EUR 350 million.

[3] The European Code of Good Administrative Behaviour is available on the website of the European Ombudsman: [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu) [Link].

[4] Communication from the Commission, *Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania*, 26 September 2006, COM (2006) 549 final.

[5] Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime, C (2006) 6570 final.

[6] COM (2006) 549 final.

[7] COM (2007) 377.

[8] As from 1 December 2009, this treaty became the Treaty on the Functioning of the European Union.

[9] COM (2008) 63 final/2.

[10] The Commission's report of February 2008 is worded as follows: "*Establish administrative arrangements to safeguard whistle-blowers*".