Advice regarding the UK's failure to respect the Ankara Agreement and its dispositions regarding Turkish citizens

Re: Response to Email of 11 March 2021

Ref Nos. Ares(2020)37444401; Ares(2020)4022983; Ares(2020)5140530; and Ares(2020)5190720

Related Complaint No. CHAP(2020)02135

Dear President O'Reilly and Ms. Fuller,

1. Thank you for your email of 11 March 2021 at 3:27 p.m. In particular, we are grateful for your confirmation and recognition that others have raised the same issues as those identified in our earlier letters. This reflects the gravity and extent of the problems identified. We respectfully commend the Ombudsman for committing to opening an investigation for maladministration by the Commission in relation to Points 1-7 of our Complaint, as well as other points.

2. Our correspondence has already drawn attention to the systematic and wide-ranging hostile approach by the UK Home Office in restricting the rights of Turkish nationals in the United Kingdom.

3. We maintain that the matters contained in our complaints meet the high threshold which you have described in order to find that the Commission is responsible for maladministration. The applicable EU law is readily identifiable: the agreement establishing an association between the EEC and Turkey was signed at Ankara on 12 September 1963[1] ('**the Ankara Agreement**'), the Additional Protocol to the Ankara Agreement[2] ('**the Protocol'**) and Decision No 1/80 of the Association Council of 19 September 1980 on the development of the EEC-Turkey Association ('**Decision No 1/80**'). Faced with years of conduct by the UK authorities inconsistent with the spirit and language of those legal instruments, coupled with the total absence of an effective judicial mechanism for redress in the UK[3], the Commission has failed to take <u>any</u> meaningful action in order to ensure that the law is respected and has not substantiated the reasons for its inaction. If such conduct does not constitute maladministration, it is difficult to see what could ever satisfy that threshold.

4. In light of your requests for clarification and for us to provide relevant detail concerning the requirements of the Ankara Agreement, by this letter we set out:

   a. A summary of the opinion of our experts[4] as to the limits of the Commission's discretion in this field, and the grounds for concluding that maladministration has occurred;

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1 OJEC L217, 29.12.1964, p.3687.

2 OJEC L293, 29.12.1972, pp. 3–56.

3 As to which, see below and in our previous correspondence.

4 As you will be aware, we have retained leading EU law experts, Ms Eleanor Sharpston QC (a former Advocate General of the Court of Justice of the European Union) and Mr Ian Forrester QC (a former Judge of the General Court of the European Union) to advise us. Neither currently holds a practising certificate in the UK and they therefore comment in the capacity of independent legal advisors. We have also retained

b. An account of the very real impact of the UK's practices, which are cruel and unjustified in applying strict rules to those genuinely seeking to work and integrate in the UK, on individual applicants – none of which appears to have been taken into account by the Commission; and

c. A summary and overview from our experts as to the scope of the provisions of the Ankara Agreement you have highlighted and a brief analysis of the seven cases you have identified.

5. We thank you in advance for your attention and for the diligence with which you propose to attend to this complaint.

I. The Commission's responsibility to act

6. Although the Commission has a wide discretion as to how it pursues its functions, it is not thereby dispensed from the need, as part of the duty of good administration, to press Member States to meet their legal responsibilities. Whatever may be the current state of EU-Turkish relations, that ought not to prejudice the rights of Turkish businesspeople and their families to enjoy treatment at the hands of the UK Home Office which is in accordance with the rules prescribed and accepted by the UK, the EU and Turkey.

7. We suggest that the Commission's duty to act as guardian of the treaties should be approached with particular rigour where – as here - there is a pattern of non-referral to the CJEU by national courts, and only limited domestic remedies are available to those whose rights are affected.

8. The Ombudsman will be aware that the UK has actively legislated to remove the right for Turkish citizens to have access to the court system in the UK. The governmental policy goal was evident. We have already addressed in our previous correspondence the removal of the statutory right of appeal in s.82 of the Nationality, Immigration and Asylum Act 2002 by s.15 of the Immigration Act 2014. In its recent judgment (SSHD v. CA (Turkey) [2019] 1 W.L.R. 2689) the Court of Appeal of England & Wales failed to apply the rights of Turkish nationals under the Ankara Agreement and held that the UK's withdrawal of the right of appeal was not prohibited by the Agreement[5]. The failure of the UK courts to refer to Luxembourg the evidently uncertain questions of law presented exacerbated the problem.

