



Cinneadh i gcás 640/2011/AN - Beartas teangeolaíoch an Choimisiúin Eorpaigh i ndáil le comhairliúcháin phoiblí

Cinneadh

Cás 640/2011/AN - Tosaithe an 14/04/2011 - Moladh faoi 24/11/2011 - Cinneadh an 04/10/2012 - Institiúid ábhartha An Coimisiún Eorpach (Le ráiteas criticiúil) |

Rinne an gearánach, dlíodóir Spáinneach, gearán leis an Ombudsman Eorpach faoin gcaoi inar fhoilsigh an Coimisiún Eorpach comhairliúchán poiblí i mBéarla amháin.

Chuir an tOmbudsman tús le fiosrúchán, ní amháin ar easpa infhaighteachta an chomhairliúcháin ar leith a luaigh an gearánach i dteangacha eile seachas Béarla, ach ar cheist ghinearálta bheartas teanga an Choimisiúin maidir le nósanna imeachta comhairliúcháin phoiblí freisin. Thug fiosrúchán an Ombudsman le fios gur beag comhairliúchán poiblí a eisítear i dteangacha oifigiúla uile an AE. Thairis sin, ní raibh aon phátrún intuartha teanga, sa mhéid is gur eisíodh roinnt comhairliúcháin a bhí dírithe ar an bpobal i gcoitinne i dteanga amháin nó i líon teoranta teangacha. Cásanna drochriaracháin a bhí i gceist leo seo.

Rinne an tOmbudsman dréacht-mholadh leis an gCoimisiún, ag léiriú gur chóir dó a chuid comhairliúcháin go léir a fhoilsiú i dteangacha oifigiúla uile an AE, nó aistriúcháin a sholáthar do shaoránaigh ar iarratas. Mhol sé freisin gur cheart don Choimisiún treoirínte soiléire, oibiachtúla agus réasúnta a dhréachtú maidir le húsáid teangacha an Chonartha ina chuid comhairliúcháin phoiblí, rudaí ar cheart a chur in iúl do shaoránaigh.

Dhiúltaigh an Coimisiún don chéad dréacht-mholadh a rinne an tOmbudsman. Maidir leis an dara ceann, thug sé aird ar bhreathnúcháin an Ombudsman faoi neamhréireanna in úsáid na dteangacha oifigiúla agus gealladh go n-oibreofaí i dtreo beartas teanga níos soiléire maidir le comhairliúcháin phoiblí. Mheas an tOmbudsman gur theip ar an gCoimisiún a dhréacht-mholtaí a chur i bhfeidhm i gceart. Toisc go raibh Parlaimint na hEorpa díreach tar éis glacadh le Rún ar "*Chomhairliúcháin phoiblí agus a n-infhaighteacht i dteangacha uile an AE*" , rud a chlúdaigh scóip dhréacht-mholtaí an Ombudsman, níor mheas an tOmbudsman go raibh sé cuí Tuarascáil Speisialta a chur faoi bhráid na Parlaiminte. Dhún sé an fiosrúchán dá réir le ráiteas criticiúil. Chuir an tOmbudsman a chinneadh in iúl don Pharlaimint, ionas go bhféadfaí é a chur san áireamh nuair a dhéanann an Pharlaimint measúnú ar fhreagra an Choimisiúin ar a Rún.

Introduction

1. The present inquiry originates from an individual complaint concerning a specific public



consultation which the Commission launched in English only. However, the complaint called the Ombudsman's attention to the general issues underlying it, namely, the Commission's linguistic policy in public consultations. That matter was the subject of a Resolution adopted by the European Parliament on 14 June 2012.

The background to the complaint

2. On 7 October 2010, the European Commission published a communication [1] setting out ideas for the future taxation of the financial sector. Subsequently, on 22 February 2011, the Commission launched a public consultation on financial sector taxation (the 'Consultation'). The Consultation announcement [2] was published in French, English and German, whereas the Consultation paper (the 'Paper') was only available in English [3]. The public was invited to submit comments on the Paper by 19 April 2011.

3. On 9 March 2011, the complainant, a Spanish lawyer, wrote to the Commission asking when the Spanish translation of the Paper would be available.

4. On 11 March 2011, the Commission replied, stating that the document was only published in English due to " *a matter of time* " and to its technical character. The Commission explained that Parliament, the Council and itself had requested that the evaluation of the impact of financial sector taxation be ready before the summer of 2011, and therefore the Consultation was launched as soon as the English version was available. According to the Commission, translating the documents into the other languages would have delayed the Consultation and would have made it impossible to evaluate the feedback received before the summer.

5. In addition, the Commission mentioned that, due to its technical nature, the Consultation was mainly directed towards interested parties in the financial sector. For these reasons, the Commission qualified its publication in English as a " *mere practical solution, given the circumstances* ", but clarified that stakeholders could submit their contributions in any EU language.

