

## **Decision of the European Ombudsman on complaint 367/98/(VK)/GG against the European Commission**

Decision

**Case 367/98/GG - Opened on 15/06/1998 - Recommendation on 22/11/2000 - Decision on 26/04/2001**

Strasbourg, 26 April 2001

Dear Mrs B., Dear Mr L.,

On 2 April 1998, you lodged a complaint with the European Ombudsman against the European Commission concerning the latter's alleged failure to implement Articles 25 (2), 27 and 28 of the "Rules laying down the Specific Conditions of Employment of Local Staff serving in Austria".

On 15 June 1998, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 7 October 1998, and I forwarded it to you on 20 October 1998 with an invitation to make observations, if you so wished. On 8 December 1998, you sent me your observations on the Commission's opinion.

On 31 March 1999, I submitted a proposal for a friendly solution to the Commission. The Commission sent its opinion regarding this proposal on 1 June 1999, and I forwarded it to you on 30 June 1999 with an invitation to make observations, if you so wished. On 16 August 1999, you sent me your observations on the Commission's opinion.

On 22 May 2000, I asked the Commission to provide me with further information regarding your complaint. The Commission sent its reply on 10 July 2000, and I forwarded it to you on 13 July 2000 with an invitation to make observations, if you so wished. On 29 September 2000, you sent me your observations on the Commission's reply.

On 22 November 2000, I addressed a draft recommendation to the Commission. On 29 January 2001, the Commission sent me its detailed opinion, and I forwarded it to you on 8 February 2001 with an invitation to make observations, if you so wished. On 29 March 2001, you sent me your observations on the Commission's detailed opinion.

I am now writing to you to let you know the results of the inquiries that have been made.

I apologise for the time it has taken to deal with your complaint.



## THE COMPLAINT

The complaint was lodged by two members of the local staff of the representation of the European Commission in Vienna (Austria). This representation is the successor of the delegation that the Commission maintained in Austria prior to the accession of this country to the European Communities on 1 January, 1995.

Article 14 of the "Framework rules laying down the conditions of employment of local staff of the Commission of the European Communities serving in non-member countries" (hereinafter the "Framework Rules") that were circulated on 22 June 1990 provides as follows:

*"The Commission shall be responsible for the social security contributions payable by employers under the rules in force at the place where the member of local staff is to perform his duties.*

*The Commission shall set up supplementary or independent sickness, accident or invalidity insurance or pension schemes where there is no local scheme or where the local scheme is judged to be inadequate.*

*The contributions payable by the Commission and the member of the local staff to meet the cost of any supplementary or independent schemes shall be determined by the authority empowered to conclude contracts of employment."*

On 26 April 1994, the Commission adopted the "Rules laying down the specific conditions of employment of local staff serving in Austria" (hereinafter the "Specific Conditions") which entered into force on 1 May 1994.

Article 25 (1) of these Specific Conditions provides that, without prejudice to the statutory insurance scheme applicable in Austria, a member of the local staff who is unable to work as a result of sickness or accident shall remain entitled to remuneration during the first 6, 8, 10 or 12 weeks, depending on how long they have been in service. From the 7<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> and 13<sup>th</sup> week of incapacity respectively, the member of the local staff is to receive an income of 50 % of his or her remuneration during a supplementary period of four weeks. From the periods of intervention of the statutory insurance scheme and until the 180<sup>th</sup> day, the member of the local staff shall receive social security benefits entitling him or her to an income equal to 100 % of the last basic monthly salary received before the time of incapacity. According to Article 25, the terms of compensation for loss of earnings from the periods of incapacity provided for by the statutory insurance scheme shall be established with an insurance company to which the member of the local staff is affiliated.

Article 27 of the Specific Conditions provides that in the event of permanent and total invalidity caused by sickness or accident at work, or in the event of death, members of the local staff shall be entitled to benefits in accordance with the insurance policy concluded for this purpose by the Commission.



According to Article 28 of the Specific Conditions, a member of the local staff shall receive a retirement pension in accordance with the insurance policy concluded for this purpose by the Commission.

The contributions to these insurance schemes are set out in Article 30 of the Specific Conditions. According to Article 30 (2), members of the local staff shall make a contribution amounting to one third of the costs of the insurance referred to in Article 25. Article 30 (3) provides that with respect to the risks referred to in Articles 27 and 28 of the Specific Conditions, the contribution for pension and invalidity-death shall amount to 60 % for the Commission and 40 % for the member of the local staff.