9. The Commission has not reacted to, or engaged with, either of these evident disrespect for the law.

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counsel practising in England & Wales with extensive EU law and immigration law experience, Mr Ravi Mehta. It would be inappropriate for our experts to advise on the specifics of each case considered and determined by the UK Home Office (to do so would require them to have access to material that they do not possess). However, they do unquestionably have extensive expertise in advising on EU law, including relevant constitutional principles, the Ankara Agreement and the obligations incumbent on the United Kingdom authorities as a result of those sources.

5 As the Ombudsman will be aware, the first instance court had effectively applied the Ankara Agreement and upheld the rights of Turkish nationals ([2017] EWHC 297 (Admin); [2017] 4 WLR 62 per Holman J). Permission to appeal from the Court of Appeal's judgment was refused by the UK Supreme Court.

10. The absence thus far of guidance from the CJEU as to the lawfulness or otherwise of the UK regime makes a vigorous approach by the Commission appropriate; *a fortiori* where the arguments advanced to justify the assertion that the new Home Office regime presents "*no problem*" are very far from convincing.

11. We submit that a fair review of the status of the rights of appeal granted by the Home Office in the UK, as well as the new requirements imposed on Turkish nationals to obtain permanent residence in the UK, would strongly suggest that the recent modifications have the effect – the intended effect – of narrowing and excluding the rights contemplated by the Ankara Agreement and the Protocol and Decision 1/80 already referred to.

12. Prior to April 2015, candidates had to show that they genuinely meant to set up a viable business and had sufficient funds to set it up and manage it. In addition, they had to show that their role would not amount to mere employment; and the likely fruits of the business had to be realistic enough to feed the candidate and his or her family. The UK Home Office recognised in its formal guidance that if such conditions were satisfied a path to full settlement status in the UK was open to Turkish nationals.

13. The new (and current) immigration regime applied to Turkish nationals is sharply more intrusive. It includes (a) a linguistic assessment, coupled with the so-called 'Life in the UK' test (a form of citizenship examination), (b) stringent criteria to show, through market research surveys, that there is a need for the proposed business in the UK and that the majority of the proposed business's customers would be located in the UK, (c) extensive requirements for the disclosure of financial information concerning the business. Most significantly, the changes have had the effect of removing the right to apply for indefinite leave to remain (or "**ILR**") in the UK after four years of continuous residence in the UK. Additionally, very heavy fees are now applicable: £2,389 for main applicants plus the sum of £2,389 for each dependant.

14. Collectively, these changes have transformed the previously neutral processing of Turkish applications on a rational basis into an obstacle course which the great majority of applications fail to navigate successfully. These changes are intended to deter, discourage, exclude and harass candidates for establishment in the UK – and they are having those pernicious effects.

15. The Commission's role as guardian of the Treaties requires it critically to examine and challenge the UK about such alterations to the well-established rights of Turkish nationals.

II. The human impact of the UK's practices

16. By way of illustration of the importance of these matters and their very real impact, we next identify three specific examples of the consequences for particular individual victims of the policies of the Home Office, policies which are irreconcilable with the principles established by the Ankara Agreement and subsequent instruments. We are aware of hundreds of such examples but focus on these three as disclosing representative issues.

17. Since this letter may be circulated, we do not give names here, but they are readily available subject to appropriate guarantees of confidentiality.

18. In the first case, **DM** was a self-employed boss of his own company in England where he had an EU Family Residence permit. He applied for a five-year Biometric Residence Permit Card to replace his residence permit, since the latter was due to expire shortly. He contracted Covid-19 after the Permit had expired and before the biometric card had been printed. He was refused hospital treatment. As he had not yet received his permit, he was also unable to ensure his family obtained settled status in the UK (to which they were entitled). No appointments to resolve the matter were available; complaints and appeals and pleas for help were fruitless. The Covid virus spread to the entire family. The family returned to Turkey and DM's mother died of Covid.

