



Emily O'Reilly
European Ombudsman

Mr Clive BATES
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Strasbourg, 22/01/2014

Complaint 81/2014/OV

Dear Mr Bates,

On 13 January 2014, you submitted a complaint to the European Ombudsman against the European Commission.

The complaint relates to the legislative process for revision of the Tobacco Products Directive, in particular as concerns electronic cigarettes. You argue that the original Commission proposal was changed beyond recognition during the closed "trilogue" process involving the European Parliament, the Council and the Commission. In your view, for practical purposes, a completely new legislative proposal was created without regard to the procedural requirements of the EU Treaties as regards consultation, reasoning, impact assessment and scrutiny by national Parliaments. You allege that the Commission is failing in its duty as "Guardian of the Treaties". In your view, at the point where Parliament radically altered the Commission's proposal, the Commission should have withdrawn it and submitted a new proposal, so that the procedural requirements of the Treaties could be fulfilled.

As you are clearly aware, the Treaty limits my power to deal with complaints against the EU institutions to cases of "maladministration". My institution has consistently taken the view that complaints concerning the political work of the European Parliament fall outside the concept of maladministration. Whilst your complaint is directed against the Commission, it would not be possible for me to deal with your complaint without trespassing on Parliament's political role. Parliament itself would have the power to block the existing (revised) proposal, which is, in essence, the outcome you seek to achieve. In these circumstances, an inquiry by the Ombudsman into your



allegation and claim would necessarily impinge on Parliament's political role. Your complaint is therefore outside my mandate.

However, I note from your complaint that, on 23 October 2013, you sent an e-mail with your concerns to the Commission which has not replied to you. The right to receive an answer from the EU Institutions is a key element of the fundamental right to good administration guaranteed by Article 41 of the Charter of Fundamental Rights of the European Union. In seeking to ensure respect for this right, the Ombudsman goes beyond merely seeking to obtain replies to requests for information. In particular, a citizen who requests an Institution to change its position on some issue can reasonably expect that the answer, if negative, will allow him or her to understand the reasons. The more cogent and reasonable the citizen's arguments, the more is expected from the Institution by way of response. The Ombudsman thus encourages constructive dialogue between citizens and the Institutions, whilst being careful not to be drawn into the substance of issues that fall outside the mandate.

I have therefore decided to request the Commission to reply to your e-mail of 23 October 2013.

As soon as my Office receives the Commission's reply, it will be forwarded to you with an invitation to make observations.

Yours sincerely,

Emily O'Reilly