

Decision of the European Ombudsman on complaint 950/2020/DDJ about the alleged lack of progress by the European Commission in investigating a complaint against Ireland for possibly infringing EU law

Decision

Case 950/2020/DDJ - Opened on 25/06/2020 - Decision on 25/06/2020 - Institution concerned European Commission (No maladministration found) |

Dear Mr X,

On 1 June 2020, you submitted a complaint to the European Ombudsman against the European Commission concerning the alleged lack of progress made in investigating your infringement complaint (CHAP(2019)00542) against Ireland.

Your infringement complaint concerns the Irish authorities' alleged failure to implement correctly the European Working Time Directive. You have turned to the Ombudsman because you are concerned that the Commission is taking too much time to reach a conclusion on whether to open an infringement procedure, especially bearing in mind EU legislation on whistle-blower protection.

After a careful examination of the information provided by you, the Ombudsman finds no maladministration by the Commission. [1]

The Commission has established rules for handling its relations with individuals who submit infringement complaints [2] [Link]. According to the relevant provisions [3] [Link], the Commission *aims* to arrive at a decision whether to open an infringement procedure within one year from the date of registration of the complaint, provided that all the necessary information has been submitted by the complainant. Should the investigation take longer, the Commission should inform the complainant accordingly. In other words, while the Commission has set itself certain time limits that it seeks to adhere to, there is no legal deadline for the Commission's investigation. It is also important to point out in this context that an infringement complaint is not dealt with under EU whistle-blower rules, which do not apply in this case.

You submitted your complaint to the Commission in February 2019 and the Commission first concluded that the complaint did not warrant investigation. We appreciate that the Commission took some time to come to the conclusion that the complaint had aspects relating to the



implementation of EU law. However, we understand that it did not have all relevant documents until 21 November 2019.

Following further submissions from you, the Commission decided, on 21 November 2019, that your complaint in fact did warrant further investigation. We see from the information provided with your complaint that there have been further exchanges between you and the Commission on the matter and that the Commission has explained to you - in particular through the letter of 16 June 2020 to MEP Daly - why its investigation is taking some time.

In the above context, we do not, at this stage, find the time taken by the Commission to deal with the matter to be excessive.

As the Commission has clarified to you, the statement in its email of 29 May 2020 that the procedure could take several years, was not referring to the present stage of the investigation but to the (potential) infringement procedure in its entirety. [4]

It is also worth mentioning that the Commission enjoys wide discretion in deciding whether and when to commence infringement proceedings. [5] [Link] When it comes to infringement complaints, the Ombudsman's role is limited to examining whether the Commission has properly informed the complainant about its position and the progress in the case. As set out above, so far we consider that the Commission has done so.

I appreciate that this decision might be disappointing to you. I hope that the above information and explanations are nevertheless helpful.

Yours sincerely,

Tina Nilsson Head of Inquiries - Unit 4

Strasbourg, 25/06/2020

[1] [Link] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link].

[2] [Link] Annex to the Commission Communication *EU law: Better results through better application* (https://ec.europa.eu/info/publications/communication-commission-eu-law-better-results-through-better-application_en [Link]).



[3] [Link] Point 8.

[4] [Link] This includes sending a letter of formal notice to the country concerned, sending a reasoned opinion (formal request to comply with EU law), and - potentially - deciding to refer the matter to the Court of Justice of the EU. For more information regarding this procedure, see: https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en [Link].

[5] [Link] As has consistently been determined by the EU courts, cf. Case 247/87 *Starfruit v Commission* [1989] ECR 291.