6. The complainant was not satisfied with the Commission's position and turned to the Ombudsman on 11 March 2011.

The subject matter of the inquiry

7. The Ombudsman opened an inquiry into the following allegation and claim identified in the complaint.

Allegation:

The Commission failed to ensure the publication of the consultation paper on financial sector taxation in all official languages of the Union.

Claim:

The Commission should, as a matter of principle, publish its consultation documents in all the official languages of the Union, or provide the citizens with a translation upon request.



8. The Ombudsman also asked the Commission to address the following issues in its opinion:

(i) Did the Commission consider the possibility of translating the text of the consultation into other Treaty languages after the publication took place? In the affirmative, why did it not do so?

(ii) Did the Commission consider the possibility of translating the consultation paper upon request from citizens? Has it received any such requests?

(iii) Did the Commission consider informing the citizens that it would accept contributions in any Treaty language? In the affirmative, why did it not state so in the consultation paper?

(iv) Has the Commission received contributions to its Consultation from the general public? In the affirmative, in which language(s) were they drafted?

9. Finally, the Ombudsman informed the Commission that he would be grateful if the Commission's opinion could make specific reference to the principles of equality and proportionality and comment on the relevance of Articles 10(3) [4] and 11(3) [5] of the Treaty on European Union ('TEU').

10. In further correspondence, sent to the Ombudsman on 18 May 2011, the complainant submitted the view that the Ombudsman should request the Commission to provide information about its general policy on public consultations and whether there are any general guidelines in this regard, especially from a linguistic point of view. The Ombudsman considered these matters to fall within the scope of the inquiry as already announced to the complainant and the Commission.

The inquiry

11. On 14 April 2011, the Ombudsman requested the Commission to submit an opinion on the above issues.

12. On 19 April, 13, 18 and 27 May, 17, 20 and 23 June 2011, the complainant sent further correspondence to the Ombudsman, providing him with examples of other public consultations launched by the Commission in the meantime, in different linguistic combinations.

13. The Commission submitted its opinion in English on 15 July 2011, and on 1 August 2011 provided the Ombudsman with a translation into the language of the complaint, that is, Spanish. On 2 August, the Ombudsman forwarded the Spanish translation to the complainant, inviting him to submit observations on it. The complainant did so on the same day.

14. On 24 November 2011, the Ombudsman made a draft recommendation to the Commission. On 27 March 2012, the Commission submitted its detailed opinion concerning Ombudsman's draft recommendation. On 3 April 2012, the complainant submitted observations on the Commission's detailed opinion.



A. Allegation of failure to publish the Consultation Paper in all official languages of the Union and claim that the Commission should, as a general rule, publish its consultation documents in all those languages or provide translations to citizens upon request

Arguments presented to the Ombudsman

15. According to the complainant, by publishing the Paper only in English, the Commission breached its own Governance Statement of 2007 [6], and in particular its fourth point, which states: "*The Commission is committed to working in an open manner. It endeavours to communicate actively about what it does and the decisions it takes. Before initiating legislation and policies the Commission must consult widely: the quality of EU policy depends on ensuring a wide participation of citizens, civil society organisations and all stakeholders throughout the policy chain. The Commission is committed to an inclusive approach when developing and implementing policies and has approved a set of internal minimum standards for consultation of interested parties.*" In light of this statement of the Commission, the complainant considered that policies which affect all citizens should be subject to consultation directed at all citizens and in all EU official languages.

16. The complainant also considered that the Commission breached the principles of openness, transparency, good administration and non-discrimination, and that it limited citizens' participation. The complainant gave the example of another public consultation by the Commission, on the Green Paper concerning VAT [7]. The latter consultation aimed at practically the same target group as the Consultation. However, the documents for it were made available in all Treaty languages.

17. Moreover, the complainant considered that the reasons put forward by the Commission for publishing the Consultation exclusively in English were not valid. Impact assessments should be planned sufficiently in advance so as to be as broad, open and transparent as possible. It is not acceptable for the Commission to invoke "*practical solutions*" which go against the principles of openness and transparency. Finally, the fact that the Consultation has a "*technical nature*" is not a valid justification either, since the purpose of the consultation is, in fact, political (review of the taxation of financial transactions) and will eventually affect consumers of financial products.

18. In further correspondence, the complainant informed the Ombudsman about several new public consultations launched by the Commission on different topics. In particular, the complainant referred to the public consultations on: (i) the revision of the Guidelines on public funding to broadband networks [8]; (ii) corporate governance reform [9]; (iii) best practices for cooperation among EU national competition authorities in the field of mergers



[10] ; (iv) reducing the use of plastic bags [11] ; (v) small and medium enterprises [12] ; (vi) fishing opportunities [13] ; (vii) State aid reporting obligations [14] ; (viii) freedom of movement for workers [15] ; (ix) evaluation of state aid for audiovisual works [16] ; and (x) the Professional Qualifications Directive [17] .

