Decision in case 129/2017/AMF on the European Commission’s closure of an infringement complaint against Spain

The case concerned the closure of an infringement complaint against Spain about a court judgement on the right to VAT deduction. The Ombudsman inquired into the issue and found no maladministration by the European Commission in closing the case on the basis that an isolated court judgment cannot constitute administrative practice contrary to EU law.

The background to the complaint

1. The complainant, a Spanish citizen, submitted a complaint to the European Commission because he considered that the Spanish courts were wrong in endorsing the decision of the Spanish tax authorities that he had no right to VAT deduction in relation to certain goods and services.

2. The Commission informed the complainant that it is only competent to intervene in cases that involve a potential breach of EU law by Member State authorities. The Commission informed the complainant that it considers the Spanish VAT legislation to be compliant with the provisions of EU law. The Commission therefore informed the complainant of its intention to close the complaint and invited him to submit his comments.

3. The complainant submitted comments to the Commission, arguing that a judgement of the Spanish court constitutes an “administrative practice” of the Spanish authorities that is not compliant with EU law. He therefore maintained that the Commission should initiate infringement proceedings against Spain.

4. The Commission replied, stating that according to the case law of the Court of Justice of the European Union, an “administrative practice” has to be general and consistent [1], and that an isolated judgment which, in addition, is based on the appreciation of facts does not qualify as “administrative practice”. In the absence of any element that would lead it to reconsider its position, the Commission therefore closed the case.

5. Unsatisfied with the Commission’s decision, the complainant turned to the Ombudsman.
The inquiry

6. The Ombudsman opened an inquiry into the complainant’s concern that the European Commission was wrong in deciding to close the complainant’s infringement complaint and that it failed to motivate its decisions. The complainant wished the European Commission to reopen the complaint and initiate action against Spain before the European Court of Justice.

7. In the course of the inquiry, the Ombudsman’s inquiry team duly considered the information provided in the complaint. In particular, the inquiry team carried out a thorough analysis of the correspondence that had taken place between the Commission and the complainant before the complainant turned to the Ombudsman.

The closure of the infringement complaint

Arguments made by the complainant

8. The complainant maintains that the Commission was wrong in its assessment of his infringement complaint and that it did not motivate its decision to close the case.

The Ombudsman’s assessment

9. The effective application, implementation and enforcement of EU law is a responsibility entrusted to the European Commission by the Treaty on European Union [2]. The complaint to the Commission was against a judgment of a Spanish court on the complainant’s right to VAT deduction. The Commission has explained to the complainant that it considers the Spanish VAT legislation to be compliant with the provisions of EU law. Although there is still a possibility that a Member State’s “administrative practice” is contrary to EU law, the Commission has correctly informed the complainant that an isolated judgment based on the appreciation of facts does not qualify as “administrative practice”. There is thus nothing to suggest that the Commission was wrong to close the case and it has provided the complainant with its reasons for doing so.

Conclusion

On the basis of the inquiry into this complaint, it is closed with the following conclusion:

There has been no maladministration by the European Commission.

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

Strasbourg, 14/03/2017

Tina Nilsson

Head of Inquiries - Unit 4

[2] Article 17(1)