

## **Decision in case 2265/2019/EWM on the European Commission's alleged failure to take a decision as regards an infringement complaint against Germany regarding a violation of EU environmental rules and failure to reply to requests for information on the matter**

Decision

**Case 2265/2019/EWM - Opened on 22/01/2020 - Decision on 19/06/2020 - Institution concerned** European Commission ( No maladministration found ) |

The case concerned how the Commission handled a complaint about Germany's possible infringement of the EU's Strategic Environmental Assessment Directive. The complaint has been pending before the Commission for two and a half years and the Commission has currently regular contacts with the German authorities. The Ombudsman inquired into the issue and found that there was no maladministration in the Commission's conduct.

### **Background to the complaint**

1. In May 2017, the German legislator changed the German Construction Code to allow for the possibility of drawing up, under certain conditions, plans for the use of land in areas outside existing urbanised areas without having to carry out a formal environmental assessment.
2. In September 2017, an environmental precaution association submitted an infringement complaint to the European Commission. It argued that this change infringes the EU's Strategic Environmental Assessment Directive [\[1\] \[Link\]](#), according to which public authorities are obliged to carry out an environmental assessment before drawing up a land-use plan.
3. The complainant asked the Commission for an update on the processing of this complaint in February 2019. The Commission explained in its reply dated March 2019 that it was in contact with the German authorities and that it was currently evaluating the most recent reply from the German authorities. The complainant sent two more emails to the Commission in May and June 2019 but did not receive another reply. He therefore turned to the Ombudsman in December 2019.

### **The inquiry**



4. 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 Germany.

5. In the course of the inquiry, the Ombudsman received the reply from the Commission to another request for information that the complainant had sent to the Commission in December 2019. The Ombudsman's inquiry team also met with the Commission's team on this case.

## Arguments presented to the Ombudsman

6. According to the complainant, the Commission has not acted. He states that the Commission should finally decide on the complaint. It should either reject it or initiate infringement proceedings against Germany. In the complainant's view, a decision by the Commission is also urgently required, because the German government intended to present a draft bill to amend the German Construction Code by the end of 2019 and extend the period of validity of the law at issue beyond 2019.

7. The Commission provided detailed information to the Ombudsman's inquiry team about how it is effectively processing this infringement complaint. In particular, the Commission clarified that it is currently in regular contact with the German authorities in relation to this infringement complaint.

## The Ombudsman's assessment

8. The Commission is responsible for overseeing the effective application, implementation and enforcement of EU law by the Member States. If a Member State fails to fulfil an obligation under the EU Treaties, the Commission, as guardian of the Treaties, can take measures (infringement proceedings) to bring this infringement to an end.

9. The Commission enjoys wide discretion in deciding whether and how to pursue infringement proceedings. The Ombudsman's role in this area extends to inquiring into the administrative and procedural handling of infringement cases by the Commission, including as regards the time taken and reasons given for any delays. The Ombudsman will find maladministration in this context only if the time the Commission has taken to handle the matter was unnecessarily extended, as a result of negligence by the Commission or unfounded postponements. [\[2\]](#) [\[Link\]](#)

10. The Commission has explained to the Ombudsman's inquiry team precisely how it is effectively processing this infringement file and explained in detail the nature of ongoing contacts with the German authorities. The details of these contacts cannot, at the present time, be made public. Disclosing more details would prevent the Commission from deciding on its position free from external influence and would risk undermining the dialogue with the German authorities for which the climate of cooperation and mutual trust is essential. Doing so could affect negatively the ability of the Commission to carry out its work of ensuring the proper



application of EU law.

11. However, having used her extensive powers of inquiry to verify precisely what is taking place, the Ombudsman can reassure the complainant that the Commission is dealing with this case diligently.

12. The Ombudsman also underlines, to the Commission, that it should inform the complainant adequately about the outcome of the procedure as soon as this becomes possible.

13. In the light of the confidential information provided by the European Commission, the Ombudsman assures the complainant that the inquiry has not brought to light any instance of maladministration.

## Conclusion

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

**There is no maladministration by the European Commission.**

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

Fergal Ó Regan

Head of Inquiries - Unit 2

Strasbourg, 19/06/2020

[1] [\[Link\]](#) More precisely, the complaint concerned Article 3(1) and (2) of Directive 2001/42.

[2] [\[Link\]](#) See e.g. Decision in case 369/2018/JAP, available at [https://www.ombudsman.europa.eu/en/decision/en/119020#\\_ftn12](https://www.ombudsman.europa.eu/en/decision/en/119020#_ftn12) [\[Link\]](#).