Article 38 of the Specific Conditions stipulates that the provisions of Articles 25, 27 and 28 "shall enter into force and take effect on the date on which the insurance policies referred to in these articles take effect."

According to the complainants, the subsequent developments may be summed up as follows:

Detailed offers from three insurance companies were submitted to the administration by the local staff on 5 May 1994. In December 1994, the unit in charge at the Commission's Directorate-General I.A (1) asked the Commission's delegation to forward declarations from the members of the local staff that were to be covered in which the latter agreed to be covered by the insurance "sickness-accident-incapacity to work" of Van Breda, an insurance company. Shortly afterwards, the members of the local staff signed the relevant forms in so far as the guarantee of revenues in case of incapacity to work was concerned and handed them over to the administrative assistant at the delegation in Vienna. The latter forwarded these forms to DG I.A on 1 June 1995.

In a note to the administrative assistant at the delegation dated 4 July 1995, DG I.A stated that the local staff working in Vienna was not to be covered by the insurance policy offered by Van Breda. The delegation was invited to submit, together with DG X (2), new proposals to DG I.A and DG IX (the Directorate-General in charge of Administration and Personnel).

On the occasion of a meeting with all the local staff working in Vienna in early March 1996 and in the presence of the administrative assistant at the representation, Mr Walker, the head of personnel at DG X invited the members of the local staff to submit new proposals. These proposals should be based on two options, providing for retroactive effect as from 1 May 1994 and from 1 January 1996 respectively. In a note to the administrative assistant at the representation of 26 March 1996, Mr Walker expressed the view that the issue of the supplementary insurance policies had not been dealt with further by DG I.A in view of the fact that responsibility for local staff had been transferred to DG IX and DG X. Mr Walker asked the addressee of his note to grant priority to this matter.

In August 1996, the members of the local staff in Vienna submitted to the representation three updated proposals that took into account the two options mentioned above. In December 1996,



the local staff presented a comparison between the services offered by the three insurance companies and expressed a preference for two of these offers. They again asked for the supplementary insurance policies to be set up rapidly. A further request in that sense was made in a note that the local staff submitted to the representation on 21 April 1997.

In a note of 21 April 1997, Mr Käfer, the head of administration at the representation, asked the local staff to provide him, by 28 April 1997, with the name of one single insurance company so that negotiations could be started. On 24 April 1997, the members of the local staff wrote to Mr Käfer and suggested that negotiations should be undertaken on the basis of the offers presented by two companies. The local staff felt that they were not in a position to decide which offer was to be chosen and considered that this decision should be left to the Commission's experts in the matter. Mr Käfer informed Mr Walker of the names of the two companies in a note of 13 May 1997. In his reply of 16 May 1997, Mr Walker stressed that a decision regarding the company to be chosen needed to be made by the representation in order to allow the procedure to continue.

In a note of 22 October 1997 to Mr Käfer, the members of the local staff submitted that negotiations should be entered into with an insurance company called BVP and that the Commission's services should give priority to this matter.

## THE INQUIRY

The complaint was sent to the Commission for its comments.

### **The opinion of the Commission**

In its opinion, the Commission made the following comments:

After the accession of Austria to the EU on 1 January 1995, the Commission's delegation became a representation which implied various changes regarding the rules to be applied. Within this framework, the Commission was in the process of revising the specific conditions of employment of local staff serving in Austria. The staff representatives and the administration were trying to find an agreement regarding all these problems within the framework of a joint study group. Until this revision was carried out, the Specific Conditions that had been adopted having regard to the situation of local staff in a non-member state, remained provisionally applicable.

It followed from Article 14 of the Framework Rules that the setting-up of supplementary insurance schemes depended on the inadequate coverage offered by the local scheme. On the basis of Article 14 of the Framework Rules, the Commission could therefore not be held responsible for the non-implementation of Articles 25, 27 and 28 of the Specific Conditions.

Account also had to be taken of the margin of interpretation of which the Commission disposed in the matter. Given that the setting-up of supplementary insurance schemes was linked to a negative appraisal of the local scheme, the Commission had to act prudently, particularly in the case of a country that had become a member state. The establishment of supplementary



insurance schemes that were limited to certain members of staff (in the present case the local staff) was a cause of potential conflict between the beneficiaries and other staff and thus had to be handled with particular attention.

The Commission had to ensure a transition that was coherent with the regime applicable in all the other member states. For this reason and in order to procure its staff a high level of social protection, the Commission had manifested its intention to set up supplementary insurance schemes to an extent as wide as possible, provided that the homogeneity of the system was maintained. This intention was borne out by the steps by the Commission in this matter already since 1994. It had however not yet been possible to find an agreement regarding the technical and financial conditions in which such supplementary insurance schemes could function.

