

## Decision of the European Ombudsman in the case 171/2020/KT on how the European Commission dealt with a complaint that Denmark had breached EU environmental law (Habitats Directive)

Decision

**Case** 171/2020/KT - **Opened on** 06/10/2020 - **Decision on** 06/10/2020 - **Institution concerned** European Commission ( No maladministration found ) |

Dear Mr X,

In January 2020, you complained to the European Ombudsman, on behalf of Sea Shepherd Nederland (Sea Shepherd), about how the European Commission dealt with the infringement complaint CHAP(2017)1868 against Denmark.

In its complaint to the Commission, Sea Shepherd argued that the Danish authorities (police and navy forces) breach the EU Habitats Directive [1] , as they support, facilitate or even participate in the annual hunt of long-finned pilot whales in the Faroe Islands (an event locally known as *Grindadráp* ).

In the complaint to the Ombudsman, you argue that, in assessing the infringement complaint, the Commission made manifest errors. In your view, by interpreting very narrowly the scope of the Habitats Directive and the obligations that it imposes on the EU Member States, the Commission wrongly excluded its applicability in this case. You contend that the Commission disregarded the “natural range” of the protected whales (that is, the spatial limits within which this species occur), which, you say, extends also to EU waters. You also believe that the Commission took a contradictory position by finding that the Habitats Directive does not apply to the action of the Danish authorities, at the same time as concluding that you had not provided sufficient evidence that Denmark breaches EU law. Finally, you argue that the Commission breached the European Code of Good Administrative Behaviour (ECGAB), as it did not examine the infringement complaint with diligence and did not clearly communicate its final position [2] .

After a careful analysis of all the information provided with the complaint, **we find no indication of maladministration by the European Commission.**

The Commission has wide discretion in dealing with infringement complaints [3] . Its policy on infringements of EU law is set out in its communication *EU law: Better results through better*



*application* [4] . When it comes to infringement complaints, the Ombudsman may examine whether the Commission has clearly explained its position and whether it has given the complainant the opportunity to provide comments before it closes a case. In that regard, the Commission is not obliged to engage with a complainant on every issue or argument raised in the infringement complaint. Rather, it suffices that the Commission explains clearly why it has taken a certain position. Regarding the substance of an infringement complaint, the Ombudsman may only intervene (by asking the Commission to look at the complaint again) in case there is an indication that the Commission was **manifestly wrong** in its presentation of the facts or of law.

We note that the Commission gave you the opportunity to comment on its position before it closed the case. We also consider that the Commission provided you with clear information as regards why it closed the infringement complaint.

The Commission said that the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) do not apply to the Faroe Islands [5] , which is an autonomous part of Denmark. As such, EU secondary legislation based on these Treaties, including the Habitats Directive, also does not apply to the Faroe Islands. *Grindadráp* takes place in the Faroe Islands.

Regarding the *natural range* of the pilot whales, the Commission said that the Habitats Directive protects the natural habitats and wild fauna in the European territory of the Member States to which TFEU applies [6] .

The Commission also said that, while not part of the EU, the Faroe Islands are part of Danish territory. When sending police and navy forces to the Faroe Islands, Denmark does so based on its right to maintain law and order and to ensure internal security during an activity which, controversial as it may be, is legal in this part of its territory.

We find nothing to indicate a manifest error in the Commission's assessment. Nor do we find anything to suggest that the Commission failed to comply with the principles of good administration and, in particular, its duty to state the grounds of its decision to close the infringement complaint.

In light of the above, the Ombudsman has closed the case. [7]

While you may be disappointed with the outcome of the case, we hope that you will find the above explanations helpful. We also consider it useful to note that the Commission has set out its position and powers regarding *Grindadráp* in its publicly available replies to various questions raised by MEPs [8] . The Commission is expected to do so again in the near future, as the issue has recently been raised again in the European Parliament [9] .

We apologise for the length of time it has taken to complete this inquiry.

Yours sincerely,



Tina Nilsson Head of the Case-handling Unit

Strasbourg, 06/10/2020

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01992L0043-20130701> [Link]).

[2] Article 18 of the ECGAB (“Duty to state the grounds of decisions”), available at <https://www.ombudsman.europa.eu/en/publication/en/3510> [Link].

[3] See judgment of the Court of 14 February 1989, *Starfruit v Commission*, 247/87 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61987CJ0247&from=EN> [Link]).

[4] [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN) [Link].

[5] Article 355 TFEU: “*[T]he Treaties shall not apply to the Faeroe Islands*”.

[6] Article 2(1) of the Habitats Directive: “*The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies*”.

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

[8] See, for example, the Commission’s replies to parliamentary questions [E-002160-14](#) [Link], [P-006608/2014](#) [Link], [E-006677/2014](#) [Link].

[9] See parliamentary question [E-004510/2020](#) [Link], addressed to the Commission in August 2020.