



## Decision in case 299/2016/DK on the European Commission's action

Decision

**Case 299/2016/DK - Opened on 17/03/2016 - Decision on 27/10/2016 - Institution concerned** European Commission ( No maladministration found ) |

### Decision

in case 299/2016/DK on the European Commission's action

*The case concerned how the Commission dealt with an infringement complaint concerning the regulation of insurance intermediaries in Ireland.*

*The Ombudsman inquired into the issue. She noted that the Commission had closed its investigation in February 2016 with a conclusion that it could not identify any breach of EU law by the Irish authorities. The Ombudsman examined the correspondence from the Commission and concluded that the Commission had properly analysed the complainant's infringement complaint. She therefore closed the case with a finding of no maladministration.*

### The background to the complaint

- 1.** The background to the case dates back to 2005. In June 2005, the complainant submitted an infringement complaint to the European Commission. The complainant's main grievance was that the Irish law transposing the Insurance Mediation Directive (Directive 2002/92/EC [1]) into national law provided that all insurance policies had to be classified as 'investment instruments'. As a result, sellers of insurance policies had to be re-classified as 'investment intermediaries', instead of the earlier classification as 'insurance intermediaries'. As such, they had to comply with the more onerous legislation designed to regulate the sale of investment products.
- 2.** In January 2006, the Commission informed the complainant that it was not planning to initiate infringement proceedings against Ireland on the grounds that it was not possible to prove that any infringement had been committed by Ireland in relation to the transposition of the Insurance Mediation Directive.
- 3.** In November 2006, the complainant submitted a complaint to the European Ombudsman. He alleged that the Commission had failed to investigate properly his complaint into the allegedly erroneous transposition of the Insurance Mediation Directive into Irish law.



**4.** The Ombudsman inquired into the matter. During the inquiry, the Ombudsman found that the Commission, as Guardian of the Treaties, was obliged to deal diligently with complaints presented by citizens concerning possible alleged infringements of EU law by Member States. The Ombudsman concluded in this regard that the fact that the Commission did not register the complainant's complaint as an infringement complaint until January 2007, instead of in June 2005 when it actually received it, constituted maladministration. The Ombudsman therefore made a relevant critical remark.

**5.** The Ombudsman also found during the inquiry that, further to an extensive correspondence between them, the complainant, the Commission and the Irish authorities appeared to share the view that certain aspects of the Irish legislation transposing the Insurance Mediation Directive into Irish law did not fully conform to the Insurance Mediation Directive. In particular, the complainant and the Commission appeared to agree that Ireland wrongly excluded from the application of the insurance mediation rules those credit institutions which also acted as insurance intermediaries. The Irish authorities therefore made a commitment to the Commission to rectify the errors identified in the Irish legislation and to adopt a new Irish legislation to resolve those errors in October or November 2007.

**6.** The Commission also stated that, in addition, the issue of possible overregulation of intermediaries in Ireland should be settled by the revised rules.

**7.** It is important to note that while the Commission expressly stated that the non-regulation of certain credit institutions (banks) selling insurance was an infringement of EU law, it never stated, nor did it imply, that the possible "overregulation" of insurance intermediaries was an infringement of EU law. The Commission simply stated that it had been informed by the Irish authorities that they intended to deal also with the possible overregulation of insurance intermediaries when they resolved the issue of the non-regulation of credit institutions.

**8.** In his decision of 7 November 2007 closing the inquiry, the Ombudsman made a further remark that, in order to ensure that the concerns raised by the complainant are resolved satisfactorily, the Commission should decide either to issue a formal notice to Ireland as regards compliance with its obligations under the Insurance Mediation Directive, or decide to close the case, by no later than 26 January 2008. [2]

**9.** In response, in April 2008, the Commission informed the Ombudsman that it had issued a letter of formal notice to Ireland on 2 April 2008 as regards compliance with its obligations under to the Insurance Mediation Directive. The Commission added that it would keep the complainant informed of any further progress in the case.

**10.** In February 2016, the complainant submitted a new complaint to the Ombudsman. He explained that he wrote to the European Commission in December 2015, asking it to live up to its promise made to the Ombudsman in its letter of 30 April 2008. He complained that, despite several reminder e-mails and a telephone call to the Commission, it had not replied to him and thus had failed to inform him about the progress in the case.



## The inquiry

11. The Ombudsman opened an inquiry into the following allegation.

### **Allegation :**

The Commission failed to deal properly with the complainant's infringement complaint.

