

Amateur Radio Station
DJ5IL

KARL FISCHER - FRIEDENSTR. 42 - 75173 PFORZHEIM - GERMANY
phone: ++49-7231-22102 - email: DJ5IL@cq-cq.eu - web: <http://cq-cq.eu>

Emily O'Reilly
European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg CEDEX
FRANKREICH

Registered Letter / Advice of Delivery,
by email in advance

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Complaint 1296/2014/JN

Dear Ms O'Reilly,

I reply to your letter of 26 August 2014 [1] concerning my complaint about the citation of EN 50561-1 as a harmonised standard in the OJEU by the European Commission which, as I see it, is illegitimate and therefore a case of maladministration.

You wrote:

"After a careful examination of your complaint, I have concluded that there are not sufficient grounds for opening an inquiry. In fact, the Commission's replies to you appear as convincing and satisfactory (...)"

In numerous publications and requests to the Commission since 2012 I have emphasized that no mandate exists for the standard EN 50561-1 and therefore its citation in the OJEU as a harmonised standard is illegitimate. The replies I received from the Commission were the letters from Mr Diego Canga Fano of 23 April 2013 [2] and from Mr Gwenole Cozigou of 20 May 2014 [3]. Both letters simply state that EN 50561-1 is subject to mandate M/313 but completely ignore my arguments which refute that claim. Mr Cozigou wrote in German:

"Die Kommission erteilte CENELEC und ETSI 2001 den Normungsauftrag M313 zur Entwicklung harmonisierter Normen für Telekommunikationsnetzwerke (...) Im Heimbereich verwendete PLC-Geräte unterliegen als Teil des Telekommunikationsnetzwerks dem Normungsauftrag M313."

Translated into English this sentence reads:

"In 2001 the Commission addressed mandate M313 to CENELEC and ETSI to develop harmonised standards for telecommunication networks (...) In-house PLC equipment are subject to mandate M313 as part of the telecommunication network."

But contrary to this assertion mandate M/313 concerns standards only for telecommunication networks as whole installations and it makes unmistakably clear that it does not cover standards for equipment (products) connected to these networks by stating:

"This mandate does not concern the preparation of harmonised standards relating to the electromagnetic compatibility of equipment to be connected to the networks."

Note that the words "not" and "equipment" are underlined in the original mandate text [4]. And the fact that PLC products are expressly not covered by M/313 has been formally confirmed even by the Commission itself according to the CENELEC document "STATUS REPORT ON THE FOLLOW-UP OF EC MANDATE M/313 ON EMC OF TELECOM NETWORKS" from June 2002 [5] which states:

"3.1 Networks and not products

"Following a query from CENELEC, the Commission has formally confirmed that M/313 envisages the preparation of harmonised standards on EMC of networks and not of products (...)"

EN 50561-1 concerns "in-home communication apparatus that use the low-voltage power installation as the transmission medium". In other words, it is a product standard for PLC equipment which is intended to be connected to a PLC network. It follows that contrary to the Commission's present assertion EN 50561-1 is definitely not subject to mandate M/313. And it must be noted that the Commission's replies on my requests contradict its own mandate and its own formal confirmation given to CENELEC upon request according to which M/313 does not concern products ("equipment to be connected to the networks") but only networks as whole installations. So could you please explain why you consider the Commission's replies to be convincing and satisfactory ? In my logical understanding they are certainly not !

You wrote:

"(...) and your submissions, which do not effectively challenge the Commission's explanations, do not disclose any possible instance of maladministration (...)"

I have submitted evidence that actually no mandate exists for the PLC product standard EN 50561-1 and that the Commission is wrong in asserting that it is subject to M/313. And I have submitted evidence that - according to the legal definition for a harmonised standard by the European Commission - a mandate is a necessary prerequisite for the harmonisation of a standard by citation in the OJEU. This fact is also implied in the "Guidelines for the publication of references of standards in the Official Journal of the European Union" (Brussels, 6th April 2005) [6] which stipulate:

"3. Which checks does the EC sectorial unit have to make ?

(...)

b) on the conformity of the content:

- is the standard covered by the relevant directive ?***
- is the standard subject to the relevant mandate ?***

"(...) the sectorial units have to be aware that the publication of references of harmonised standards in the Official Journal has a Legal effect and thus errors have to be avoided."

The product standard EN 50561-1 is undoubtedly not subject to mandate M/313 which is deemed relevant by the Commission and therefore EN 50561-1 is not eligible for citation in the OJEU. Obviously this check has not been conducted or its outcome has been ignored by the Commission.

The Commission ensures that EU legislation is correctly applied by EU member countries, so I think each and every EU citizen has the right to demand of the Commission to abide by their own rules and regulations and not to ignore or breach them. Or as Viviane Reding puts it on her website: "The European Commission has to lead by example". But the Commission has harmonised the standard EN 50561-1 by publishing its reference in the OJEU though it has not been mandated and in doing so has ignored and breached its own regulations. That's the essential point of my complaint and therefore I am convinced that my submissions indeed disclose an instance of maladministration. And I think it is fair to say that it is exactly the other way round than you wrote: The Commission's explanations actually do not effectively challenge my arguments for the illegitimacy of the harmonised standard EN 50561-1.

The decisions of an Ombudsman should be unbiased and logical. Given the facts which constitute my complaint and which I tried to clarify in this letter, I regret to say that I cannot follow your arguments for the refusal to open an inquiry into the conduct of the European Commission. Because it seems to me that you have misunderstood or overlooked parts of my original complaint which has been closed recently, I will resubmit my complaint within the next days - somewhat revised and supplemented in order to enhance its comprehensibility. If it helps to clarify any open questions, I shall be pleased to visit you in Strasbourg. If you still can see no possible instance of maladministration, I would like to know for what specific reasons you deem my arguments to be inadequate. Otherwise I am really looking forward to the opening of an inquiry.

Yours sincerely,



Karl Fischer

- [1] http://cq-cq.eu/OReilly_DJ5IL.pdf
- [2] http://cq-cq.eu/CangaFano_DJ5IL.pdf
- [3] http://cq-cq.eu/Cozigou_DJ5IL.pdf
- [4] <http://cq-cq.eu/M313.pdf>
- [5] http://cq-cq.eu/M313_Status.pdf
- [6] http://cq-cq.eu/Guidelines_OJEU.pdf