

## **Decision in case 1481/2019/MH on how the European Commission dealt with an infringement complaint against the Netherlands concerning the importation of potentially unsafe lighters**

Decision

**Case 1481/2019/MH - Opened on 04/09/2019 - Decision on 06/03/2020 - Institution concerned** European Commission ( No further inquiries justified ) |

The case concerned the time taken by the European Commission to deal with a complaint from a manufacturer of lighters alleging that the Netherlands was infringing EU law. The complainant was particularly concerned that the Commission had not taken the next formal step in the procedure since July 2014, when it had asked the Netherlands for further information about the case.

The Ombudsman acknowledges that more than nine years to conduct an investigation into an infringement complaint is a very long time. However, based on the Commission's extensive information gathering and its analysis, and the extent of its engagement with the Dutch authorities and the complainant, the Ombudsman has not found undue delay in the Commission's handling of this case. Over the nine-year period, the Commission had approximately six rounds of information gathering with the Netherlands, while the complainant submitted reports and studies on more than 18 occasions. The complainant also met with the Commission at least 13 times.

As the Commission has now sent a letter to the complainant informing it of its intention to close the case, the Ombudsman considers that no further inquiries are justified.

### **Background to the complaint**

1. The complainant is a European manufacturer of lighters. The case concerns the time taken by the European Commission to deal with its infringement complaint against the Netherlands.
2. The infringement complaint to the Commission was lodged in September 2010 (reference CHAP(2010)02783) . The complainant contended that, by failing to take measures to ensure the safety of lighters imported through Dutch ports (primarily from Asia), the Netherlands was breaching EU rules [1] , in particular, the General Product Safety Directive.



3. Under the General Product Safety Directive, Member States need to ensure that producers and distributors comply with their obligations in such a way that products on the market are *safe* [2] . These obligations include, in certain circumstances, taking measures proportionate to the seriousness of the risk and putting in place “ *appropriate means and procedures* ” to ensure market surveillance. If a Member State considers that a product presents a serious risk, it has certain powers under the Directive to take action. [3]

4. The Commission initially dealt with the infringement complaint by way of an informal dialogue with the Netherlands, under the “EU pilot” [4] . The department responsible for the file at the time was the Directorate General for Health and Consumers (then referred to as ‘DG SANCO’).

5. In 2011, the Commission sent the complainant a letter informing it of its intention to close the case. However, after having received the complainant’s comments on that letter, the Commission kept the case open under the EU pilot procedure.

6. In March 2012, the Commission sent a letter of formal notice [5] commencing an infringement procedure against the Netherlands.

7. In July 2014, the Commission sent a supplementary letter of formal notice to the Netherlands. It then, following the start of a new Commission mandate in 2014, transferred the infringement complaint to another Commission department, the Directorate General for Justice and Consumers (‘DG JUST’).

8. In January and April 2016, the complainant met with the Commission to discuss various studies and data submitted by it.

9. In October 2018, the complainant filed two new infringement complaints against Germany and France , also concerning lighter safety. Additional meetings took place between the Commission and the complainant in December 2018 and February 2019.

10. In May 2019, the Commissioner for Justice and Consumers replied to a Member of the European Parliament’s question about the status of the infringement procedure against the Netherlands and the time the procedure was taking. According to the Commissioner, *“in view of the new complaints filed, the Commission has asked further information from the French, German and Dutch authorities. **The Commission is currently awaiting more feedback from the relevant authorities [...] before it could be able to take a position on the complaints and on the infringement case.**”*

11. Dissatisfied with how the Commission had dealt with the matter, the complainant turned to the European Ombudsman in July 2019.

## The Inquiry



**12.** The Ombudsman opened an inquiry into the complainant's concern about the time it was taking the Commission to deal with the infringement complaint against the Netherlands.

**13.** In late September 2019, the Ombudsman's inquiry team met with the Commission and inspected relevant documents on its case file.

**14.** The Ombudsman gave the complainant access to some of these documents, including the Commission's timeline of its investigation into the infringement complaint. Other inspected documents could not be shared with the complainant for confidentiality reasons.

## Arguments presented to the Ombudsman

**15.** The complainant argued that the Commission was taking excessive time to investigate its infringement complaint. It criticised the Commission for not having taken a procedural step since July 2014, when it had sent a supplementary letter of formal notice to the Netherlands.