19. The complainant placed particular emphasis on the fact that the language(s) used by the Commission were not the same in all cases [18] . He stated that the examples given to the Ombudsman " *show the errant and arbitrary policy followed by the Commission as regards public consultations, which calls into question and endangers the principles of openness, transparency, good administration and non discrimination* ". In the complainant's view, this showed that the Commission has neither a policy nor clear guidelines on linguistic matters in consultation procedures.

20. The complainant argued (i) that all EU citizens have the right to participate in public policies envisaged by the Commission and (ii) that citizens cannot make use of this right unless they have " *effective knowledge of the consultation* ". This is not possible if consultations are only available in one language, or in a few languages. Exceptions to the general principle that all consultations should be published in all EU languages should be interpreted and applied strictly. It is contradictory to state that a public consultation targets " *the public* " and at the same time make it available in only one language.

21. In its opinion, the Commission acknowledged that " *the language barrier may constitute a hindrance for citizens to participate in its public consultations* ". "The Commission is committed to multilingualism as regards public consultations and constantly works to improve the situation in that respect. However, that goal can only be achieved " *within the limits of available resources* " and, in certain cases, " *within certain time constraints* ". The Commission referred to its Communication on public consultations [19] and stated that, in its view, it sufficiently reflects both the principles of equality and proportionality, and Articles 10(3) and 11(3) TEU. That Communication does not contain a requirement that consultation papers must be translated into all official languages of the EU.

22. As regards the Consultation, its topic was announced on the *Your Voice in Europe* website [20] in all official languages of the EU. The invitation to submit contributions was also made in all EU official languages. This was considered sufficient to indicate that submissions in all EU official languages are welcome. Moreover, the Consultation page is available in English, French and German.

23. However, the Consultation Paper itself was published in English only, due to time constraints. The issue of financial sector taxation is a very high priority on the European Institutions' agenda. In its Communication on Financial Sector Taxation, the Commission made a commitment to undertake a comprehensive impact assessment by the summer of 2011, in the framework of which the Consultation was launched. Due to the consultation period of eight weeks, it was published immediately after agreement on the English text.

24. A translation of the Paper into all official languages of the Union would have significantly delayed its publication and made the finalisation of the impact assessment by the summer



impossible. This is also the reason why the Paper was not translated upon request by individual citizens.

25. Against this background, a publication in English only was considered to be a practical solution, bearing in mind that interested parties can submit their contributions in their respective EU language. The Commission received contributions in other languages, such as Spanish, French, German and Portuguese. All contributions were processed on an equal basis and were equally reflected in the analysis of the consultation. There was no discrimination on a linguistic basis.

26. In his observations, the complainant stated that he maintained his initial position and put forward that the reasons invoked by the Commission were unacceptable. The complainant took the view that it is absurd to expect citizens to reply to public consultations in any EU official language if they have not previously been able to read or understand the relevant consultation paper in their own language. The complainant also disagreed with the Commission's point of view that the Treaty does not impose an obligation to translate consultation documents into all EU languages. In his opinion, this is an erroneous interpretation which fails to take into account the fundamental right to public participation in the Union's affairs.

27. Moreover, the complainant pointed out that the Commission's opinion only referred to the concrete Consultation on taxation of financial transactions, but did not reply to "*the Ombudsman's questions concerning public consultations in general*". He stated that, as shown by the examples given to the Ombudsman in his further correspondence, the Commission's linguistic policy is very restrictive, limits the citizens' fundamental right to take part in the Union's public affairs and is clearly discriminatory. The complainant considers that the Commission's policy amounts to systemic maladministration.

The Ombudsman's assessment leading to the draft recommendations

a) As regards the Consultation

28. It is the Ombudsman's longstanding position that, where the European institutions' external communication with the citizens is concerned, it would be ideal that the material intended for such purposes be published in all official languages. In order for that external communication to be effective, it is necessary that citizens understand the information provided to them by the institutions [21].

29. However, when the "*external communication*" is a means to enable European citizens to participate in the decision-making process, multilingualism becomes an essential precondition for the effective exercise of the citizens' democratic right to become informed about matters and issues that may lead to legislative action. As the complainant rightly pointed out, it is not reasonable to expect European citizens to participate in a consultation,



the content of which they may not understand in the first place.

30. In light of the fact that, as the Commission stated, the financial sector taxation is of utmost priority for all EU institutions, it would have appeared desirable to ensure the broadest public participation possible in order to legitimise the Consultation process. Moreover, as the complainant pointed out, despite its " *technical* " character, the topic was of direct interest to large sectors of society, since potential taxes on financial transactions will most likely be passed on to consumers by financial entities, in the form of banking costs or other charges.

31. In the present case, all EU citizens could indeed ascertain that the Commission had launched a consultation concerning taxation of the financial sector, for which the closing date was 19 April 2011. As the Commission stated and the Ombudsman could verify, the *Your Voice in Europe* website indeed contains, in the 23 official languages of the Union, a list of the titles of all the consultations launched, including the one relating to the subject of the present complaint. However, given that the consultation page was only available in those three languages, only EU citizens who are English, French or German speakers could obtain further details concerning, for example, how to submit their contributions. Moreover, since the Consultation Paper was drafted in English only, only EU citizens who spoke English could effectively take cognisance of the actual content of the Consultation, the rationale behind it, the problems raised and the envisaged measures.