19. In case **MKK**, the applicant held a UK visa, which erroneously stated that only the father of the family was self-employed, whereas both father and mother were recognised to be self-employed. Corrections were made after months but not accurately, such that the immigration decision-maker either did not read or did not see the corrected visa materials. When an application for renewal was made, the visa was rejected on the grounds that company shares in the business were held jointly, and as such MKK did not have control over the company and was not self-employed. Pointless delays and pointless travel were caused. The entire family contracted Covid-19 and severe damage was done to the business.

20. Yet again the file is a litany of malignant administrative choices utterly at variance with the principles binding the UK.

21. Yet another death occurred applying Home Office policies in the case of **G**. Once more, a series of administrative errors and printing problems delayed the issuance of a Biometric Residence Permit. As a consequence, the victims of the process were unable to open bank accounts, get medical attention, start their business, or get anything like adequate redress. After numerous procedures and complaints, notably an insistence on physical travel to London to collect the Permit once it had been printed notwithstanding the existence of the pandemic, the father of the family died of a blood clot associated with Covid-19.

22. These examples of the adverse consequences of Home Office policy are especially shocking, since they involved death for those affected. However, hundreds of other episodes present the same pattern – eligible candidates for their rights under the Ankara Agreement are confronted with a series of pretexts of varying absurdity, the overall goal of which is to deny their applications regardless of the underlying circumstances, regardless of eligibility, regardless of human consequences.

III. Response to the Ombudsman's queries

23. Your letter requests clarification of the scope of certain of the provisions in the Ankara Agreement and for our experts' view on the meaning and effect of those provisions as well as seven key cases we have identified.

Key principles of the Ankara Agreement

24. As UK and EU courts have recognised, the objective of the Ankara Agreement and its Additional Protocol is "[…] *to promote the continuous and balanced strengthening of*

trade and economic relations between the contracting parties, including […] *by abolishing restrictions on freedom of establishment (art.13) and on freedom to provide services (art.14), in order to improve the standard of living of the Turkish people and to facilitate the accession of Turkey to the European Community (as it then was) at a later date*" (R (Buer) v SSHD [2014] EWCA Civ 1109, [2015] 1 CMLR 3, at [6] per Richards LJ; Case C-317/01 Abatay v Bundesanstalt für Arbeit [2003] E.C.R. I-12301 at [3]).

25. The key provisions engaged by and relevant to the Home Office's treatment of Turkish nationals are:

    a. Article 7 of the Ankara Agreement, which provides that: "*The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement. They shall refrain from any measures liable to jeopardize the attainment of the objectives of this Agreement*". This provision recognises the importance of all parties striving to achieve the objectives of the Ankara Agreement;

    b. Article 9 of the Ankara Agreement, which provides that "*The Contracting Parties recognize that within the scope of this Agreement -and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in - Article 7 of the Treaty establishing the Community*". This provision applies the general prohibition of nationality discrimination under EU law in the context of the Ankara Agreement;

    c. Article 13, which records that "*The Contracting Parties agree to be guided by Articles 52 to 56 and Article 58 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom of establishment between them*";

    d. Article 41(1) of the Additional Protocol, which provides that "*The contracting parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services*" (this is commonly known as the "**standstill clause**"). This is designed as a floor for the protection of the rights of Turkish nationals within the EU, i.e. a baseline which Member States will not seek to reduce or diminish. The CJEU had made clear, in Case C-37/98 R v Secretary of State for the Home Department, Ex p Savas [2000] 1 WLR 1828; [2000] ECR I-2927 (EU:C:2000:224) ("**Savas**"), that this provision "*precludes a Member State from adopting any new measure having the object or effect of making the establishment, and, as a corollary, the residence of a Turkish national in its territory subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force with regard to the Member State concerned*" (at [69]). The Court has also made clear that this provision is directly effective, i.e. can be relied upon by individuals (at [48]-[50]); and

    e. Article 59 of the Additional Protocol, which provides that "*In the fields covered by this Protocol, Turkey shall not receive more favourable treatment than that which member states grant to one another pursuant to the Treaty establishing the Community*." This makes sure that the effect of the Ankara Agreement and its Protocol does not result in greater rights for Turkish nationals than those available to nationals of other EU Member States, i.e. the rights of other EU nationals are the

ceiling applicable to Turkish nationals too (see C-677/17 Çoban (ECLI:EU:C:2019:408) at [61]).