**16.** The complainant wanted the Commission to send a reasoned opinion [6] to the Netherlands. It considered that the Commission had all the necessary information to do this.

**17.** According to the complainant, the circumstances of the case did not justify the time taken by the Commission. The complainant argued that the Commission should not delay further because there were multiple complaints [7] .

**18.** During the inspection meeting, the Commission put forward the view that the documents and timeline inspected by the Ombudsman's inquiry team showed continuous activity on the infringement complaint.

**19.** The Commission also explained that, in early 2014, based on the evidence it had received, the Commission had decided not to proceed with a reasoned opinion. It considered that there was insufficient evidence to demonstrate a failure by the Netherlands to fulfil its obligations under the relevant provisions of the General Product Safety Directive [8] .

**20.** During the inspection meeting, the Commission also updated the inquiry team on the status of its investigation. The Commission said that it expected to receive data from the Dutch authorities shortly, after which it would propose next steps.

**21.** In its comments on the inspection meeting report, the complainant expressed its concern that the Commission would further prolong the infringement procedure.

**22.** The complainant disagreed with the Commission's view that there had been continuous activity on the case. The complainant did not consider the explanations provided by the Commission about its activities [9] from November 2014 to October 2015 as sufficient to justify the lack of procedural steps.



**23.** For the complainant, the timeline showed that the Commission had “ *not stopped requesting* ” information from the Dutch authorities, something it found “ *less than productive* ” [10] . It was also concerned about the time the Commission would take to analyse the outstanding data, once received from the Netherlands. It criticised the Commission for the time it took (according to the complainant, 1 year and 8 months) to analyse the data provided by the Netherlands in November 2014.

**24.** On 3 February 2020, that is, during the course of the Ombudsman’s inquiry, the Commission sent a letter to the complainant informing it of its intention to close the case. Shortly after that, the complainant wrote to the Ombudsman expressing disappointment with the Commission for taking some nine years on the infringement procedure. The complainant maintained that the time taken by the Commission was excessive and unreasonable.

## The Ombudsman's assessment

**25.** Once the Commission has commenced an infringement procedure, there is no rule requiring it to send, within a specific period, a reasoned opinion or a letter about its intention to close a case. According to well-established case law [11] , the Commission enjoys a wide margin of discretion in deciding when and how to act in infringement proceedings against a Member State.

**26.** The Ombudsman has consistently taken the view that her role in such cases is limited to verifying whether the Commission has acted diligently and in accordance with the principles of good administration. This role may, for instance, include a review of whether the Commission has unduly delayed its handling of the case.

**27.** The Ombudsman acknowledges that more than nine years to conduct an investigation into an infringement complaint is a very long time, compared to the average time taken by the Commission to deal with infringement cases [12] .

**28.** However, the information provided in this complaint and the documents inspected show that the Commission conducted numerous rounds of information gathering and analysis, and engaged extensively with the Dutch authorities and the complainant. Given the Commission’s wide discretion in how it investigates a Member State’s potential infringement of EU law, it is not for the Ombudsman to call into question the appropriateness of its information gathering or to assess whether the activities carried out by the Commission in this case were “ *productive* ”.

**29.** Over the nine-year period, the Commission conducted approximately six rounds of information gathering with the Netherlands, while the complainant submitted reports and studies on more than 18 occasions. These reports and studies included: statistics; excel spreadsheets of testing data; various accident studies; consumer survey and interview results; risk assessments; market scanning results; information on joint market surveillance action [13] ; media tracking; information from consumer databases; a lighter hazard study; a study on flames; and an epidemiological study. The complainant also met with the Commission at least



13 times.

**30.** The documents inspected by the Ombudsman's inquiry team show that, from early 2013 to early 2014, after the first letter of formal notice was sent, the Commission was of the view that it required more information to move forward. It therefore asked the Netherlands to provide information concerning lighters and to comment on the evidence provided by the complainant. It also gave the complainant the opportunity to substantiate its case further.

**31.** During the 1 year and 8 months after having received the reply from the Netherlands to the supplementary letter of formal notice, the Commission met with the complainant at least twice to discuss the various reports and studies that the complainant had submitted during that period. During that time, the Commission also consulted Member States in a Consumer Safety Network [14] meeting [15] .

