

Decision in case 1854/2018/SRS on the European Commission's handling of an infringement complaint against Spain about declaration of assets located abroad

Decision

Case 1854/2018/SRS - Opened on 13/02/2019 - Decision on 12/07/2019 - Institution concerned European Commission (No maladministration found) |

The case concerned the conduct of the European Commission during an infringement procedure against Spain regarding an anti-fraud law requiring Spanish residents holding assets over a certain threshold in other countries to fill in a specific tax form.

The Commission considered that the sanctions for failing to fill in the tax form were disproportionate and discriminatory and sent Spain a formal request to comply with EU law. The complainant took issue with the Commission's delay in taking Spain to the European Court of Justice for breach of its EU law obligations.

During the Ombudsman's inquiry, the Commission brought a case against Spain to the European Court of Justice, thus addressing this aspect of the case. The Ombudsman also considered that the time it took the Commission to take a decision was justified by the specific circumstances of the case. Thus, the Ombudsman found no maladministration.

Background to the complaint

1. In October 2012, the Spanish government adopted a new anti-fraud law concerning tax residents in Spain holding assets in other countries. [1] The law required Spanish tax residents to declare assets held abroad of over EUR 50 000 by filling in a specific tax form. [2]

2. In February 2013, the complainant submitted an infringement complaint to the European Commission against the Spanish government. He argued that any failure, delay or mistake in filling in this tax form resulted in disproportionate fines, which in his view was contrary to EU law.

3. In November 2015, the Commission opened an infringement procedure against Spain.



4. On 15 February 2017, the Commission sent the Spanish authorities a request to comply with EU law (a so-called 'reasoned opinion'). [3] For the Commission, the fines in question were much higher than those that applied in similar, purely national situations. Those sanctions could deter businesses and individuals from investing or moving across borders in the EU. The Commission considered that the rules breached EU fundamental freedoms, as they were discriminatory and disproportionate. [4] It invited the Spanish authorities to adopt all necessary measures to comply with its opinion within two months.

5. In October 2018, the complainant wrote to the Commission several times asking when the Commission would bring Spain before the European Court of Justice. Dissatisfied with the Commission's lack of action, the complainant turned to the Ombudsman on 30 October 2018.

The inquiry

6. The Ombudsman opened an inquiry into the way the Commission had handled this infringement procedure.

7. In the course of the inquiry, the Ombudsman's inquiry team inspected the Commission's file on this case and met with Commission staff.

Arguments presented to the Ombudsman

8. The complainant considered that by not taking Spain to the Court of Justice, almost a year and a half after the expiry of the deadline given to Spain to comply with its reasoned opinion, the Commission had breached the principles of good administration.

9. During the meeting with the Ombudsman's inquiry team, the Commission stated that it enjoys a broad margin of discretion in deciding whether and when to bring a case against a Member State to the Court of Justice. It added that the time for taking this decision depends on the complexity of the case, among other factors.

10. The Commission stated that Spain replied to its reasoned opinion in April 2017, denying the existence of an infringement and submitting a number of new supporting documents. The Commission held two more meetings with the Spanish authorities, one in September 2017 and another in April 2018, following additional submissions by Spain in March 2018.

11. The Commission also pointed out that throughout that period, it kept the complainant informed of all relevant developments.

12. On 6 June 2019, the Commission informed the Ombudsman that it had decided to bring a case against Spain to the European Court of Justice. [5]



The Ombudsman's assessment

13. The EU Treaties confer an obligation on the Commission to oversee the application of EU law by Member States. This includes ensuring that Member States transpose and apply EU law correctly. [6] According to the settled case law of the Court of Justice, the Commission has a wide margin of discretion in deciding whether and when to bring a case against a Member State to the Court of Justice. [7]

14. The Ombudsman's review in such cases extends to examining whether the Commission has complied with principles of good administration and, in particular, due diligence.

15. Following the meeting with the Ombudsman's inquiry team, the Commission informed the Ombudsman of its decision to bring the matter before the European Court of Justice.

16. The complainant took issue with what he considered to be an unjustified delay on the part of the Commission, specifically in terms of the time it took the Commission to refer Spain to the Court of Justice after the deadline to comply with its reasoned opinion had passed. During the inspection meeting, the Commission provided to the Ombudsman's inquiry team a detailed account of the different steps it had taken in relation to this case. It also referred to the complexity of the case and the voluminous documentation received from the Spanish authorities.

17. On this basis, the Ombudsman takes the view that the time it took the Commission to bring a case against Spain to the Court of Justice was justified by the particular circumstances of the case. Her review of the file does not suggest inaction on the part of the Commission. Thus, the Ombudsman finds no maladministration in this case.

Conclusion

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

There was no maladministration in this case.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 12/07/2019



[1] Real Decreto 1558/2012, available at: <https://www.boe.es/eli/es/rd/2012/11/15/1558> [Link]

[2] The so-called 'Modelo 720'

[3] For more information on the stages of an infringement procedure see:
https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en

[4] The Commission referred to the free movement of persons, free movement of workers, the freedom of establishment, the freedom to provide services and the free movement of capital (Articles 21, 45, 49, 56 and 63 of the Treaty on the Functioning of the European Union and Articles 28, 31, 36 and 40 of the EEA Agreement).

[5] http://europa.eu/rapid/press-release_IP-19-2774_en.htm

[6] Article 17(1) of the Treaty on the European Union and Article 258 of the Treaty on the Functioning of the European Union.

[7] See judgment of the Court of Justice of 16 May 1991, *Commission v Netherlands*, C-96/89, [ECLI:EU:C:1991:213](#) [Link], paragraphs 15-16, and judgment of the Court of Justice of 26 June 2001, *Commission v Portugal*, C-70/99, [ECLI:EU:C:2001:355](#) [Link], paragraph 17.