26. For the sake of completeness, we observe that Decision 1/80 was a decision of the Association Council between the EU and Turkey. It identified specific rights to free movement which were to be conferred on Turkish workers, for the purpose of advancing the objectives of the Association Agreement. Key provisions are as follows:

    a. Article 7:

    > "The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:
    >
    > – shall be entitled – subject to the priority to be given to workers of Member States of the Community – to respond to any offer of employment after they have been legally resident for at least three years in that Member State;
    >
    > – shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.
    >
    > Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years."

    b. Article 13 of Decision 1/80 includes a standstill clause akin to Article 41 of the Additional Protocol: "*The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories*".

27. This collection of provisions establishes a clear and powerful framework for protecting the right of establishment of Turkish nationals in EU Member States. They must be given effective access to the markets for employment and self-employment in those states and must not have to face new restrictions which make such access more difficult than at the time of the signature of the Ankara Agreement. To the extent that the CJEU case-law has elaborated on the detailed rights applicable to the families of Turkish workers, it provides valuable guidance as to the implications of taking a teleological approach to the Ankara Agreement and the Protocol.

28. Fundamentally, in Savas (which concerned freedom of establishment as a self-employed person) the CJEU emphasised that "*the employment rights thus conferred on Turkish workers* [under the Agreement] *necessarily imply the existence of a corresponding right of residence for the persons concerned, since otherwise the right of access to the labour market and the right to work as an employed person would be rendered entirely ineffective*" (at [60]).

29. The Immigration Rules in 1980 contained a section on "Settlement" which included, in para.26, a provision that

> "[w]*hen a person admitted in the first instance for a limited period has remained here for 4 years in approved employment or as a businessman or a self-employed person or a person of independent means, the time limit on his stay may be removed*".

30. In essence, therefore, so long as the four-year period was completed by applicants, they would have been entitled to the right to settlement in the UK at the time of the introduction of Decision 1/80.

Analysis of Key Cases

31. We will now review the individual reported cases, which you have enquired about, to demonstrate the persistent errors in the judgments of the English courts. The common theme in these cases is the UK's adoption of a restrictive interpretation of "*the conditions of access to employment*" of Turkish nationals under the Ankara Agreement, and the related right of residence identified above, to the exclusion of any right to settle in the United Kingdom. At its core, this is fundamentally inconsistent with the terms and scope of the Agreement, which is designed to encourage integration of Turkish nationals economically active in EU Member States.

32. In particular, the UK authorities fail to account for the substantial costs, administrative burden and insecurity placed upon Turkish nationals wishing to be economically active in the UK, who are required to reapply for residence status on a regular basis, to pay substantial fees disproportionately higher than those payable by EU nationals, and potentially to be subject to administrative caprice with no recourse to the courts for redress.

33. In the view of our experts, there has been a recent pattern of increasing textual cleverness on the part of the Home Office to limit the rights of Turkish nationals and to refuse applications for residence status in individual cases. An ordinary reading of the Ankara Agreement should – by contrast – result in effective rights for Turkish nationals to carry out economic activity in the UK, with increasing security over time as they attain integration in the UK market. This should include a prohibition on creating a more hostile environment – including in terms of rights of residence and settlement which ensure economic rights can be exercised effectively – than that which was in place at the time the Ankara Agreement was introduced.

34. The seven cases which you have identified are reflective of the difficulties arising where the courts in the UK declined to make a reference to Luxembourg and found against the applicant. In each such case, the UK courts either failed to grapple fully with the points of EU law raised or failed properly to consider exercising their power to refer questions for clarification to the CJEU.

35. In Alacakanat v General Medical Council [2013] EWHC 1866 (Admin) [2014] 1 C.M.L.R. 5, the English High Court considered the denial of mutual recognition to the professional qualifications of a Turkish paediatrician, with some 32 years' experience. The applicant in that case alleged that these rules were a 'new' restriction in breach of

Articles 9 and 41 of the Ankara Agreement. The High Court concluded that these provisions of the Agreement "*do not, in themselves, confer an enforceable right on the claimant to be treated, for the purposes of access to and pursuit of the medical profession, no less favourably than a national of a relevant European state*" (at [20]).