32. It is therefore undeniable that only a restricted number of EU citizens could, in fact, exercise their right " *to participate in the democratic life of the Union* ", as provided in Article 10(3) TEU. As a result, the " *broad consultations* " required by Article 11(3) TEU were limited to the English-speaking " *parties concerned* ". Non-English speaking citizens were thus excluded *ab initio* from this democratic exercise.

33. In its opinion, the Commission stated that it received contributions in languages other than English, namely, Spanish, French, German and Portuguese. While this statement does not precisely reply to the second part of the Ombudsman's question (iv), namely, in which Treaty languages the Commission received contributions from the general public, it is also insufficient to establish that individual citizens actually contributed to the Consultation, notwithstanding the fact that it was not published in their own language.

34. On the one hand, it is impossible to establish how many citizens were, in effect, dissuaded from submitting contributions by virtue of the fact that the Paper was not available in their language. On the other hand, according to the Ombudsman's own research [22], out of a total of 16 citizens' contributions to this Consultation, 11 were in English (approximately 70%) and the rest were in French or German, that is, in the languages in which some additional information was provided on the Consultation webpage. None of the contributions received from the general public appears to be in the other languages cited by the Commission. What is more, the Ombudsman read several contributions to the Consultation and could ascertain that some of the contributors expressed their disagreement with the Commission's decision to publish the Consultation Paper in English only.



35. In the Ombudsman's view, this shows that, even when EU citizens can effectively participate in the Consultation, linguistic restrictions are still perceived as an unequal treatment of those who do not speak the language chosen by the Commission for its Consultation. The Commission itself acknowledged, in its opinion, that the language barrier may indeed constitute a hindrance to the citizens' right to participate in its public consultations.

36. In paragraph 82 of the judgment in *Kik* [23], the Court of First Instance (now the General Court) held that Treaty references concerning the use of languages cannot be regarded as evidencing a general principle of Union law that confers on every citizen a right to have, in all circumstances, a version of anything that might affect his interests drawn up in his language [24]. It follows that there may be circumstances in which that right cannot be applied. They should, however, be limited and justified on each occasion [25]. In other words, unequal treatment is permitted where there is a reasonable and objective justification for it. In the present case, the Commission invoked (a) the technical nature of the Consultation; and (b) its urgency as reasons for publishing the Paper in English only. The question therefore arises as to whether the reasons provided by the Commission are sufficient to justify the linguistic restrictions in the present case.

37. As regards the technical nature of the consultation, the Ombudsman noted that the Commission mentioned this aspect in its reply to the complainant dated 11 March 2011, but did not reiterate it in its opinion. Therefore, the Ombudsman considered that the Commission abandoned this argument and he did not take a stance on it.

38. The Commission alluded, in its opinion, to "*available resources*" that limit its efforts to improve multilingualism in public consultations. The Ombudsman did not consider that these vague terms are sufficient to justify the Commission's possible financial constraints in applying the principle of multilingualism in the present case.

39. To the extent that the Commission invoked reasons of urgency in order to support its position, the Ombudsman took the view that such considerations cannot suffice to entitle the Commission completely to disregard the objectives of participation and transparency enshrined in Article 10(3) TEU, read in conjunction with Article 11(3) TEU, unless the difficulties it would have faced by giving full effect to those provisions were insurmountable. In the Ombudsman's view, it was not established that this was the case. In any event, even if this had been so, the Commission's reason for not translating anything into any language at any stage of the Consultation process is clearly disproportionate.

40. Indeed, although the publication of the Paper was urgent and had to be completed as soon as an agreement on the English text had been reached, an argument that the Ombudsman did not contest, the Commission could have still ensured that non-English speaking citizens could participate in it. In particular, the Commission could have at least provided citizens, even after the publication, but still within the sufficient time-limit allowing them to send answers, with a translation of essential parts of the Consultation Paper into all Treaty languages. At the very least, the Commission could have provided the basic



information available on the Consultation webpage in English, French and German, in all Treaty languages. Another solution would have been to provide citizens with a translation upon request .

41. If it had availed itself of any one of these means, the Commission could have avoided delays in launching the Consultation, since the translation would have been provided *a posteriori* . In addition, translations upon request would have minimised the efforts required, in terms of costs and human resources, since they would have only been provided into those languages for which a request was made. From the Commission's opinion, it does not appear as though it took any of these alternatives into consideration. On the contrary, in reply to the first part of the Ombudsman's question (ii), the Commission stated that " *the [C] onsultation [was] not translated upon request* ", due to the time constraints mentioned above. Unfortunately, the Commission did not clarify, as the Ombudsman had asked it to, whether it actually received any translation requests.

