

## **Decision of the European Ombudsman in case OI/6/2018/LM on the European Commission's failure to report on time on Member States' compliance with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings**

Decision

**Case** OI/6/2018/LM - **Opened on** 09/10/2018 - **Decision on** 10/12/2018 - **Institution concerned** European Commission ( Maladministration found ) |

This own-initiative inquiry concerns the Commission's continued delay in submitting a report to the European Parliament and the Council on Member States' compliance with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

The Ombudsman inquired into the issue and found that the Commission's continued delay runs counter to the Directive and a previous commitment it made to submit the report in the beginning of 2018 at the latest. The Ombudsman thus closed the inquiry with a finding of maladministration.

### **Background to the inquiry**

1. Directive 2010/64/EU ('the Directive') lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant [1] . The Directive required EU Member States to bring into force the laws, regulations and administrative provisions necessary to transpose the Directive into the national legal systems by 27 October 2013.

2. The Directive states that the “ *European Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals* ” [2] .

3. The Ombudsman opened an inquiry into complaint 969/2017/LM, which concerned the Commission's failure to submit the report within the statutory deadline. The complainant argued that the Commission was obliged, by 27 October 2014, to submit to the European Parliament and to the Council a report assessing the extent to which Member States had taken the



necessary measures to comply with the Directive.

4. In the context of the Ombudsman's inquiry into complaint 969/2017/LM, the Commission argued that, before it could prepare the report, the Member States would have to have transposed the Directive into national law. The Commission's main priority was to ensure that all Member States transpose the requirements of the Directive into national law, so that the rights set out in the Directive are effectively protected throughout the European Union. On the date of expiry of the transposition period (27 October 2013), 16 Member States had not communicated transposition measures to the Commission. In November 2013, the Commission therefore started infringement proceedings for non-communication or partial communication of transposing measures against these 16 Member States.

5. In September 2017, when the Commission replied to the Ombudsman's inquiry into complaint 969/2017/LM, all Member States had communicated national measures transposing the Directive. The Commission stated that it was thus in a position to assess the extent to which Member States had taken the necessary measures to comply with the Directive. The Commission was thus preparing the report, which would be published as soon as the compliance assessment of the national measures was finalised, in the beginning of 2018 at the latest.

6. In March 2018, when the Ombudsman published her decision in case 969/2017/LM [3], the Commission was already more than three years late in submitting the report to Parliament and Council. The Ombudsman considered that the Commission could have submitted "*an interim report, within the 12-month deadline, which simply communicated the position as of the date of the report*". She found, however, that "*there was no intentional breach by the Commission of its statutory obligation to report by 27 October 2014. The Commission, it would seem, was focused on the substantive issue of producing a comprehensive conformity assessment across all of the Member States. At the same time, the Commission missed an opportunity to show that it respects the obligations laid on it by the particular Directive. Nevertheless, and in the particular circumstances, the Ombudsman does not find that the Commission's failure amounted to maladministration. In all the circumstances, the Ombudsman concludes that further inquiries into this complaint are not justified*". Furthermore, the Ombudsman noted the Commission's commitment to submit the report "*at the latest at the beginning of 2018*". Given that three months into 2018 had passed at that point, the Ombudsman trusted that the Commission would indeed submit the report without further delay.

7. In March 2018, the complainant in case 969/2017/LM contacted the Ombudsman to follow up on the matter, as no report had yet been published.

## The inquiry

8. On 9 October 2018, the Ombudsman opened an inquiry into the Commission's continued failure to submit the report in question. In the course of the inquiry, the Ombudsman asked the Commission to clarify the reasons for the additional delay.



9. In its reply dated 14 November 2018, the Commission reiterated that the preparation of the report requires, first, the transposition of the Directive by all Member States and, second, a thorough assessment of the completeness and conformity of all national measures transposing the Directive.

10. The Commission noted that there was a delay in the transposition of the Directive by certain Member States, which had postponed the overall assessment process. The Commission could close the infringement proceedings against those Member States only in January 2018, after having assessed the national measures.

11. The Commission further noted that the additional delay in submitting this report is due to the complexity of the assessment not only of the completeness, but also of the conformity, of all the legislative measures communicated by the 27 Member States [4]. The Commission stated that there is a draft report ready and it intends to submit the final report to Parliament and Council before the end of 2018.

## **The Ombudsman's assessment**

12. The further delay set out above runs counter to the Commission's commitment to submit a report in the beginning of 2018 at the latest.

13. Assessing the completeness and conformity of the Member States' transposition measures in respect of a Directive, having regard to the specificities of each national legal system, is inevitably a complex task. Nevertheless, the Commission's explanations of the further delay in submitting the report to Parliament and Council fall short of addressing the reasonable assumption that, in setting a time limit for the report to be submitted, the legislator sought to reconcile this complex task with its wish to be kept informed about the state of the transposition at that particular point in time.

14. The Commission could have complied with its reporting obligation by submitting an interim report, within the 12-month deadline, taking stock of the position as of the date of the report. This would not have prevented the Commission from publishing, later on, a complete final report on the completeness and conformity of the transposition measures of the Directive in the Member States.

15. On the basis of the above, and given the further delay incurred in submitting the report, there is maladministration by the Commission. At this point, the Ombudsman does not consider it appropriate to make a corresponding recommendation to the Commission.

## **Conclusion**

Based on the inquiry, the Ombudsman closes this case with the following conclusion :



**There is maladministration by the European Commission given it has not yet produced the report to the European Parliament and to the Council required under Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, which was due on 27 October 2014.**

The European Commission and the complainant in case 969/2017/LM will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 10/12/2018

[1] Directive (EU) 2010/64 of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280/1, 26.10.2010).

[2] Article 10 of Directive (EU) 2010/64.

[3] <https://www.ombudsman.europa.eu/en/decision/en/91729>

[4] The Directive does not apply to Denmark.