

Decision of the European Ombudsman closing his inquiry into complaint 946/2008/(BEH)(VL)ANA against the European Commission

Decision

Case 946/2008/(BEH)(VL)ANA - Opened on 05/05/2008 - Decision on 18/05/2010

THE BACKGROUND TO THE COMPLAINT

1. In 2000, the International Civil Aviation Organisation (ICAO) commenced work on a possible modernisation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed in Rome on 7 October 1952. In May 2004, ICAO formed a Special Group on the Modernisation of the Rome Convention of 1952 (SG-MR). The European Union is not a Contracting Party to ICAO, but the Commission participated in the work of the ICAO SG-MR as an observer.

2. On 2 May 2009, the work of the ICAO SG-MR was concluded at the Montreal Diplomatic Conference and resulted in two new Conventions which are currently open for signature: the Convention on Compensation for Damage Caused by Aircraft to Third Parties in Case of Unlawful Interference [1] and the Convention on Compensation for Damage Caused by Aircraft to Third Parties. [2]

3. The Convention on Compensation for Damage Caused by Aircraft to Third Parties in Case of Unlawful Interference ('the Convention'), introduces a system of strict liability of aircraft operators in all signatory states. This liability, however, is capped. Compensation for victims for damage exceeding these caps will be paid by a supplementary compensation fund and, where the funds are insufficient, by the states themselves.

4. There are no harmonised rules in the European Union on the liability of aircraft operators towards third parties. However, in April 2004, the Council adopted Directive 2004/80/EC [3] ('the Directive') on compensation to crime victims, requiring Member States to assume responsibility for paying compensation to victims of violent crimes.

5. The complainant, who is a well-known British author on aviation law, has followed the work of the ICAO SG-MR and has taken the view that the ICAO proposals, which led to the Convention, were inconsistent with Member States' obligations under the Directive. Moreover, the



complainant contends that it would be unjust for innocent parties, namely, aircraft operators, to be held liable for crimes committed by others.

6. In this context, on 13 February 2007, the complainant addressed the Commission's Directorate-General Justice, Freedom and Security ('DG JFS'), which is responsible for the implementation of the Directive. On 16 February 2007, the spokesperson for Vice-President Frattini, then Commissioner in charge of the Justice, Freedom and Security portfolio, replied to the complainant. In his response, the Commissioner's spokesperson replied to the questions addressed to the Commissioner and explained that the Commissioner was aware of the ICAO proposals and that his services were examining them with extreme interest.

7. Between February and April 2007, the complainant wrote back seeking clarification of two outstanding points, namely, the date when Vice-President Frattini became aware of the ICAO proposals, and his views on the apparent conflict between the ICAO proposals and the Directive. In the course of this correspondence, the complainant sought to arrange a meeting with either the Commissioner or the Director-General of DG JFS to discuss the matter. The Commission did not reply to these e-mails.

8. On 16 May 2007, the complainant sent an e-mail to the " *TREN informations* " mailbox of DG JFS in which he inquired " *why members of the Commission who are co-operating with ICAO studies of the 1952 Rome Convention have persistently failed to draw attention to the impact of EU Council Directive 2004/80 relating to compensation to crime victims* ". The Commission's response of 24 July 2007 stated that the e-mail was received by DG JFS on 19 July 2007, and went on to explain the aim and the scope of the Directive. DG JFS also drew the complainant's attention to the fact that it did not deal with matters related to the ICAO.

9. In the meantime, the complainant had commenced correspondence with the Commission's Directorate-General for Transport and Energy (DG TREN). By letter dated 16 June 2007, the complainant asked DG TREN for its position with regard to his assertion that the draft Convention was unjust and incompatible with the Directive. On 9 July 2007, DG TREN replied to the complainant and clarified that it had drawn the attention of other Commission services to the question of whether the ICAO SG-MR proposals were incompatible with the Directive. The Commission went on to state that, should the analysis indicate that there could be potential incompatibilities, it would make these concerns known to the ICAO SG-MR.

10. On 17 July 2007, the complainant replied expressing disappointment that the Commission had not responded to his assertion that there was a " *basic injustice* " in the draft Convention. In this respect, the complainant argued that aircraft operators are innocent parties and should not be held liable for crimes committed by others. In the complainant's view, the draft Convention contradicted elementary rules of natural law, and might also be in breach of the European Convention of Human Rights.