36. This decision was taken at a preliminary stage (denying the applicant permission to proceed with the claim) and no consideration was given to whether a referable question of EU law arose in the case, despite the absence of any established jurisprudence on this issue. As we have previously drawn to the Ombudsman's attention, this ignored well-established case-law of the Court of Justice which confirmed that Article 9 of the Agreement has an autonomous substantive content (see, e.g. C-92/07, Commission v Netherlands [2010] ECR I-03683, at [75]-[76]). The national court also relied upon a submission that "*art.9 does not confer a right to reside in a particular territory*" based on the Savas case, directly contrary to the conclusion identified at paragraph 28 above.

37. R (Buer) v SSHD [2014] EWCA Civ 1109, [2015] 1 CMLR 3 turned on the meaning and effect of Article 6 of Decision 1/80. The applicant had been employed for a period of 4 years before applying for ILR (permanent residence). His application was denied on the basis that the Ankara Agreement and Decision 1/80 did not confer a right to such residence. The Court of Appeal upheld this interpretation and distinguished between the right of residence for work and the right to settle in the UK on a permanent basis.

38. As in Alacakanat, the national court considered matters only at a preliminary stage and concluded that Decision 1/80 did not confer a right of settlement on Turkish nationals. It did not consider whether the scope of these provisions was a referable question for the CJEU to clarify, despite identifying possible ambiguity in the CJEU's decisions on these issues (see, e.g. at [36]). Instead, the national court simply reached its own conclusions, which were very narrow, namely by limiting the scope of Article 13 of Decision 1/80 to conferring a right of residence "*for the purpose of work and* [which] *does not extend to settlement in the host Member State*" (at [64]).

39. In BA, MA, CA, HA(AP) v SSHD [2017] CSOH 27, the Outer House (the first instance jurisdiction) of the Court of Session (Scotland's highest court) considered a similar claim to Buer but relying upon the standstill clause in Article 41 of the Additional Protocol, as it was to be applied to a Turkish businessman and his family members. The Court applied the reasoning in Buer to Article 41 and was persuaded by the previous judgment's analysis of CJEU case-law, to conclude that "*longer-term residence* […] *is* [not] *necessary for* [the] *purpose* [of setting up a business]".

40. As with Buer, the Court made no mention of the possibility of a reference despite the complexity of the CJEU's jurisprudence and the absence of a directly relevant guiding authority from that Court on this issue. The Scottish Court also failed to consider and incorporate the CJEU's extensive case-law concerning the rights of family members of Turkish nationals (see, e.g. Case C-451/11 Dülger (EU:C:2012:504), at [42], [52] and [65]; Case C-652/15 Tekdemir (EU:C:2017:239), at [31]-[32]; and Case C-89/18, A, (ECLI:EU:C:2019:580) at [47]).

41. Had the court fairly examined the authorities, it would no doubt have recognised the significant impact of denying permanent rights of settlement to the family members of a Turkish national who had achieved such settled status in the UK.

42. It is particularly regrettable that despite these open questions the Court elected to follow the line of the Home Office without seeking clarification of the obviously uncertain constitutional questions. Putting it differently, a prudent court would not have taken such an approach without making a reference for a preliminary ruling.

43. In R (Aydogdu) v SSHD [2017] UKUT 00167 (IAC), the Upper Tribunal similarly considered the rejection of applications for ILR by a spouse and child of a Turkish national. Applying the cases above, it similarly found that "[t]*he grant of limited leave to enter and remain to the family members of a Turkish national exercising rights will, in all cases bar the most exceptional, suffice to ensure the efficacious exercise and enjoyment of the economic right in play. The higher, optimum status of settlement is not necessary for this purpose*." (at [34]).

44. These conclusions were *obiter* (i.e. not determinative in the case) since the Tribunal took the view that the Ankara Agreement and its Additional Protocol did not apply to a situation in which settlement status was sought for the family and dependents of a Turkish national who had already been granted ILR by the UK. On this reasoning, the EEC-Turkey agreements were no longer relevant once ILR has been granted to such a person. Again, we may note that the purpose of the Agreement and the Protocol is ignored and the details of the rights accorded are interpreted as narrowly as a tax statute.