The Commission would ensure that the local staff in Vienna benefit from supplementary insurance schemes as soon as the new rules had been adopted. The question as to the date on which these should take effect and as to their financial implications was part of the discussions of the study group mentioned above.

#### **The complainants' observations**

In their observations, the complainants maintained their complaint and made the following further comments:

The Specific Conditions had entered into force at a time when it was clear to both the Commission and its local staff in Vienna that Austria would join the European Communities shortly. The accession of Austria had not changed the fact that the social protection offered by the statutory scheme was insufficient. In so far as the local staff in the delegations in Finland and Sweden were concerned, supplementary social benefits had been agreed shortly before the accession of these countries. These benefits were provided to the local staff of the representation in Stockholm since 1 January 1997. In the case of the representation in Helsinki, such insurance policies had not yet been concluded for the sole reason that the local staff there felt unable to provide the financial contribution that had been laid down in the Specific Conditions applicable to them. There was therefore clearly discrimination against the local staff of the Commission working in Vienna.

The award of supplementary benefits to local staff would not cause conflicts with the other agents of the Commission working in Vienna. These other agents were civil servants who enjoyed a degree of social protection that was far higher than that of local staff. It was surprising that the Commission had raised this and other arguments only now.

The delay was not due to technical problems but to the failure of the Commission's services to provide the necessary means in the budget. It was not appropriate to discuss new rules as long as the old ones were not applied properly.

## **THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION**

**The Ombudsman's analysis of the issues in dispute**



After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claims.

### **The possibility of a friendly solution**

On 31 March 1999, the Ombudsman therefore submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman invited the Commission to do its utmost to set up the supplementary insurance policies with retroactive effect.

In its reply of 1 June 1999, the Commission pointed out that the relevant issues had been discussed extensively with the members of the local staff on 16 and 17 March 1999. On that occasion, a formal decision had been taken to set up a supplementary insurance policy for temporary incapacity to work as provided in Article 25 of the Specific Conditions. In so far as the other supplementary insurance schemes were concerned, discussions continued to take place regarding the issue of retroactivity on the basis of concrete offers submitted by insurance companies. At the meeting in March, the administration had proposed to finalise this matter in July 1999 at the latest.

In their observations on this letter, the complainants informed the Ombudsman that on 4 September 1999, the representation in Vienna had addressed a note to its local staff in which it explained that no supplementary insurance policy for temporary incapacity to work had yet been concluded. According to this note, seven insurance companies had been asked to submit proposals. Six of these proposals had been unsuitable since they did not cover the benefits outlined in Article 25 of the Specific Conditions. The remaining offer did cover these benefits but did not meet with the representation's approval since it would have resulted in benefits that were higher than the basic monthly salary. According to the complainants, no progress appeared to have been made with regard to the other supplementary insurance schemes.

## **FURTHER INQUIRIES**

### *Request for further information*

In view of the above, the Ombudsman concluded that he needed further information in order to deal with the complaint. He therefore asked the Commission (1) to specify whether or not it considered that Article 14 of the Framework Rules, either on its own or in conjunction with Articles 25, 27 and 28 of the Specific Conditions, obliged it to provide supplementary insurance policies for its local staff in Austria, (2) to inform the Ombudsman as to what steps it had taken to implement the decision taken in March 1999 to conclude a supplementary insurance policy for incapacity to work as provided for in Article 25 of the Specific Conditions, (3) to provide information as to how the discussions relating to the supplementary benefits relating to retirement pensions, invalidity and death had developed since the Commission's letter of 1 June 1999 and (4) to provide a clear timetable for further action in the matter.

### **The Commission's reply**

In its reply, the Commission made the following comments:

Article 14 of the Framework Rules, even when considered in the light of Articles 25, 27 and 28 of the Specific Conditions, did not entail an automatic obligation, given that the setting-up of supplementary insurance schemes depended on the inadequate character of the coverage



offered by the local scheme. The Commission reiterated its intention to set up supplementary insurance schemes for local staff to an extent as wide as possible, provided that a certain homogeneity of the system in all the member states was maintained. In so far as the local staff in Vienna was concerned, the Commission had already decided that they should be able to benefit from supplementary insurance schemes.