11. On 26 July 2007, DG TREN responded that, having consulted DG JFS, the Commission did not consider that there was any incompatibility between the ICAO proposals for a Convention on Compensation for Damage Caused by Aircraft to Third Parties in Case of Unlawful



Interference and Council Directive 2004/80/EC. DG TREN further explained that both instruments aim to ensure the rights of crime victims to compensation for damages. As regards the complainant's assertion of a "*basic injustice*" in the proposals of the ICAO SG-MR, DG TREN drew the complainant's attention to the fact that aircraft operators are currently liable for damage caused by aircraft to third parties, usually on a non-fault basis, and that the purpose of the draft Convention was precisely to limit the third-party liability of aircraft operators in case of unlawful interference, while ensuring that appropriate compensation is paid to victims. DG TREN directed the complainant to contact DG JFS if he had specific questions relating to the Directive and to fundamental rights.

12. On 30 July 2007, the complainant sent a further letter to DG TREN in which he elaborated on his assertions of "*basic injustice*". DG TREN replied on 29 August 2007 and stated that the issues raised by the complainant in his letter would be taken into consideration in future discussions with Member States on the ICAO proposals.

13. On 30 August 2007, the complainant sent a further letter to DG TREN, asking (i) whether, in the deliberations leading to Directive 2004/80/EC, parties other than the criminal or the State were identified as responsible for paying compensation to crime victims; (ii) whether any strict liability regimes for aircraft operators have been introduced anywhere in the preceding decade; and (iii) what has been reported by the Commission to the ICAO on this issue.

14. On 6 September 2007, DG TREN replied to these questions and pointed out that specific questions on Directive 2004/80/EC should be addressed directly to DG JFS. DG TREN indicated that it did not intend to reply to further letters from the complainant on the same issue because it considered the complainant's letters on the issue of compensation for victims of unlawful interference to be repetitive.

15. In parallel to his correspondence with DG TREN, and in accordance with the latter's suggestion, on 3 August 2007, the complainant wrote to Vice-President Frattini. In his communication, he repeated his assertion that a fundamental "*injustice*" existed if innocent parties, namely, aircraft operators, had to finance compensation for victims of terrorist attacks. On 27 September 2007, DG JFS acknowledged receipt of this letter by sending a holding reply.

16. On 31 March 2008, the complainant lodged the present complaint with the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

17. The Ombudsman opened an inquiry into the complainant's allegations against the Commission. These are as follows:

- DG TREN wrongly discontinued correspondence with him.
- DG TREN insufficiently replied to the issues raised by him in his correspondence.
- DG JFS failed to reply to certain questions raised by him in February 2007.
- DG TREN wrongly redirected him to DG JFS.



18. The complainant claims the Commission should:

- Review its correspondence with him.
- Give a unified response to the issues raised.

THE INQUIRY

19. On 5 May 2008, the Ombudsman sent his request to the Commission with a request for an opinion. On 8 December 2008, the Commission delivered its opinion. On 9 April 2009, the complainant submitted his observations.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

Preliminary remarks

20. As a preliminary remark, it should be pointed out that the complainant asked the Ombudsman various questions which are conditional on the finding of maladministration. The Ombudsman will address these questions in his decision in so far as, and to the extent that, they fall within the scope of the inquiry and are subject to a finding of maladministration.

A. Allegation that DG TREN wrongly discontinued correspondence with the complainant

Arguments presented to the Ombudsman

21. The complainant stated that the purpose of his correspondence with the Commission was to draw its attention to the apparent conflict between existing obligations of EU Member States and the ICAO proposals, in order to determine the soundness of his reasoning and to ascertain the Commission's views, which he would subsequently cite in his academic writing on these issues.

22. The complainant argued that it was unfair to discontinue correspondence on the ground of repetitiveness. He stated that he had not received reasoned responses to reasoned arguments. Therefore, he summarised the answers he received, identified the aspects which remained unanswered, and requested DG TREN to answer them specifically. By discontinuing its correspondence with him, DG TREN denied him the opportunity of learning the outcome of the discussions with Member States on the issues he had raised in his correspondence. Moreover, the complainant explained that he had received no indication that his legal reasoning, which he set out at length, was incorrect. Instead DG TREN had only made bald counter-assertions. Thus, DG TREN's refusal to continue correspondence on these issues frustrated the original purpose of his writing to the Commission.