42. Moreover, the Ombudsman had no doubt that launching the Paper in English only automatically excluded a significant number of potential contributors from actually taking part in the Consultation, since they did not understand it. This could have been discriminatory. The Ombudsman noted that the Commission did not address, in its opinion, the complainant's argument in this regard. Instead, the Commission limited itself to stating that there was no discrimination among contributions on a linguistic basis. However, the object of this complaint was not an alleged discrimination of contributions , but of potential contributors , at a very early stage of the consultation process.

43. In the Ombudsman's view, the above scope illustrates that the Commission (i) unjustifiably and (ii) disproportionately restricted the right of non-English speaking citizens to be consulted. This constituted an instance of maladministration.

44. Given that, by the time his inquiry into this complaint had been completed, the Consultation was already closed, it was no longer possible for the Ombudsman to look for a solution that would have eliminated the above instance of maladministration and would have satisfied the complainant, in accordance with Article 3(5) of the Ombudsman's Statute [26] . However, since the general issue underpinning the complaint under scrutiny had clear general implications, and as such could be remedied for the future, the Ombudsman made the first draft recommendation reproduced below.

b) As regards the general linguistic practice in consultation procedures

45. At the outset, the Ombudsman recalled that the Lisbon Treaty strengthens the right of citizens and associations to participate in the democratic life of the Union [27] . It further requires that the Union institutions maintain an open, transparent, and regular dialogue with representative organisations and civil society. Holding a " *regular dialogue* " implies, in the Ombudsman's view, engaging in a genuine debate on policy with civil society. The first step to that end is to inform and consult the latter concerning potential initiatives. It is precisely at



this stage that the Commission is called upon to play an essential role through its public consultations.

46. It goes without saying that multilingualism is, at the same time, the means enabling the Commission to involve as many citizens as possible in its public consultations, and the guarantee that civil society as a whole can scrutinise the coherence and transparency of the Union's activities.

47. Although the Commission did not provide a clear and precise answer to the claim included in the Ombudsman's inquiry, from the overall content of the Commission's opinion, the Ombudsman deduced that, in its view, the principle of multilingualism in public consultations applies depending on " *available resources* " and " *time constraints* ". However, neither the content of the Commission's opinion, nor the examples of public consultations analysed by the Ombudsman in the course of this inquiry, clarify (i) the circumstances under which those alleged exceptions can be applied; and, more importantly, (ii) the available guarantees for citizens.

48. First, the Ombudsman considered that the Commission's statement that the Communication on consultations (a) " *reflect [s] sufficiently both the principles of equality and proportionality and the relevant Articles 10(3) and 11(3) of the Treaty on the European Union* ", and (b) does not require that consultation papers be published in all Treaty languages is utterly disappointing.

49. On the one hand, it is difficult to understand how the aforementioned principles and Articles can be deemed to be complied with in connection with an issue that is not even mentioned in the Communication.

50. On the other hand, the fact that the Communication does not contain any provisions concerning the languages used in public consultations certainly does not render the matter superfluous. The corollary of this situation is rather that essential aspects of a consultation procedure are not duly taken into account in that Communication, although they should be.

51. Second, the Ombudsman could ascertain that the *Your Voice in Europe* portal, which is " *the European Commission's ' single access point ' to a wide variety of consultations, discussions and other tools* " enabling citizens to " *play an active role in the European policy-making process* " does not contain any fully-fledged explanations as to why consultation documents are not available in all EU official languages.

52. While it is true that the homepage contains a section entitled " *Why is some information not in my language?* ", the only reference to consultations states that "[i]n particular, *consultation documents targeted to specialized audiences are not necessarily published in all languages. Responses are, however, acceptable in all EU languages, unless explicitly stated otherwise on the consultation documents themselves.* " The remaining explanations, available through a link to the frequently asked questions concerning the Europa Portal [28] , are generic and refer mainly to the language of the information on that website. However, no specific information as regards consultations is provided.



53. The Ombudsman therefore doubted whether the Commission has a clear language policy concerning public consultations. This doubt was reinforced by the consultation examples provided by the complainant in his further correspondence to the Ombudsman. Those examples show that the Commission uses a variety of language combinations in its public consultations, which do not necessarily follow a predictable pattern.

54. Indeed, although the topic (that is, the title) of the consultation is always available in all EU languages on *Your Voice in Europe*, only one out of 11 consultation webpages provided by the complainant is available in all Treaty languages (namely, the one on corporate governance). As for the rest, three are available in English, French and German (namely, consultations on the future of VAT, on free movement of workers and on professional qualifications) and seven in English only. This situation is clearly not in line with the Ombudsman's established position [29] that good administration requires that, as far as possible, the institutions, bodies, offices and agencies of the EU should provide information to citizens in their own languages.

