

Decision in case 1128/2018/TM on the European Commission's webpages on 'novel foods' being available in English only

Decision

Case 1128/2018/TM - Opened on 04/09/2018 - Decision on 27/06/2019 - Institution concerned European Commission (Settled by the institution) |

The case concerned the European Commission's webpages on 'novel foods', types of food that are produced by new methods or have not previously been consumed by humans on a wider scale. The Commission's webpages include an online application system for businesses seeking authorisation to market a novel food in the EU. The complainant was concerned that these webpages were available in English only.

In the course of the Ombudsman's inquiry, the Commission started translating information on the authorisation procedure for novel foods into more EU official languages. The webpages were also revised to include the information that applications may be submitted in any EU language. The Ombudsman found that the Commission had taken steps to solve the complaint and closed the inquiry as settled.

Background to the complaint

1. The complainant is the owner of a small business in France, who wanted to apply for authorisation to market a 'novel food' [1] in the EU. The European Commission, which is responsible for assessing applications for authorisations to market novel foods, has a series of webpages [2] dedicated to novel foods. These include information on the area, as well as an online application system. When the complainant turned to the Ombudsman, the webpages and online application system were available in English only.

2. Because of his limited knowledge of English, the complainant had difficulties understanding how to submit his application. He contacted the Commission by telephone, and was informed that relevant information would be available in French a week later. After one month, the webpages were still available in English only. As a result, the complainant turned to the Ombudsman.



The inquiry

3. The Ombudsman inquired into the complainant's concern that the Commission's webpages on novel foods are available in English only. In the course of the inquiry, the Ombudsman received the reply of the Commission, and subsequently invited the complainant to comment on the Commission's reply. The complainant did not submit any comments. Shortly before closing the inquiry, the Ombudsman obtained an update on the situation from the Commission.

Arguments presented to the Ombudsman

4. The complainant argued that the fact that the webpages and the online application system are available in English only distorts competition within the EU. According to him, this creates a disproportionate burden for small businesses with limited or no English-language competence that are seeking to market a novel food.

5. In its reply, the Commission expressed its commitment to the principle of multilingualism and equal treatment. It pointed out that the applicable rules [3] set out the requirements for applications, and include, as an annex, a template for a cover letter to accompany applications for authorising a novel food. This information is available in all EU official languages.

6. After the Ombudsman opened her inquiry, the Commission updated the relevant webpage to include the information that, while the online navigation of the application system is available only in English, *"submissions (applications or notifications) can be made in all EU languages"*. The Commission published a user guide [4] for the online application system, which is currently available in 19 EU official languages. A document 'Questions and Answers: New Regulation on Novel Food' [5] (the Q&A) is available in 23 languages.

7. The Commission decided not to translate the online application system as this would require *"considerable resources"* and it has a duty to manage its resources efficiently. Due to *"the specificity of the novel foods sector, in which the scientific research supporting applications for authorisations is predominately carried out in English"*, the Commission had decided not to prioritise translation of the online application system.

The Ombudsman's assessment

8. It is part of the Ombudsman's mission to take appropriate action in those cases [6] where the EU institutions, bodies, offices and agencies do not respect the Union's linguistic diversity and the principle of linguistic non-discrimination [7].

9. Respect for linguistic diversity must, however, be reconciled with administrative and budgetary constraints and other factors [8]. There is no general principle of EU law that confers a right on *every* citizen to have a version of *anything* that might affect his or her interests drawn up in his or her language in *all circumstances* [9]. In administrative procedures involving



interested parties and an EU institution, certain language restrictions may prove necessary, in particular, to ensure resources are used efficiently [10] . Two conditions should be fulfilled, however: first, the choice made by the institution must be appropriate and proportionate, having regard to the principle of linguistic diversity and, second, that choice may not give rise to unjustified discrimination between European citizens.

10. The complainant's contention that the availability of the material in English only creates a disproportionate burden for small businesses and distorts competition within the internal market must be analysed in this context. The fact that the Commission informed the complainant that the relevant information would be available in French a week later and then failed to meet this commitment did not help matters.

11. While the complainant was therefore entirely justified in turning to the Ombudsman, the fact the Commission has, in the meantime, made serious efforts to make information on the authorisation procedure for novel foods available in as many EU languages as possible must be taken into account. Specifically, the 19-language user guide for the online application system leads applicants step-by-step through creating an account and submitting an application. The Q&A on the *New Regulation on Novel Food* is available in 23 EU official languages. Finally, the Commission now clearly states that "*submissions (applications or notifications) can be made in all EU languages*".

12. The outstanding issue is whether the Commission's reliance on one language only (English) in its online navigation of the application system is objectively justifiable and proportionate. The main reason advanced by the Commission is "*the specificity of the novel foods sector, in which the scientific research supporting applications for authorisations is predominately carried out in English*". While limited, this justification is arguably sufficient, bearing in mind the target audience and the fact that a range of supporting material has been made available in most EU official languages.

13. The Ombudsman finds that the Commission has taken sufficient steps to settle the complaint and welcomes the progress made. In her view, the Commission has sought to strike a reasonable balance between respecting linguistic diversity, ensuring equal treatment and managing its resources efficiently.

14. At the same time, as noted in the Ombudsman's decision in a similar case involving the European Medicines Agency [11] , the Ombudsman recognises the negative consequences for other EU languages where one language is given a privileged position in a particular domain. She therefore urges EU institutions and in this case the Commission to keep to an absolute minimum those situations where such differentiation occurs.

Conclusion

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



The European Commission has taken steps to settle this complaint.

The complainant and the Commission will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 27/06/2019

[1] 'Novel foods' are defined under EU law as food that has not been consumed in the EU to a significant degree before 15 May 1997. According to EU Regulation 2015/2283 on novel foods, businesses seeking to market a novel food in the EU must first apply to the Commission for authorisation to do so. More information is available at:

https://ec.europa.eu/food/safety/novel_food/legislation_en [Link]

[2] https://ec.europa.eu/food/safety/novel_food_en [Link]

[3] Regulation 2017/2469 implementing the Novel Food Regulation.

The implementing act provides guidance on what information (for example, scientific, origin, safety, labelling) needs to be included in the application.

[4] https://ec.europa.eu/food/safety/novel_food/e-submission_en [Link]

[5] The Q&A document is available at

https://ec.europa.eu/food/safety/novel_food/legislation_en [Link].

[6] See, for instance, the Ombudsman's decision in case 640/2011/AN, para. 69, available at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/12009/html.bookmark> [Link]

[7] Article 21 of the Charter of Fundamental Rights of the EU prohibits, among other things, language discrimination. Article 22 of the Charter provides that the Union shall respect linguistic diversity.

[8] See the European Ombudsman's report on her public consultation on 'Multilingualism in the EU institutions', available at: <https://www.ombudsman.europa.eu/en/correspondence/en/110044> [Link].

[9] Case C-361/01 P, *Kik v OHIM*, paragraph 82.



[10] See the opinion of Advocate-General Poiares Maduro in Case C-160/03, paragraphs 38-44:

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-160/03> [Link].

[11] See the Ombudsman's decision in OI/5/2013/PMC at <https://www.ombudsman.europa.eu/en/decision/en/71564> [Link]