23. In its opinion, the Commission explained that, within a period of six weeks, DG TREN sent four letters on the very same subject in reply to the complainant's correspondence, namely, the compatibility of the proposals of the ICAO SG-MR with the Directive. The complainant's fourth letter to DG TREN, dated 30 August 2007, did not include any new information whatsoever. The correspondence had become repetitive and pointless. The complainant's question about the compatibility of the proposals of the ICAO SG-MR with the Directive had already been sufficiently addressed.

24. The Commission further argued that DG TREN did not consider itself equipped or competent to engage in a theoretical discussion on justice where such discussion bore no direct relevance to EU air transport policy. Therefore, DG TREN discontinued correspondence with the complainant in accordance with the Code of Good Administrative Behaviour and invited the complainant to address specific questions about Directive 2004/80/EC to the relevant service, namely, DG JFS.

25. In his observations, the complainant argued that DG TREN's letter dated 26 July 2007 was neither clear nor comprehensive on either the issue of injustice or the question of incompatibility.

The Ombudsman's assessment

26. Article 14(3) of the European Code of Good Administrative Behaviour [4] provides that " *No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.* " Moreover, the Code of Good Administrative Behaviour for Staff of the European Commission in their relations with the Public [5] , which is annexed to the Commission's rules of procedure, provides that its rules on correspondence " *do not apply to correspondence which can reasonably be regarded as improper, for example because it is repetitive, abusive and/or pointless. Then the Commission reserves the right to discontinue any such exchanges of correspondence.* "

27. The above codes of Good Administrative Behaviour establish the right to discontinue correspondence with a citizen on the ground of repetitiveness, but they do not elaborate on what is meant by " *repetitive correspondence* ". In defining " *repetitiveness* ", account must be had to the nature of the right to discontinue correspondence as an exception to the Commission's general duty to correspond with citizens. As the Ombudsman has held previously [6] , that right must be narrowly construed.

28. In general terms, the Ombudsman considers that what constitutes " *repetitive correspondence* " must be determined on a case-by-case basis while taking into account all the circumstances of a given case. However, the Ombudsman wishes to point out that the criteria are not quantitative. For instance, correspondence which simply repeats arguments that have already been put forward is not necessarily repetitive. Rather, for correspondence to be considered repetitive within the meaning of the aforementioned codes, it must, essentially, be unreasonable.



29. In the context of the present complaint, it is noted that the complainant made representations to DG TREN on 16 June 2007 regarding the alleged incompatibility of the ICAO proposals with the Directive. On 9 July 2007, DG TREN responded by reassuring the complainant that the attention of other Commission services had been drawn to the issue of compatibility and that, if further analysis indicated potential incompatibilities, these concerns would be made known to the ICAO SG-MR.

30. By letter dated 17 July 2007, the complainant expressed his dissatisfaction at not having received a response to his assertion that the ICAO proposals were unjust, and that the Commission had not yet reached a conclusion on the issue of incompatibility, even though the incompatibility of the draft Convention with the Directive had been obvious to him for three years. Pursuant to a letter dated 26 July 2007, DG TREN explained to the complainant that, following consultation with DG JFS, the Commission's position was that the draft Convention is compatible with the Directive, and that the assertion of " *basic injustice* " is unfounded because aircraft operators were already liable for damage caused to third parties on a no fault basis. Beyond this general proposition, DG TREN indicated that DG JFS was competent to deal with general questions of civil law instruments and fundamental rights.

31. In his letter dated 30 August 2007, the complainant insisted on his right to a substantive response regarding the issues he had raised. In particular, he asked specific questions and raised additional arguments in support of his assertions. In its response of 6 September 2007, DG TREN noted that the Commission had not identified any incompatibilities between the draft Convention and the Directive and that the specific questions on the Directive should be addressed to DG JFS.

32. The Ombudsman considers that DG TREN correctly identified the complainant's main assertions, namely, that the draft Convention is incompatible with the Directive and fundamentally unjust, and that it clearly expressed its position on the matter. The complainant's correspondence only raised arguments and asked questions which were inextricably linked to, and aimed exclusively at, supporting his main assertions. In this context, his correspondence had become repetitive within the meaning of the above-mentioned codes of Good Administrative Behaviour.