12. The Ombudsman carried out her inquiry by first contacting the Commission to obtain copies of the correspondence between the complainant and the Commission. She then analysed that correspondence.

### **Allegation of failure to deal properly with an infringement complaint**

Arguments analysed by the Ombudsman

13. The Commission, in its correspondence with the complainant, noted that the complainant had made a new infringement complaint to it in September 2015. The Commission registered it under the reference CHAP(2015) 02728. In November 2015, the Commission informed the complainant that it had investigated the matter but did not find any new "elements" in the complainant's new infringement complaint that would have warranted the re-opening of his case. According to the Commission, the complainant's current problem was that the Central Bank of Ireland had taken the view that he no longer met the requirements of the Insurance Mediation Regulation, the law by which Ireland has transposed the Insurance Mediation Directive. The Commission pointed out that it does not have the authority to intervene in a case between a national supervisor (the Central Bank of Ireland) and an intermediary (the complainant). The Commission advised the complainant to turn to the European Insurance and Occupational Pensions Authority if he wished to complain against the Central Bank of Ireland. Finally, the Commission pointed out that the Insurance Mediation Directive would soon be replaced by a new directive, the Insurance Distribution Directive. The Commission advised the complainant that it would close the complaint unless the complainant submitted further information within four weeks that changed its position.

14. By letter of 29 February 2016, the Commission wrote to the complainant that, in the absence of any reply from him within the above-mentioned four weeks, it closed his infringement complaint CHAP(2015) 02728.

The Ombudsman's assessment

15. The Ombudsman notes that on 20 January 2016 the Insurance Distribution Directive was adopted replacing the Insurance Mediation Directive. That new Directive entered into force in February 2016. The Ombudsman notes that the Commission can use infringement proceeding to investigate compliance with EU law only in relation to the law **as it currently stands** . It therefore becomes a moot point whether or not Ireland failed, as the complainant



argues it did, to make modifications to the Irish legislation in 2008.

**16.** There is no evidence in the complaint file that the complainant had taken any actions as regards his grievances between 2008 and 2015 when he made a new infringement complaint to the Commission.

**17.** The Ombudsman takes this opportunity to note that the commitment made by the Irish authorities in 2007 to the Commission, that they would rectify certain errors identified in the Irish legislation, related **only** to the issue of non-regulation of credit institutions in Ireland at that time. While the Irish authorities also informed the Commission that they would use the opportunity, provided by the review of the Irish legislation aimed at dealing with the non-regulation of credit institutions, to deal with the issue of the possible overregulation of insurance intermediaries, this does not imply that there would have been any infringement of EU law if the Irish authorities had not dealt with the issue of possible overregulation of insurance intermediaries. [3]

**18.** In this context, the Ombudsman notes that, as a general principle, while Member States are not permitted to ignore minimum requirements set out in EU legislation, nothing prevents them from “gold-plating” their national laws so as to provide for a higher level of protection for consumers than is strictly necessary to comply with EU law. Thus, if Ireland had chosen to retain a higher than necessary level of regulation of insurance intermediaries, this would not have given rise to any infringement of EU law by Ireland.

**19.** Regarding the 2016 Insurance Distribution Directive, the Ombudsman notes that the new Directive establishes a high standard as regards the protection of consumers by imposing strict requirements for insurance distribution and insurance intermediaries. At the same time, the Directive expressly states that Member States are permitted to maintain or introduce more stringent provisions in order to protect customers. In other words, the right to “gold-plate” is expressly set out in the new Directive. This means that even if Ireland imposes higher standards than the minimum standards imposed under the Directive, such higher standards could never be an infringement of EU law. An infringement of EU law could only occur if Ireland failed to impose at least the minimum standards on insurance intermediaries (as was the case when, back in 2005-2008 it failed to ensure that credit institutions complied with the EU rules).

**20.** The Ombudsman finally notes that the Commission correctly advised the complainant to bring his individual dispute with the Irish Central Bank as regards compliance with Irish law to the European Insurance and Occupational Pensions Authority which is the most appropriate body to hear his individual grievances. This practical advice is sound.

**21.** In light of the above, the Ombudsman finds no maladministration by the Commission.

## **Conclusion**

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion [4] :



**The Ombudsman finds no maladministration by the Commission.**

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

Strasbourg, 27/10/2016