In so far as the supplementary insurance policy for temporary incapacity to work was concerned, none of the main insurance companies that were present on the Austrian market had been able to offer benefits in conformity with the rules set out in Article 25 of the Specific Conditions. However, thanks to the repeated efforts of the administration the Merkur company had finally been able to submit a suitable offer that had been transmitted to the representation in Vienna on 8 March 2000 with a view to obtaining the preliminary agreement of the local staff. On 5 April 2000, ten of the eleven members of this local staff had marked their agreement with this proposal, subject to the provision of answers to the questions that were set out in the note by Mr L. dated 26 April 2000. The Merkur company had replied to all these questions on 16 May 2000, and the answers had been forwarded to the local staff the same day. Despite several reminders, however, the members of the local staff had not yet expressed their agreement with the offer submitted by the Merkur company.

Further to a new mission of the relevant services to Vienna on 16 and 17 May 2000, the local staff had expressed their wish that a new market study be carried out in order to identify the insurance companies that could offer supplementary insurance policies regarding invalidity, death and retirement which would be in conformity with the conditions laid down in the Specific Conditions. This proposal had been accepted. The market study would be carried out by the administration. It should be recalled that the local staff had been asked repeatedly to indicate their preference on the basis of a list of five companies. It had also been decided to allocate, subject to budgetary availability, a sum of  $\text{€} 1\,500$  in order to procure the services of an expert in insurance matters, as requested by the local staff in Vienna. On the basis of the results of this market study, a definitive proposal would be submitted to the local staff shortly. The Commission was however unable to provide precise dates for its future actions, given that some elements, like the replies from the insurance companies, were beyond its control.

#### **The complainants' observations**

In their observations, the complainants pointed out that in so far as the supplementary insurance policy for temporary incapacity to work was concerned, the Commission had, in a note dated 8 June 2000, asked its representation in Vienna to confirm that the local staff approved the supplementary insurance offered by the Merkur company. The representation in Vienna had forwarded this note to the local staff on 15 June 2000. According to the complainants, the members of the local staff had thereupon confirmed in a note of 15 June 2000 that they agreed with the said offer. One of these members had given a conditional agreement whilst another one had declared that he wanted to do without this insurance.

As to the supplementary insurance policies regarding invalidity, death and retirement, the complainants pointed out that already in May 1994 the members of the local staff had submitted three detailed offers by insurance companies, and that already in their note of 22 October 1997 they had suggested the name of the insurance company that they preferred.





The complainants stressed that their foremost interest was that the supplementary insurance schemes should be set up as quickly as possible and that these schemes should enter into force retroactively.

## THE DRAFT RECOMMENDATION

On the basis of the evidence submitted to him, the Ombudsman arrived at the conclusion that the Commission's failure to set up supplementary insurance schemes for its local staff working in its delegation (from 1 January 1995: representation) in Austria, in conformity with the Specific Conditions, constituted an instance of maladministration. Since a friendly solution was not possible, the Ombudsman made the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

The European Commission should do its utmost to ensure that supplementary insurance schemes for its local staff in Austria are set up as soon as possible in accordance with the "Rules laying down the specific conditions of employment of local staff serving in Austria" adopted by the Commission on 26 April 1994 and with retroactive effect.

In its detailed opinion, the Commission referred to a decision which it had adopted in 2000. According to this decision, an insurance contract in accordance with Article 25 of the Specific Conditions was to be concluded with the Merkur company. Two thirds of the contributions were to be paid by the Commission and one third by the local agents. In its detailed opinion, the Commission stated that this contract had already been concluded and that given the nature of the risk insured there was no need to provide for retroactivity.

In so far as the supplementary insurance policies regarding invalidity, death and retirement were concerned, the Commission explained that offers from local insurance companies had been obtained. These offers would now be examined by an independent expert at the Commission's expense. On the basis of this examination, the most appropriate offer would be chosen and a draft contract for each of the relevant insurance policies would be submitted to the local staff for their approval. In accordance with the Ombudsman's draft recommendation, the insurance policies would have retroactive effect. The costs arising from making the insurance policies retroactive until 1 January 1995 would be shared by the Commission (60 %) and the local staff (40 %), in accordance with Article 30 (3) of the Specific Conditions. The practical modalities of paying these costs would be established in co-operation with the local staff and the insurance company chosen at the moment when the contracts were to be finalised.

In their observations, the complainants pointed out that to their knowledge, and contrary to what the Commission had claimed, no supplementary insurance policy for temporary incapacity to work had been set up yet. They expressed the hope, however, that this insurance would become effective as soon as possible.