45. In an "*advisory*" capacity, the Tribunal adopted the same approach as the other UK Courts examined above in distinguishing between settlement and more limited rights to residence which would allow Turkish nationals to work or establish a business in the UK. The Tribunal failed (a) to refer any questions to the CJEU for clarification of the scope of the Ankara Agreement and/or Decision 1/80 and (b) to give effect to the objectives underlying those agreements, in particular progressively to ensure the integration of Turkish workers and businesspeople in EU Member States. Conferring the "*optimum status of settlement*" on Turkish nationals is an integral part of that integration.

46. In Soner Koktuk v Entry Clearance Officer (Warsaw) [2018] EWCA Civ 2850; [2019] 4 W.L.R. 10 ("**Koktuk**"), the Court of Appeal of England & Wales took a similar approach, rejecting the challenge of a Turkish national against a refusal to grant him ILR, despite the grant of ILR to his wife, a Turkish businesswoman resident in the UK. The Court of Appeal concluded that "*article 41(1) only applies to residence in so far as it is a corollary, or necessary to the effective exercise, of the right to establish a business (or to provide services) in a host member state. Provided that a Turkish national who wishes to establish a business in a member state is entitled to reside in its territory for as long as he or she is carrying on the business, any restriction on settlement or permanent residence does not interfere with the exercise of the economic freedom concerned*." (at [31] per Leggatt LJ).

47. As in Aydogdu, the Court excluded the application of the Ankara Agreement to the facts before it. In any event, it also did not address the other issues presented to it, including (i) the different scope and extent of Article 41(1) of the Additional Protocol and Article 13 of Decision 1/80; or (ii) the parallels between family reunification and settlement rights in reinforcing and making effective the right to establishment.

48. In R (Alliance of Turkish Business People Limited) v SSHD [2020] EWCA Civ 553; [2020] 1 W.L.R. 2436 ("**AoTBPL**"), the Court of Appeal of England & Wales considered a challenge to the Home Office's change in approach as to whether rights of settlement were preserved by the standstill clause in the Ankara Agreement. The Court found that there had been no legitimate expectation arising from Home Office practice for Turkish nationals, such that it was lawful for this practice to change.

49. In its judgment the Court did not consider (a) whether the change in practice reflected a lack of clarity in EU law which only the CJEU could address, such that a reference should be made, (b) whether the shift in approach, which affected approximately 6,000 who were on the path to obtaining ILR at the time, was compatible with EU fundamental rights, and/or the right to private and family life of the individuals involved, (c) whether the Home Office's approach was consistent with the objectives and terms of the Ankara Agreement and (d) what the implications of a "standstill clause" really are.

50. These cases illustrate the shortcomings and limitations in the scrutiny given by the UK Courts to legitimate challenges by Turkish nationals. Now, those shortcomings are not directly the fault of the European Commission, for the Ombudsman to underscore. The Commission cannot be blamed for a decision taken by an English judge who receives a powerful set of controversial but in context apparently plausible submissions on behalf of the Home Office, nor is it obligated to bring infringement proceedings whenever a national court reached a conclusion contrary to established principles of EU law. However, there should and can come a point where the trend of a country's cases is so askew that a correction via a reference to Luxembourg or via an expression of anxiety from the guardian of the treaties is necessary and required by those Treaties.

51. In the present situation, the Commission has received detailed descriptions of the perverse readings and the literally fatal consequences of the unchallenged pursuit of wilful hostility against Turkish citizens. It is not yet part of the duty of the Commission to refrain from complaining when illegality strikes a politically unpopular target. We very warmly commend the sympathy of the Ombudsman in exploring the conduct of the Commission and in seriously examining the possibility that its persistent toleration (shading to neglect) of a Member State's dubious policy which plainly seeks to circumvent a public obligation may constitute maladministration. Official passivity in the face of wrongdoing may be convenient but it is not a lawful policy.

We thank you again for your diligence to date and look forward to receiving your analysis of the issues outlined above.

26 March 2021

IAN FORRESTER QC

ELEANOR SHARPSTON QC

RAVI MEHTA