55. Moreover, it is not clear whether only specifically targeted consultations are published in a limited number of EU languages, as is stated on the *Your Voice in Europe* portal. For example, the consultation paper concerning free movement of workers was only available in English, although it concerned a fundamental aspect of EU citizenship, thereby inherently affecting all EU citizens. Similarly, the consultation about reducing the use of plastic bags, specifically directed towards "the public" and to which it was obvious that many citizens would contribute due to the "common sense" subject at issue, was only published in English. The same occurred with the consultation concerning small and medium size enterprises, whereas the consultation paper on public funding to broadband networks, whose target group consisted of "[m]ember states, public authorities, electronic communication operators, investors of broadband networks", was published in all EU languages.

56. The Ombudsman therefore concluded that the criteria used by the Commission to reduce the number of EU languages in which it publishes its public consultations are not clear.

57. It follows that, as regards the Commission's public consultation policy, the reiterated exceptions to the principles of democratic citizen participation in the decision-making process and of broad consultation by the Commission, enshrined in Articles 10(3) and 11(3) TEU, were not, or were not shown to be, objective, justified and proportionate. This constituted an instance of maladministration.

58. Given that it is the Commission's responsibility to put an end to an instance of maladministration identified by the Ombudsman, which affects citizens at large, the Ombudsman made the second draft recommendation reproduced below.

The Ombudsman's draft recommendations were the following:

" 1. The Commission should, as a matter of principle, publish its consultation documents in all the



official languages of the Union, or provide the citizens with a translation upon request. In doing so, the Commission should take into account that the Treaty of Lisbon has placed special emphasis on the right of civil society to participate in the democratic life of the Union.

2. Furthermore, the Commission should draft clear, objective and reasonable guidelines concerning the use of the Treaty languages in its public consultations, bearing in mind that any restriction to the principles of democratic citizen participation in the decision-making process and of broad consultation by the Commission, enshrined in Articles 10(3) and 11(3) TEU, must be justified and proportionate. These guidelines should be public and easily accessible. The Commission could include them among its excellent general principles and minimum standards for consultation of interested parties, or, at least, on the Your Voice in Europe website. "

The arguments submitted to the Ombudsman after his draft recommendations

The Commission's detailed opinion

59. In its detailed opinion on the draft recommendations, the Commission stated that it has to prioritise its translation activity in light of the importance and urgency of its different activities and of the available budgetary and human resources. The translation budget is frozen and likely to remain so. Once the legal obligations, such as the translation of legislative texts, are fulfilled, the Commission continues to prioritise its translation activity among competing needs so as to make the best use of available resources. Although neither the Treaties nor Regulation 1/1958 [30] determining the languages to be used by the European Economic Community established a legal duty to translate all public documents, the Commission made a political choice to increase transparency and enhance policy-making by translating "*large parts of its work above and beyond the legislative sphere*".

60. The Commission's Communication on public consultations draws a distinction between consultations launched by the Commission prior to the adoption of a legislative proposal and the subsequent formalised and compulsory decision-making process pursuant to the Treaties. The Court of Justice itself has held that there is no general principle of EU law that every citizen should have a version of any document that may affect him or her translated into his or her language in all circumstances. Moreover, the publication of a consultation does not amount to "*sending*" a document to citizens within the meaning of Article 3 of Regulation 1/1958. Citizens, nevertheless, do have the right to submit their contributions in any official language.

61. A similar situation occurs in connection with the information published on the Commission's website. The Commission tries to make such information available in as many languages as possible, while striking a balance between the costs and benefits of such translations, the provision of which goes beyond its legal obligations. The choice of language depends on various factors, such as, the nature of the information, urgency, relevance, and target audience. The Commission's Communication on public consultations already provides



that the method used for, and the extent of, the consultation should be proportionate to its impact and specific constraints.

62. As regards the Ombudsman's suggestion to provide translations upon request, the Commission took the view that it would not be efficient or economic to translate consultation documents, directed at a large audience, upon the request of a single citizen. Besides, this would imply giving priority to one particular language over another. The choice of language belongs to the institution and is arrived at on the basis of a number of factors related to the consultation. It cannot depend on individual requests. The Commission is, furthermore, working on a new machine translation service, which could contribute, as of the end of 2013, to the services offered or supported by the Commission to citizens and Member States.

63. In sum, the Commission considered that its current translation policy does not in any way restrict the Treaty-based citizens' right to participate in the democratic life of the Union. Citizens have equal access to the decision-making process, since the Commission's proposals are published in the Official Journal in all the official languages. Internal preparatory documents are provided to the European and national Parliaments in the language version used by the Commission. As regards the right to broad consultations, the TEU refers to "*the parties concerned*", which is a deliberately restrictive expression allowing the Commission not to address all of its consultations to all citizens. Finally, transparency as regards public access to documents functions in the same way, that is to say, access is always given to the existing language versions of the requested documents.

64. The Commission nevertheless took note of the Ombudsman's observations about inconsistencies in the use of official languages in its public consultations. To remedy this situation, the Commission committed itself to working towards a more coherent language policy, in accordance with the priorities laid down in the Communication concerning translations [31].