**32.** It is clear from the confidential documents inspected by the Ombudsman's inquiry team that, from July 2016, the Commission engaged on a regular basis with the Dutch authorities on the complaint. It also seems to have revisited some of the information submitted by the complainant during this time. From December 2018 to February 2019, the Commission met at least three times with the complainant. Around this time, the European Parliament's Committee on Petitions had an oral hearing and subsequently asked the Commission to reply in writing to a petition concerning the infringement procedure [16] .

**33.** Based on the Commission's extensive information gathering and its analysis, and given the extent of its engagement with the Dutch authorities and the complainant in this case, the Ombudsman has not found undue delay in the Commission's handling of this case.

**34.** On 3 February 2020, the Commission took the next procedural step in the infringement procedure, sending a letter to the complainant informing it of its intention to close the case.

**35.** As the Commission has now sent a letter to the complainant informing it of its intention to close the case, the Ombudsman considers that no further inquiries are justified.

## Conclusion

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

**As the Commission has now sent a letter to the complainant informing it of its intention to close the case, the Ombudsman considers that no further inquiries are justified.**

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

Emily O'Reilly



European Ombudsman

Strasbourg, 06/03/2020

[1] Including the following: Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, available at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0095> [Link] (the General Product Safety Directive); and the Commission Decisions 2006/502/EC, 2007/231/EC, 2008/322/EC and 2009/298/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters (no longer in force), available at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006D0502> [Link];

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32007D0231&from=FR> [Link] and <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009D0298> [Link].

[2] Article 6(1) of the General Product Safety Directive.

[3] Articles 8(2) and (3) and 9(1) of the General Product Safety Directive.

[4] Reference EU Pilot 1576/10/SNCO. The EU pilot procedure is an informal dialogue between the Commission and the relevant Member State about potential non-compliance with EU law. It sometimes takes place before the Commission launches an infringement procedure.

[5] A letter of formal notice is the first step of the infringement procedure. If matters are not resolved at this stage, the Commission can issue a “reasoned opinion”. 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](https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en) [Link]

[6] See footnote 5 above.

[7] The complaint to the Ombudsman did not concern these two additional complaints.

[8] Namely, Articles 6(2), 8(2) and (3) of the General Product Safety Directive.

[9] Following the inspection of the timeline, the Commission clarified to the Ombudsman’s inquiry team that during the November 2014 to October 2015 period, it was assessing data submitted by the Dutch authorities in reply to the supplementary letter of formal notice. Additionally, the Commission had discussed issues relating to lighters with Member States at the Consumer Safety Network meeting in October 2015. During that period, there was also ongoing work on lighters in the context of the extension of Decision 2006/502/EC<sup>3</sup> (under Article 13 General Product Safety Directive). That Decision allowed only child resistant lighters



to be placed on the market and banned novelty lighters.

[10] The Ombudsman's translations from French.

[11] See judgment of the Court of Justice in Case C-247/87, *Star Fruit v Commission* [1989], ECLI:EU:C:1989:58, para. 11, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61987CJ0247> [Link]

[12] In 2018, the Commission took on average 116 weeks to deal with EU pilots and 109 weeks to deal with infringement cases, that is to say just over 2 years for each. See the Commission's 2018 Annual Report, ("*Monitoring the Application of Union Law*", Part I, General Statistical Overview (page 11)) available at:

<https://ec.europa.eu/info/sites/info/files/report-2018-commission-staff-working-document-monitoring-application-eu-l>  
[Link]

[13] In the GPSD Committee meeting of 4 February 2013, a presentation was given on joint market surveillance action on lighters, including information on statistics, and the results of Member States' inspections in this area and of laboratory tests. See:

[https://ec.europa.eu/transparency/regcomitology/index.cfm?do=Search.getPDF&ds\\_id=25938&version=2&AttLang=](https://ec.europa.eu/transparency/regcomitology/index.cfm?do=Search.getPDF&ds_id=25938&version=2&AttLang=)  
[Link]

[14] The Consumer Safety Network is a consultative expert group chaired by the Commission. Its members are national experts from the 27 EU Member States and EFTA/EEA countries. Candidate countries and selected stakeholders can attend as observers.

[15] Public summary record of the meeting of the Consumer Safety Network of 7 October 2015.

[16]

<https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/0924%252F2018/html/Petition-No-0924%252>  
[Link]