33. Therefore, the Ombudsman finds that DG TREN did not commit an act of maladministration when it informed the complainant that, having concluded that his correspondence was repetitive within the meaning of the above mentioned codes, it was not going to reply to any further letters from him concerning these issues. This finding is without prejudice to the Ombudsman's assessment of the second allegation below.

34. Consequently, there are no grounds for the complainant's related claim that the Commission should review its correspondence with him on the same issues. However, it should be noted, that, by its letters dated 13 August 2008 and 25 February 2009, DG JFS continued its correspondence with the complainant on the same issues. In its final letter of 28 July 2009, DG JFS informed the complainant of the results of the Diplomatic Conference in Montreal and



attached the Commission's Reports on Member State implementation of Directive 2004/80 [7] . In that letter, DG JFS pointed out that the Commission had already replied to all of the complainant's substantive questions and that, due to the repetitive nature of his correspondence, it would discontinue any further exchange of correspondence dealing with the same issues.

B. Allegation that DG TREN insufficiently replied to the issues raised by him in his correspondence

Arguments presented to the Ombudsman

35. In his complaint to the Ombudsman, the complainant argued that DG TREN insufficiently replied to the issues raised in his correspondence. In particular, he stated that its replies were incomplete, inadequate, and consisted of bald counter-assertions. The complainant further stated that he found the Commission's view unconvincing and that he had been given no reasoned counter-argument for his published views.

36. The complainant further argued that his complaint to the Ombudsman was not aimed at determining who is right in the basic controversy, namely, (a) whether the ICAO proposals are compatible with the Directive, and (b) concerning the injustice inherent in the proposition that innocent parties will be held liable for crimes committed by others. Rather, the aim was to recognise the global importance of the controversy and its relevance to EU citizens. The complainant's correspondence with the Commission was intended to give practical meaning and effect to Article 24 of the Treaty on the Functioning of the European Union (ex Article 21 of the EC Treaty), which can be seen to support the mutual bonds of respect which should unite citizens and the institutions of the European Union.

37. In its opinion, the Commission recognised the importance of the issues but argued that DG TREN had replied in substance to those questions which were related to EU policy. In particular, the Commission stated that, following consultation with DG JFS, DG TREN had given a clear response on the question of whether the proposals of the ICAO SG-MR are incompatible with Member State responsibilities arising from the Directive, and that it had unequivocally held that, in the Commission's view, they are fully compatible. Moreover, DG TREN had further indicated that the ICAO proposals were not unjust, and that their purpose was to limit the third-party liability of aircraft operators in case of unlawful interference.

38. The Commission argued that the complainant's letter dated 17 July 2007 did not raise any additional questions, but merely insisted that compatibility with the Directive and basic injustice were two distinct issues. It further argued that DG TREN's reply of 26 July 2007 responded to both the compatibility of the proposals of the ICAO SG-MR with the Directive, and the alleged "basic injustice".

39. The Commission argued that, in his letter of 30 July 2007, the complainant raised only one additional question, asking to be informed of the content of the Commission's reports to ICAO



concerning the effect of Directive 2004/80 on the ICAO proposals. On 29 August 2007, DG TREN replied that the issues raised by the complainant would be taken into consideration when discussing the proposals of the ICAO SG-MR with Member States.

40. As regards the complainant's question as to whether DG TREN was aware of any exceptions to the proposition that only criminals or States have ever been identified as responsible for paying compensation to victims of crime, and whether DG TREN was aware of any no fault liability systems introduced within the preceding decade, the Commission replied that these are not matters concerning EU air transport policy and they do not affect the Commission's view that the proposals of the ICAO SG-MR are neither incompatible with the Directive, nor fundamentally unjust. Therefore, DG TREN was not in a position to provide the complainant with a detailed assessment of his legal reasoning, since this would go beyond the scope of Community competence and its expertise in this matter. Finally, DG TREN's reply of 29 August 2007 underlined that the complainant's views would be taken into consideration in the further discussions with Member States on this issue.