The complainant's observations

65. In his observations on the Commission's detailed opinion, the complainant recalled the democratic principles enshrined in Articles 9 [32], 10(3) and 11(3) of the TEU, and stated that mere economic reasons cannot entitle the Commission to derogate from them. If money is the problem, the Commission could consider eliminating potential superfluous costs.

The Ombudsman's assessment after his draft recommendations

66. The Ombudsman has carefully read the Commission's detailed opinion, but remains unconvinced by its arguments. The Ombudsman agrees with the Commission that the publication of legislative proposals in all languages is necessary to enable citizens to exercise their "*right to participate in the democratic life of the Union*" (Article 10 (3) TEU). However, the Ombudsman cannot accept that such publication is sufficient to guarantee that right. On the



contrary, it is at the preceding stage, that is, when the Commission's mind has not yet been made up and its proposals have not yet been adopted as such, that citizens should be called upon to participate and to express their view(s) concerning future legislation and, in so doing, have an impact on decision making in the EU. EU law and the rights it grants to EU citizens are not meant to remain a dead letter. It is hard to imagine how citizens could actually enjoy a right guaranteed by the Treaty and have a direct say in the Union's affairs, if they are only aware of the Commission's position once it has been established and the formal legislative process has begun. This may be possible, to some extent, for well-resourced lobbying organisations representing specific interest groups, but not for the vast majority of ordinary citizens.

67. Nor is the Ombudsman convinced by the Commission's references to its legal obligations in this context. The Ombudsman acknowledges that Article 11(3) TEU indeed refers to consultations with "*parties concerned*" and that, in some contexts, this phrase refers to specific groups rather than to all citizens. However, as mentioned in the Ombudsman's draft recommendations (see paragraph 55 above), in some public consultations the "parties concerned" are, in the Commission's own view, European citizens in general. Even such consultations, however, are sometimes published in only one official language, or in just a few official languages.

68. Furthermore, in the Ombudsman's view, the specific requirements of Article 11 (3) should not be read as restricting the more general provisions of Title II of the TEU, in particular Articles 9, 10 (3) and 11 (1), which clearly express the intention to enhance democracy and public involvement in the Union's affairs. The Commission's obligation to make it possible for all citizens to inform themselves about the subject-matters of its public consultations thus flows directly from the democratic principles on which the Union is based.

69. Seen in this perspective, moreover, resource and budgetary constraints cannot justify *systematically* putting the burden on citizens themselves to pay for consultation documents to be translated if they wish to participate in the democratic life of the Union through the Commission's public consultations. The Ombudsman therefore maintains his view, as expressed in the draft recommendations, that the "**Commission should ensure that all European citizens are able to understand its public consultations, which should, as a matter of principle, be published in all the official languages .**"

70. In light of the above, the Ombudsman concludes with regret that the Commission has not (i) shown any real willingness to ensure that all **European citizens are able to understand its public consultations, which should, as a matter of principle, be published in all the Treaty languages**, nor (ii) put forward any convincing and acceptable justification for limiting the use of the Treaty languages in its consultation procedures. The Commission thus perpetuates the instances of maladministration identified in paragraphs 43 and 57 of the Ombudsman's draft recommendation proposal.

71. Given that citizens' right to participate in European Union affairs is an essential aspect of the democratic functioning of the Union, of its openness and transparency and ultimately of the European citizenship as such, the Ombudsman would have considered that the current



case merited a Special Report to the European Parliament, pursuant to Article 3(6) of his Statute [33]. However, the Ombudsman notes that, on 14 June 2012, the European Parliament adopted a Resolution on " *Public consultations and their availability in all EU languages* " [34] point 2 of which "[u]rges the Commission to ensure that every EU citizen's right to address the EU institutions in any of the EU official languages is fully respected and implemented by ensuring that public consultations are available in all EU official languages, that all consultations are treated equally and that there is no language-based discrimination between consultations. " Parliament has, therefore, recently adopted a Resolution that covers the scope of the Ombudsman's draft recommendations to the Commission. In these circumstances, a Special Report in the present case seems unnecessary.

74. The Ombudsman thus closes his inquiry into the present complaint with the critical remark below.

B. The Ombudsman's critical remark

The Ombudsman closes his inquiry into the present complaint with the following critical remark:

The Commission should ensure that all European citizens are able to understand its public consultations, which should, as a matter of principle, be published in all the official languages. Its failure to do so is an instance of maladministration.

The complainant and the Commission will be informed of this decision. The Ombudsman will also send a copy of the decision to the President of the European Parliament, in order for Parliament to be able to take it into account in dealing with the Commission's response to its Resolution of 14 June 2012. He will also inform Parliament of the Commission's follow-up to the critical remark.