In so far as the supplementary insurance policies regarding invalidity, death and retirement were





concerned, the local staff had agreed on the insurance company to be chosen in February 2001. However, none of the complainants' written inquiries to the management of the representation in Vienna in respect of this issue had been answered to date. The complainants were therefore unable to make further comments regarding the present state of the matter. They anticipated, however, that the insurance schemes would not enter into force for several weeks or even months. The complainants therefore asked the Ombudsman to urge the Commission to set up these schemes as soon as possible.

## THE DECISION

### 1 Failure to set up supplementary insurance schemes

1.1 The complainants, two members of the local staff of the Commission's representation in Vienna, claimed that the Commission had failed to set up supplementary insurance schemes for its local staff working in its delegation (from 1 January 1995: representation) in Austria. They referred to the "Rules laying down the specific conditions of employment of local staff serving in Austria" (hereinafter the "Specific Conditions") adopted by the Commission on 26 April 1994. According to these Specific Rules, supplementary insurance schemes were to be set up in respect of temporary incapacity to work (Article 25), invalidity and death (Article 28) as well as retirement (Article 29). According to the complainants, none of these supplementary insurance schemes had been set up yet.

1.2 The Commission claimed that Austria's accession to the EU implied various changes regarding the rules to be applied. According to the Commission, it was still engaged in the process of revising the specific conditions of employment of local staff serving in Austria. The Commission also referred to the "Framework rules laying down the conditions of employment of local staff of the Commission of the European Communities serving in non-member countries" (hereinafter the "Framework Rules") on the basis of which the Specific Conditions were adopted. Article 14 of the Framework Rules provides that the Commission shall set up supplementary or independent sickness, accident or invalidity insurance or pension schemes where there is no local scheme or where the local scheme is judged to be inadequate. The Commission argued that it could thus not be held responsible for the non-implementation of Articles 25, 27 and 28 of the Specific Conditions. It claimed that in view of the fact that the establishment of supplementary insurance schemes was linked to a negative appraisal of the national scheme, it had to act prudently, particularly in the case of a country that had subsequently joined the EU. The Commission pointed out, however, that it intended to set up supplementary insurance schemes to an extent as wide as possible, provided that the homogeneity of the system was maintained. It had however not yet been possible to find an agreement regarding the technical and financial conditions in which such supplementary insurance schemes could function. Finally, the Commission pointed at its margin of interpretation in the matter and claimed that the establishment of supplementary insurance schemes that were limited to certain members of staff was a cause of potential conflict between the beneficiaries and other staff.

1.3 The Ombudsman noted that the Commission agreed that the Specific Conditions continued to be applicable to the local staff in Vienna until they were replaced by new rules. It was thus



*these* rules that fell to be examined here. The Ombudsman therefore considered that the Commission's statement in its opinion according to which it would ensure that the local staff in Vienna benefit from supplementary insurance schemes as soon as *new* rules had been adopted was of no relevance for the examination of the present complaint.

1.4 The Commission correctly pointed out that according to Article 14 of the Framework Rules, supplementary insurance schemes were to be set up where there was no local scheme or where the local scheme was judged to be inadequate. The Ombudsman also agreed with the Commission's view that it disposed of a margin of appreciation in this matter and that it needed to proceed prudently, particularly in the case of a country that had subsequently joined the EU. The Ombudsman took the view, however, that these arguments did not appear to be relevant in the present context. In the Specific Conditions adopted in 1994, the Commission accepted that its local staff in Austria should benefit from the supplementary insurance schemes set out at Articles 25, 27 and 28 of these rules. The discretion which the Commission enjoyed in this field under Article 14 of the Framework Rules thus appeared to have been exercised in the sense that the Commission had decided that it was necessary to set up supplementary insurance schemes. It was difficult to see why these provisions should have been established if the Commission had considered that the statutory scheme applicable in Austria was sufficient to grant the level of social protection that it deemed appropriate for its local staff. An examination of Article 25 of the Specific Conditions reinforced this conclusion. This provision clearly spelt out the details of the benefits that the Commission intended to confer on its local staff in the case of temporary incapacity to work without leaving any significant space for the exercise of discretion on the part of the Commission. Incidentally, from its reply to the Ombudsman's request for further information it seemed to emerge that the Commission no longer denied that it was under an obligation to set up these supplementary insurance schemes.

