

Decision of the European Ombudsman closing his inquiry into complaint 2591/2010/GG against the European Commission

Decision

Case 2591/2010/GG - **Opened on** 20/12/2010 - **Recommendation on** 29/07/2011 - **Special report on** 14/05/2012 - **Decision on** 14/05/2012 - **Institution concerned** European Commission (Closed after Special Report) |

The present case concerns the way in which the European Commission handled a complaint submitted to it in 2006 by 27 citizens' initiatives ("the complainants") fighting against what they perceived to be the negative consequences of the expansion of Vienna airport. The Commission reached the conclusion that the relevant works had been carried out without the obligatory environmental impact assessment ("EIA") required by Directive 85/337/EEC. In order to remedy this omission, it agreed with the Austrian authorities that the latter would carry out an *ex post* EIA, simulating in the best possible way an *ex ante* EIA and rendering possible a full assessment of the environmental impact of the relevant projects. The final report on this procedure was submitted to the Commission in February 2011.

The complainants were unhappy with the way in which the *ex post* EIA was carried out. Among other things, they criticized that (i) the authority in charge of the relevant procedure was the very same authority that had granted the permits for the relevant works and thus found itself in a manifest conflict of interest and (ii) that they did not have access to a review procedure, as foreseen by the relevant EU directive.

In 2008, the complainants turned to the European Ombudsman (complaint 1532/2008). Having examined the matter, the Ombudsman took the view that the complainants' arguments concerning the above two issues appeared to be well-founded at first sight and that, at that point in time, he was therefore unable to conclude that the Commission had ensured that the *ex post* EIA had been carried out properly. However, given that the procedure was ongoing and that the Commission had stated that it would only close the infringement case when it was satisfied that the Austrian authorities had taken the necessary steps, the Ombudsman considered that there was no need for further action on his part at that stage. He therefore closed his inquiry in December 2009, making it clear that he trusted that the Commission would take his findings into account.

In November 2010, the complainants turned to the Ombudsman again (complaint 2591/2010). The Ombudsman opened a second inquiry, in the course of which he inspected the



Commission's file. The inspection showed that the file did not contain any other significant correspondence between the Commission and the Austrian authorities during the period when the *ex post* EIA was being carried out. In particular, there was nothing to suggest that the representations that the complainants made during that period had been discussed in writing with the Austrian authorities. Nor did the Ombudsman's decision on complaint 1532/2008 appear to have given rise to any such correspondence. This state of affairs led the Ombudsman to the conclusion that the Commission failed to take his findings from the first inquiry into account. He therefore made a draft recommendation urging the Commission to reconsider its position. This draft recommendation was not successful.

The Ombudsman considered that the present case constituted a deplorable example of a situation where the Commission (i) failed to take appropriate remedial action in relation to a clear infringement of EU law in an important case and (ii) chose to ignore the Ombudsman's advice. He therefore took the view that it was appropriate to bring the matter to the attention of the European Parliament. The Ombudsman therefore closed his inquiry with a special report to Parliament.

This case was closed with a Special Report to the European Parliament (see above links).