

## **Decision in case 1487/2016/EIS on the European Commission's response to a complaint alleging that disabled persons are being stigmatised by a picture warning used on tobacco products**

Decision

**Case 1487/2016/EIS - Opened on 11/07/2017 - Decision on 11/07/2017 - Institution concerned** European Commission ( No further inquiries justified ) |

The case concerned the European Commission's response to a complaint alleging that disabled persons are being stigmatised by a picture warning used on tobacco products.

The complainant, the Ombudsman for Social Matters and Head of the Anti-discrimination Office of Schleswig-Holstein in Germany, alleged that the picture, which shows a person in a wheelchair alongside a text stating 'smoking causes strokes and disability', portrays people with disabilities in a bad light. The picture in question is one of a range of such pictures provided by the Commission.

The Commission explained that the purpose of the pictures is to inform people about the risks of smoking. It added that the pictures were selected following a very strict selection procedure.

The Ombudsman inquired into the issue and found the Commission's explanation, overall, to be reasonable. She decided therefore that further inquiries into the complaint are not justified at this stage. However, she also understands that the publication of such pictures could be perceived negatively by persons with disabilities and by organisations representing them. Accordingly, the Ombudsman believes that, for the future, and in order to strike the best possible balance between the different interests at stake, it would be helpful to consult appropriate civil society groups regarding the choice of sensitive images before they become publicly available.

### **The background to the complaint**

1. The complainant is the Ombudsman for Social Matters and Head of the Anti-discrimination Office of Schleswig-Holstein in Germany.

2. The EU Tobacco Products Directive [1] requires cigarettes and roll-your-own tobacco packages to carry combined health warnings consisting of (i) a picture, (ii) a text warning, and (iii) cessation information. The 'library' of picture warnings to be used is defined in a separate Delegated Directive (the 'Picture Warnings Directive') [2] .



3. On 22 August 2016, the complainant's predecessor wrote to the Commission, pointing out that her office had received a number of complaints concerning a picture warning used on tobacco product packages (the text of the picture states that "[s] *moking causes strokes and disability* "). They were of the view that one of the pictures, which shows a person in a wheelchair, discriminated against and stigmatised people with disabilities. They argued that the picture depicted people in wheelchairs in a bad light, while clearly not all disabilities requiring people to use wheelchairs were caused by smoking.

4. On 21 September 2016, the Commission replied to the complainant. It expressed its regret that some people felt discriminated against because of the picture. However, it argued that the picture did not stigmatise anyone nor was it discriminatory. It stated that the purpose of the various pictures it used was to inform potential consumers about the risks of smoking. Furthermore, the Commission explained that the pictures were chosen following a very strict selection procedure in which special attention was paid to the general goal of preventing and reducing tobacco consumption. To that end, the Commission had also consulted medical specialists [3] .

5. Dissatisfied with the Commission's reply, the complainant turned to the Ombudsman.

#### **The inquiry**

6. The Ombudsman opened an inquiry into the complaint and identified the following allegation:

The Commission failed to provide a convincing and exhaustive reply to the complainant.

7. In the course of the inquiry, the Ombudsman duly considered the information provided in the complaint. In particular, she 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 Ombudsman also carried out her own research including contact with the European Disability Forum. The latter expressed concerns about the appropriateness of the pictures.

#### **Allegation that the Commission failed to provide an adequate reply**

Arguments presented to the Ombudsman

8. In the complainant's view, the picture stigmatised people with disabilities. He argued that disabilities requiring wheelchair use are usually not the result of smoking. In addition, the picture portrayed wheelchair users as "frail, unhappy and desperate". He referred also to the content of the website link to which the Commission had referred in its reply to the complaint. The complainant was of the view that the content of this link wrongly lends support to the view that the pictures are "medically correct". He took issue also with the fact that the Commission's consultation with legal experts related to copyright issues only.

The Ombudsman's assessment

9. The Ombudsman is aware that the use of pictures of people with disabilities is a sensitive issue which has been highly controversial at the national level [4] . In line with Article 8 of the



UN Convention on the Rights of Persons with Disabilities, states parties should abstain from creating negative images as regards disability or images that may be perceived as such. They should promote positive perceptions of persons with disabilities instead.

**10.** At the same time, the Ombudsman notes that tobacco use is a major public health concern in the EU. In this case, the picture is intended to convey that one of the many negative consequences of tobacco use is serious incapacitation resulting from smoking-related illnesses. The Commission explained that (i) the purpose of the pictures is to inform and warn existing and potential smokers about such risks, and that (ii) it had consulted medical specialists about the pictures and their appropriateness to the accompanying text warning.

**11.** The objective of reducing and eliminating the use of tobacco products is undoubtedly one of the highest public health priorities across the EU. The use of graphic and sometimes shocking images has, for some time now, been an integral part of the effort to achieve this objective. In selecting appropriate images, there is a balance to be struck between maximising effectiveness and ensuring sensitivity to the position of people for whom some images may be offensive. The pictures approved for use as health warnings on tobacco products are set out in an annex to a delegated EU directive [5] . The Ombudsman's mandate does not allow her to take issue with the content of legislation approved by the EU's legislature. However the Ombudsman feels that, overall, the Commission has given a reasonable reply to the complaint and that, accordingly, there is no basis for inquiring further.

**12.** At the same time, the Ombudsman stresses the importance for the EU administration of having regard to citizens' perceptions and to the need to promote a positive image of the EU. In any future review of the images required to be printed on the packaging of tobacco products, the Ombudsman believes that it would be helpful for the Commission to consult widely, and not simply with health professionals. As illustrated in this complaint, some of these images can be particularly sensitive in the case of people with disabilities. Accordingly, the Ombudsman believes that, in order to strike the best possible balance between the rights and interests of people with disabilities on the one hand and the public health perspective on the other, consultation with appropriate civil society groups would be particularly helpful.

### **Conclusion**

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

### **No further inquiries are justified.**

The Ombudsman stresses the importance for the EU administration of having regard to citizens' perceptions and to the need to promote a positive image of the EU. In any future review of the images required to be printed on the packaging of tobacco products, the Ombudsman believes that it would be helpful for the Commission to consult widely, and not simply with health professionals. As illustrated in this complaint, some of these images can be particularly sensitive in the case of people with disabilities. Accordingly, the Ombudsman believes that, in order to strike the best possible balance between the rights and interests of people with disabilities on the one hand and the public health perspective on the other, consultation with appropriate civil



society groups would be particularly helpful.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 11/07/2017

[1] Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ 2014 L 127, p. 1.

[2] Commission Delegated Directive 2014/109/EU of 10 October 2014 amending Annex II to Directive 2014/40/EU of the European Parliament and of the Council by establishing the library of picture warnings to be used on tobacco products, OJ 2014 L 360, p. 22.

[3] The Commission stated that more information on the picture warnings could be found at: [http://ec.europa.eu/health/tobacco/docs/pictorialwarnings\\_tpd\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/pictorialwarnings_tpd_en.pdf) [Link]

[4] This is the case with road safety campaigns, for instance.

[5] See footnote 2.