41. Finally, the Commission argued that the complainant's letter dated 30 August 2007 repeated exactly the same questions as those already raised in his letter of 30 July 2007. DG TREN's response of 6 September 2007 repeated that the proposals of the ICAO SG-MR were not incompatible with the Directive. It clarified that, due to the compatibility of both instruments, the Commission services had not raised this issue in the context of the ICAO SG-MR. DG TREN further clarified that third-party liability rules for aircraft operators are not a matter of Community competence, but of national law and that the Commission has no systematic overview of worldwide rules on third-party liability. Any further questions on compatibility or human rights should be directed to DG JFS.

42. In his observations, the complainant disputed that DG TREN's letter of 26 July 2007, constituted a "*clear response*" to the assertion that the ICAO proposals were incompatible with the Directive and unjust. On the issue of incompatibility, DG TREN's reply was by no means clear because it stated that, whether the proposed Convention could be considered as "*more favourable*" than compensation under the Directive, remained "*to be determined*". "*Otherwise both systems would co-exist ... giving the victim a choice*". On the issue of injustice, the complainant argued that DG TREN's reply cites the advantage of the draft Convention for aircraft operators, but says nothing about injustice to aircraft users (passengers and cargo shippers).

The Ombudsman's assessment

43. Article 24 TFEU provides that "*Every citizen of the Union may write to any of the institutions ... in one of the [official] languages ... and have an answer in the same language*". Article 12(1) of the European Code of Good Administrative Behaviour provides that "[t] he official shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the official shall try to be as helpful as possible and shall reply as completely and as accurately as possible to questions which are asked." Moreover, principles of good administration require that Union institutions should give citizens the



opportunity to make their views known, and publicly to exchange their views in all areas of Union action. [8] It follows from the above that institutions are obliged to provide an appropriate reply to the correspondence they receive from citizens.

44. The question of whether an institution provides an appropriate reply depends on the context and the circumstances governing the issue. Generally speaking, institutions should address, accurately and completely, issues which are brought to their attention by citizens, and to which the latter can reasonably expect a reply. However, unless circumstances so require, as would normally be the case when a formal administrative procedure is involved, this does not require the institutions to respond to all arguments or points raised in correspondence. Likewise, institutions are not obliged to answer questions which do not fall within their competence and expertise, or to conduct theoretical discussions. In such cases, however, they should make reasonable efforts to inform citizens of alternative means of pursuing the issues concerned.

45. As regards the present allegation and, without entering into the substance of the arguments raised by the complainant and the Commission's replies, it is clearly established that the complainant made detailed representations, which often appeared in published work, in support of his two main assertions, namely, that the draft Convention is incompatible with the Directive, and that it is unjust to aircraft operators.

46. The Commission, through DG TREN, and following consultation with DG JFS, established its position regarding the issues of incompatibility and injustice, and made its position clear to the complainant. Besides providing information, such as whether the Commission was "*aware of any systems of law imposing no-fault unlimited liability on aircraft for third party damage*", the Commission did not consider it necessary to enter into a detailed rebuttal of the complainant's arguments.

47. In view of the context of the correspondence between the complainant and DG TREN, and the policy considerations governing the given policy field, the Commission appears to have answered the complainant's questions appropriately and sufficiently. It is noteworthy that the EU shares its competence with the Member States in the field of air transport. At the same time, the EU enjoys only limited competence in the field of civil law and civil liability harmonisation. Moreover, the questions raised by the complainant in his correspondence with DG TREN were also being discussed in ongoing international negotiation. This negotiation took place under the auspices of ICAO, an international organisation of which the EU is not a member, and was conducted by the Member States and assisted by the Commission in matters falling within Union competence.

48. The Ombudsman finds that, in circumstances such as those outlined above, the Commission should transmit to the Member States information it receives and considers relevant, and should provide citizens with feedback and/or information as appropriate. In the case at hand, however, good administration does not require the Commission, once it has established its position, to enter into a detailed discussion on all the arguments raised by the complainant in support of his main assertions. Given the specific context of the correspondence at issue, the Commission's conduct also conformed to the duty of sincere cooperation [9] .



49. In light of the above considerations, the Ombudsman finds that there has been no maladministration as regards the complainant's second allegation.

C. Allegation that DG JFS failed to reply to certain questions raised by the complainant in February 2007

Arguments presented to the Ombudsman

50. On 13 February 2007, the complainant contacted Vice-President Frattini to ask a number of questions concerning the present inquiry. On 16 February 2007, the spokesperson for Vice-President Frattini replied to the complainant. He explained, among other things, that the Commissioner was aware of the ICAO proposals and that his services were examining them with great interest.