P. Nikiforos Diamandouros

Done in Strasbourg on 4 October 2012

[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the Taxation of the Financial Sector (COM/2010/549), available at:
http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2010_0549_en.pdf

[2]

http://ec.europa.eu/taxation_customs/common/consultations/tax/2011_02_financial_sector_taxation_en



[3]

http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/financial_sector

[4] " *Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.* "

[5] " *The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.* "

[6] Governance Statement of the European Commission of 30 May 2007, available at:
http://ec.europa.eu/atwork/synthesis/doc/governance_statement_en.pdf

[7] Green Paper on the future of VAT- Towards a simpler, more robust and efficient VAT system, available at:
http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_11_future_vat_en.html

[8]

http://ec.europa.eu/competition/consultations/2011_broadband_guidelines/index_en.html

[9] http://ec.europa.eu/news/business/110427_en.html

[10]

http://ec.europa.eu/competition/consultations/2011_merger_best_practices/index_en.html

[11] Consultation on options to reduce the use of plastic carrier bags and options to improve the requirements of biodegradability in the Directive 94/62/EC on packaging and packaging waste and the visibility of biodegradable packaging products to consumers. Available at:
http://ec.europa.eu/environment/consultations/plasticbags_en.html

[12] Public consultation: Small Business, Big World - A new partnership to help SMEs seize global opportunities. Available at:
<http://ec.europa.eu/enterprise/policies/international/listening-stakeholders/public-consultation-sme-sup>

[13]

http://ec.europa.eu/fisheries/partners/consultations/fishing_opportunities/index_en.html

[14] Consultation on amendment of State aid Reporting obligations, available at:
http://ec.europa.eu/competition/consultations/2011_reporting_obligations/index_en.html

[15] Consultation concerning EU initiatives for the enforcement of EU rules on freedom of movement for workers, available at:
<http://ec.europa.eu/social/main.jsp?catId=699&consultId=8&visib=0&furtherConsult=yes&langId=en>

[16] http://ec.europa.eu/competition/consultations/2011_state_aid_films/index_en.html

[17] Consultation: Modernising the Professional Qualifications Directive, available at:



http://ec.europa.eu/internal_market/consultations/2011/professional_qualifications_directive

[18] The languages used by the Commission were as follows: (i) announcement in English, consultation document in all EU languages; (ii) announcement and consultation document in all EU languages; (iii) announcement and consultation document in English; (iv) announcement and consultation document in English; (v) announcement and consultation document in English; (vi) announcement in English, consultation document in all EU languages; (vii) announcement in English, consultation document in all EU languages; (viii) announcement in English, French and German, consultation document in English; (ix) announcement in English, consultation document in all EU languages; (x) announcement in English, French and German, consultation document in all EU languages.

[19] Communication from the Commission: Towards a reinforced culture of consultation and dialogue- General principles and minimum standards for consultation of interested parties by the Commission (COM(2002)704), 11 December 2002.

[20] http://ec.europa.eu/yourvoice/consultations/2011/index_en.html

[21] See the decision of the European Ombudsman on complaint 871/2006/(BB)MHZ, paragraph 2.9.

[22] http://circa.europa.eu/Public/irc/taxud/consultation_taxation/library

[23] Case T-120/99 *Kik v OHIM* [2001] ECR II-2235, paragraph 64. The Court of Justice upheld this judgment on appeal: Case C-361/01, *Kik v OHIM* [2003] ECR-I-8283, paragraph 83.

[24] The General Court reiterated the above view in its most recent judgments in Case T-205/07 *Italy v Commission*, judgment of 3 February 2011, not yet published in the ECR, paragraph 50, and Joint Cases T-156/07 and T-232/07 *Spain v Commission*, judgment of 13 September 2010, not yet published in the ECR, paragraph 53 (in the original French): "*...ainsi qu'il a déjà été jugé par la Cour, les nombreuses références dans le traité CE à l'emploi des langues ne peuvent être considérées comme étant la manifestation d'un principe général de droit communautaire assurant à chaque citoyen le droit à ce que tout ce qui serait susceptible d'affecter ses intérêts soit rédigé dans sa langue en toutes circonstances.*"

[25] Opinion of Advocate-General Poiares Maduro in Case C-160/03, paragraph 38.

[26] "*As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint.*"

[27] On this topic, see the Ombudsman's Presentation at the Breakfast Policy Briefing of the European Policy Centre, held in Brussels on 23 May 2011. Available at: <http://www.ombudsman.europa.eu>

[28] http://europa.eu/abouteuropa/faq/index_en.html



[29] See the Ombudsman's decisions in cases 939/99/ME, 1146/2001/IP and his special report to the European Parliament following the draft recommendation to the Council of the European Union in case 1487/2005/GG, all available at www.ombudsman.europa.eu.

[30] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 06.10.1958, p. 385.

[31] Communication to the Commission: Translation in the Commission - Responding to the challenges of 2007 and beyond (SEC(2006)1489).

[32] "*In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies ...*"

[33] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15. Article 3(6) states as follows: "*If the Ombudsman finds there has been maladministration, he shall inform the institution or body concerned, where appropriate making draft recommendations. The institution or body so informed shall send the Ombudsman a detailed opinion within three months.*"

[34] European Parliament resolution of 14 June 2012 on public consultations and their availability in all EU languages (2012/2676(RSP))
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0256&language=EN>