

The European Commission's failure to finalise an updated Sustainability Impact Assessment before concluding the Mercosur-EU trade negotiations

Correspondence - 08/07/2020

Case 1026/2020/MAS - **Opened on** 08/07/2020 - **Decision on** 17/03/2021

Ms Ursula von der Leyen President European Commission

Dear President,

I have received a complaint from five civil society organisations against the European Commission on the above issue.

I have decided to open an inquiry into this complaint to examine the concerns put forward by the complainants.

The complaint concerns the fact that the Commission did not produce an updated Sustainability Impact Assessment (SIA) before an agreement was reached in the Mercosur-EU trade negotiations in June 2019.

The complainants contend that the fact that the SIA report was not finalised before the end of the negotiation process constitutes maladministration based on two grounds:

- a) The Commission disregarded its own guidelines on the use of SIAs stemming from a Commission Communication ('Trade for all') and the Commission Handbook on the use of SIAs.
- b) The Commission breached Article 21 TEU, which contains sustainability goals for all EU trade.

The complainants further contend that the content of the interim report, which was published in the meantime, does not take on board the latest information available.

Finally, the complainants contend that the fact that the interim report was not available when public consultations were conducted made it impossible to include comments on the interim



findings when the negotiations were ongoing.

I have decided that it would be useful to receive a written reply from the Commission to this complaint, both to the issues set out above and the questions in annex. My inquiry team is also available to meet with representatives of the Commission, if necessary. The responsible case-handler is Markus SPOERER, T. +32 2 28 32152, markus.spoerer@ombudsman.europa.eu.

Please note that I am likely to send your reply and related enclosures to the complainant for comments [1]. I would be grateful to receive that reply within three months from the date of this letter. If, in the course of this inquiry, the Commission becomes involved in court proceedings concerning the same subject matter as this complaint, I would ask you to let us know.

Yours sincerely,

Emily O'Reilly European Ombudsman

Enclosures:

Complaint 1026/2020/MAS

Annex with questions

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1. On the procedure for SIAs in general:

- What is the standard procedure for conducting SIAs? Is there an internal manual of procedure? If so, please provide this document to us.
- How does the Commission ensure that SIAs contain the latest information available?

2. Regarding this specific case:

- Was the standard procedure for SIAs followed in this case?
- Did the production of the SIA take longer than anticipated? If so, why?
- In which way (if any) did the Commission's negotiators have access to the preliminary results of the interim report before the end of the negotiations? How were the negotiators involved in the relevant public consultations?
- What does the Commission plan to use the SIA for once it is finalised? How will it contribute to future decision making?
- Does the Commission plan to update the content of the SIA to include the latest available



information and the results of the negotiations? If so, what is the expected timeline?

- Does the Commission plan to hold consultations with civil society organisations before the publication of the final report?
- When does the Commission plan to publish the final SIA report and a position paper on the report?

[1] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'. Such documents can be sent through secure channels, such as Ares, CIRCABC or equivalent applications. The case handler can be contacted beforehand, if necessary.