51. In his correspondence with DG JFS between February and May 2007, and in his complaint to the Ombudsman, the complainant argued that the Commission failed to reply to his e-mails concerning the following two issues: first, the point in time at which Vice-President Frattini became aware of the ICAO proposals, and second, the point in time when he became aware of the " *apparent* " conflict between the ICAO proposals and the Directive.

52. In parallel, the complainant sent an e-mail to the " *TREN informations* " mailbox. On 24 July 2007, DG JFS (Civil Justice Unit) replied to the e-mail and analysed the aims, objectives and operation of Council Directive 2004/80.

53. On 3 August 2007, the complainant continued his correspondence with DG JFS. On 27 September 2007, a holding letter was sent to the complainant. On 18 June 2008, DG JFS responded to the complainant, the Ombudsman having, in the meantime, opened his inquiry into the present complaint. First, it apologised for the delay following its holding letter of 27 September 2007. It went on to explain that the Commission had participated in the ICAO SG-MR as an observer since its formation in May 2004, and provided information on the developments which had taken place in ICAO on the draft Convention at the meeting of ICAO's Legal Committee in April 2008. DG JFS explained that these issues fall mainly within the competence of the Member States, and that the Commission had always encouraged Member States to participate in the draft Convention. DG JFS pointed out, in particular, that the Civil Justice Unit did not deal with policy matters relating to the ICAO. DG JFS then explained the scope and nature of Directive 2004/80, and stated that, having consulted DG TREN, it considered the Directive to be entirely compatible with the draft Convention, and that both systems could co-exist.

54. In its opinion of 8 December 2008, the Commission argued that DG JFS is the Commission's service responsible for following up the implementation of Council Directive 2004/80/EC relating to compensation to crime victims, and that, in DG JFS's reply of 24 July 2007, the Commission had given the complainant relevant information concerning the aims and



the scope of the Directive.

55. In his observations of 9 April 2009, the complainant maintained that he had not received an answer to all of his questions.

56. On 28 July 2009, DG JFS contacted the complainant for the last time. In its letter, DG JFS attached a copy of the Commission's report on the application of the Directive and informed the complainant of the progress achieved at the Montreal Ministerial Conference of ICAO, which concluded the negotiations on the new Conventions. Moreover, DG JFS established that the issue of incompatibility or injustice had not been raised by the Member States in Montreal nor, in the context of the Commission reporting back to the Council, within the Council itself.

The Ombudsman's assessment

57. The Ombudsman considers that, in the course of his inquiry, the Commission addressed the complainant's two unanswered questions, namely, when Commissioner Frattini became aware of the ICAO proposals and their incompatibility with the Directive. In particular, in its letter dated 18 June 2008, DG JFS, after apologising for the delay in replying to the complainant's correspondence, explained that the Commission had participated in the work of the ICAO SG-MR as an observer since the latter's establishment in May 2004. Consequently, it can be inferred that the Commission already knew about the ICAO proposals in 2004. In the same letter, DG JFS explained that, following consultation with DG TREN, it considered the draft Convention to be " *entirely compatible* " with the Directive.

58. The Ombudsman notes that the Commission did not initially reply to the questions identified above. However, in light of the content of the reply that it subsequently sent to the complainant following the opening of the present inquiry, and in light of its apology for the delay in replying, the Ombudsman considers that no further inquiries are justified as regards this allegation.

D. Allegation that DG TREN wrongly redirected the complainant to DG JFS and the related claim that the Commission should give a unified response to the issues raised

Arguments presented to the Ombudsman

59. The complainant argued that he is entitled to a " *holistic response* " from the Commission and that he should not be directed from one Directorate to another. Despite being treated in this way, the complainant stated that he endeavoured to communicate in a straightforward manner with two separate Directorates on these closely-related issues.

60. In its opinion, the Commission explained that DG TREN is the Commission service responsible for relations with ICAO and that it follows the work of the ICAO SG-MR. Therefore, the complainant was right to address to DG TREN his concerns about the proposals of the



ICAO SG-MR.

61. The Commission further held that DG TREN's reply of 26 July 2007 gave a "*holistic response*" to the complainant's concerns that the proposals of the ICAO SG-MR were unjust and incompatible with the Directive. The response letter had been drawn up in coordination with DG JFS and it had replied sufficiently to the issues raised by the complainant with regard to the proposals of the ICAO SG-MR.