1.5 Although the Commission did not directly rely on Article 38 of the Specific Conditions according to which the provisions of Articles 25, 27 and 28 "shall enter into force and take effect on the date on which the insurance policies referred to in these articles take effect", the Ombudsman considered it useful to point out that this article could not be interpreted in the sense that the Commission was free as to whether and when it set up the relevant insurance schemes. Such an interpretation would effectively deny any *effet utile* to Articles 25, 27 and 28. It had therefore to be assumed that this provision was meant to ensure that the Commission should have sufficient time within which to set up these supplementary insurance schemes.

1.6 The Ombudsman considered that the Commission had not shown why the establishment of supplementary insurance schemes for its local staff should be a cause of conflict with other agents. The complainants' argument that these other agents were civil servants who enjoyed a degree of social protection that was far higher than that of local staff was plausible and had not been refuted by the Commission.

1.7 The Ombudsman furthermore noted that the fact that the Commission's failure to set up the supplementary insurance schemes for its staff in Austria was not due to the accession of this country to the EU and the changes this necessitated appeared to be confirmed by the approach of the Commission towards its local staff in Sweden. The complainants explained, without being



contradicted by the Commission, that supplementary social benefits for its local staff in the delegation in Stockholm had been agreed shortly before Sweden's accession to the EU and had been granted since 1 January 1997.

1.8 In these circumstances, the Ombudsman concluded that the Specific Conditions that entered into force on 1 May 1994 obliged the Commission to set up, within a reasonable time, supplementary insurance schemes for its local staff in Austria. The Ombudsman took the view that a period of more than six years by far exceeded what could be considered to be reasonable, unless there were special circumstances that would justify such a delay.

1.9 In its opinion, the Commission appeared to refer to technical and financial difficulties. The Ombudsman considered, however, that the Commission had not established that the excessive delay that had occurred was due to such difficulties. The only concrete example furnished by the Commission related to a note prepared by it in mid-1999 according to which the offers of six out of seven insurance companies had been unsuitable since they did not conform to the provisions of the Specific Conditions. It had to be pointed out, however, that this example related to only one of the supplementary insurance schemes concerned, i.e. the one provided for in Article 25 of the Specific Conditions. Given that the relevant offers appeared to have been obtained only in 1999, the Ombudsman further considered that the lack of suitability of these offers could not explain the delay that had occurred already prior to 1999.

1.10 The Commission also appeared to suggest that the delay in the establishment of the supplementary insurance schemes was, to some extent at least, due to the lack of co-operation on the part of the local staff in Austria. The Ombudsman considered that the Commission had not put forward any substantial evidence that would support such a conclusion. On the contrary, the Ombudsman noted that the local staff had not only called on the Commission, on various occasions, to treat the matter as a priority but had also made what appeared to be constructive proposals, notably in May 1994 (when specific offers from insurance companies were submitted) and in October 1997 (when the local staff informed the administration about the insurance company that they preferred).

1.11 The Ombudsman's conclusion was, therefore, that the Commission had failed to set up supplementary insurance schemes for its local staff working in its delegation (from 1 January 1995: representation) in Austria, in conformity with the Specific Conditions, and that this constituted an instance of maladministration.

## **2 Conclusion**

2.1 On the basis of his inquiries, the Ombudsman made a draft recommendation in which he suggested that the Commission should do its utmost to set up the relevant insurance schemes and make them applicable with retroactive effect. In its detailed opinion, the Commission informed the Ombudsman that it had decided to conclude a contract providing for a supplementary insurance policy for temporary incapacity to work with the Merkur company, and that this contract had consequently been concluded. The Commission further informed the Ombudsman that supplementary insurance policies regarding invalidity, death and retirement were to be set up, and that these insurance policies were to have retroactive effect as from 1 January 1995.



2.2 The Ombudsman considers that the Commission has thus accepted his draft recommendation and that the measures taken or to be taken by the Commission appear to be satisfactory. Whilst it appears that the insurance policies regarding invalidity, death and retirement (and possibly also the supplementary insurance policy for temporary incapacity to work) were not yet in place in late March 2001 when the complainants submitted observations on the Commission's detailed opinion, the Ombudsman has no reason to assume that these insurance policies will not be set up in the very near future. The Ombudsman thus considers that it is justified to close the case. He would like to stress, however, that the complainants are free to renew their complaint if contrary to the Ombudsman's belief the Commission should fail to set up the relevant insurance schemes in the very near future.

2.3 The Ombudsman thus closes the case. The President of the European Commission will also be informed of this decision.

Jacob SÖDERMAN

(1) The Directorate-General that (together with DG I.B) used to be in charge of Foreign Relations.

(2) The Directorate-General that used to be in charge of Information, Communication, Culture and Audiovisual Media.