62. Finally, the Commission explained that DG TREN did not redirect the complainant to DG JFS, but considered that its responses had dealt sufficiently with the issue of the ICAO proposals. DG TREN then invited the complainant to address any additional questions related to Council Directive 2004/80, or other issues related to justice or human rights, directly to the service responsible for the implementation of the Directive and related matters, which, in this instance, was DG JFS. Coordination with DG JFS was ensured throughout the correspondence.

63. In his observations, the complainant noted that he "*did not use the word 'redirection' in his complaint*" but maintained that the Commission's contention that it gave a "*holistic response*" "*... is unsustainable as DG TREN was at pains to explain the difference between its role in furtherance of air transport policy, and the different role of DG JFS... on compatibility or fundamental rights.*"

The Ombudsman's assessment

64. Article 22(4) of the European Code of Good Administrative Behaviour [10] and the Code of Good Administrative Behaviour for Staff of the European Commission in their relations with the Public [11], which is annexed to the Commission's Rules of Procedure, require that, when a Commission department receives a question which it is not competent to answer, it shall direct the requester to the responsible department.

65. On this occasion, DG TREN participated in negotiations on the draft Convention under the auspices of ICAO. DG TREN considered that its responses had addressed the issues relating to the draft Convention. It considered that DG JFS was responsible for providing (a) information on issues of criminal liability, in light of the European Convention on Human Rights, and (b) advice on the interpretation of Directive 2004/80 and its implementation by the Member States.

66. Consequently, by instructing the complainant to address DG JFS regarding the issues pertaining to the European Convention of Human Rights and the interpretation and implementation of Directive 2004/80, DG TREN acted in accordance with the rules enshrined in the above codes. Hence, there is no maladministration.

67. As regards the complainant's related claim that the Commission should provide a unified response, it appears that both DG TREN and DG JFS consulted one another when drawing up replies to the complainant's questions in their respective correspondence. Consequently, this claim cannot be sustained.



E. Conclusions

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

There is no instance of maladministration as regards the complainant's allegations.

The complainant's claims cannot be sustained.

FURTHER REMARK

The Convention on Compensation for Damage Caused by Aircraft to Third Parties in Case of Unlawful Interference is currently open for signature. Its implementation in the Union legal order will raise important legal issues within the framework of EU air transport policy.

The Ombudsman wishes to draw the Commission's attention to the enhanced scope of the institutions' duty, following the Treaty of Lisbon amendment, to: "*... by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*" [12] In this regard, the Ombudsman would be grateful to receive information as to how the Commission intends to provide those opportunities for consultation and dialogue in the field here concerned.

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

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 18 May 2010

[1] "Unlawful interference" in air transport means terrorist attacks on or with an airplane.

[2] The text of the Conventions and their ratification status can be found at http://www.icao.int/DCCD2009/docs/DCCD_doc_42_en.pdf [Link], http://www.icao.int/DCCD2009/docs/DCCD_doc_43_en.pdf [Link], http://www.icao.int/icao/en/leb/2009_UICC.pdf [Link], http://www.icao.int/icao/en/leb/2009_GRC.pdf [Link] respectively.

[3] Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, O.J. L261, 6.8.2004, p. 15.



[4] Available on the website of the European Ombudsman, <http://www.ombudsman.europa.eu> [Link]

[5] http://ec.europa.eu/civil_society/code/_docs/code_en.pdf [Link]

[6] Decision of the European Ombudsman closing his inquiry into complaint 1437/2006/(WP)BEH against the European Commission, at paragraphs 80-108.

[7] Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to crime victims (COM(2009)170 final) and Commission staff working document accompanying document to the report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to crime victims (COM(2009)170 final) (SEC(2009)495).

[8] See, in this regard, Article 11(1) of the Treaty on European Union following the Treaty of Lisbon amendment.

[9] Article 4(3) of the Treaty on European Union, following its amendment by the Treaty of Lisbon, provides: "*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*"

[10] Available on the website of the European Ombudsman, <http://www.ombudsman.europa.eu> [Link]

[11] http://ec.europa.eu/civil_society/code/_docs/code_en.pdf [Link]

[12] Article 11(1) of the Treaty on European Union.