

Decision of the European Ombudsman on complaint 708/2000/(IJH)BB against the European Commission

Decision

Case 708/2000/(PB)BB - Opened on 18/07/2000 - Decision on 07/06/2001

Strasbourg, 7 June 2001

Dear Mr R.,

On 1 June 2000, you made a complaint to the European Ombudsman concerning alleged failure by the European Commission to publish the list of all committees which assist the Commission in the exercise of its implementing powers, as required by Council Decision 1999/468/EC (1) .

On 18 July 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 26 October 2000 and I forwarded it to you with an invitation to make observations, which you sent on 19 November 2000.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant complains that the Commission has not yet published the list of all committees which assist the Commission in the exercise of its implementing power (i.e. comitology committees), as required by Council Decision 1999/468/EC. The list should have been published by January 2000.

THE INQUIRY

The Commission's opinion

The Commission in its opinion made the following points:

As regards the background, Article 7(4) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission states that, « *The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall*



specify, in relation to each committee, the basic instrument(s) under which the committee is established ». Article 10 states that the Decision will take effect « *on the day following that of its publication in the Official Journal of the European Communities ».* It was published on 17 July 1999.

The list in question was actually published in Official Journal No C 225 of 8 August 2000.

The Commission wished to point out that it is always especially anxious to implement legislation scrupulously and correctly, particularly in view of the role conferred on it under the Treaty. It was also concerned to ensure as much transparency as possible. In this respect it should be pointed out that, over and above the obligations laid down in the Decision, the list published in the Official Journal indicated the applicable committee procedures and the publication references of the instruments in question.

As the case involved implementing a provision in a legislative instrument, the Commission was in fact faced with a complex task, which it finally succeeded in accomplishing.

Many reasons can be given for the delay; the Commission merely wished to stress three points:

The scope of the task encompassed several thousand legislative instruments adopted over a period of decades; furthermore, those instruments relate to different responsibilities assigned to various committees under legislation that has been adopted and amended throughout the history of the European Communities;

In particular, the exercise involved, first, distinguishing - from among the many tasks assigned to each of the committees - those tasks which came under the implementing powers conferred by the legislator on the Commission (the object of the Council Decision) from those which did not; and, second, settling a number of questions of legal interpretation which arose as a result;

Last but not least, it is worth bearing in mind the circumstances in which the work was carried out, i.e. departmental reorganisation following the change of Commission and the reforms requested by the European Parliament, which naturally led to coordination problems between the various departments concerned.

The complainant's observations

The complainant maintained his complaint and stated that he found the Commission's opinion totally unacceptable. The complainant made, in summary, the following points:

Council Decision 1999/468/EC sets out a timetable for action by the Commission. It was regrettable that the Commission failed to admit, up front and quite straightforwardly, that it had failed to meet the deadline for publication.

The complainant noted the phrase « *. especially anxious to implement legislation scrupulously and correctly, . ».* According to the complainant there is no doubt that when applied to others, i.e. the Member States, the above phrase would be interpreted by the Commission as including implementation within the prescribed timescale. The inference here was that the timescale set



by Council for the Commission did not apply. The complainant was not able to see any justified reason why this should be the case.

The complainant found it impossible to believe that Council Decisions such as 1999/468/EC are adopted without the involvement and agreement of the Commission. If this was indeed the case then the Commission was guilty of one or the other, or possibly both, of the following:

- a) failure to recognise the magnitude of the task that it was being given and to assign sufficient resources to ensure completion on time ;
- b) failure to manage the task effectively to a successful and timely completion.

According to the complainant, the Commission appeared to be saying that requirements to comply with the law are, for an indeterminate period, not applicable to any organisation that is subject to a re-organisation when that re-organisation was the result of a recent senior management change or the result of an imposition from outside the organisation.

The Commission has the responsibility, under Treaty of Amsterdam Article 211, to « *ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied* ».

The complainant was of the view that those responsible within the Commission for the failure to comply with Council Decision 1999/468/EC should be identified and held to account.

THE DECISION

1 Alleged failure to publish the list of all comitology committees, as required by Council Decision 1999/468/EC

1.1 The complainant alleges failure by the European Commission to publish the list of all committees, which assist the Commission in the exercise of its implementing powers, as required by Council Decision 1999/468/EC.

1.2 Article 7(4) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission provides that « *The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established* ». Article 10 provides that the Decision will take effect « *on the day following that of its publication in the Official Journal of the European Communities* ».

1.3 The Ombudsman notes that Council Decision 1999/468/EC was published on 17 July 1999 and took effect on 18 July 1999 and, therefore, the list of all comitology committees should have been published by January 2000.



1.4 The Commission in its opinion stated that the above mentioned list was published in Official Journal No C 225 of 8 August 2000.

1.5 The Commission gives in its opinion three particular reasons explaining the delay in publishing the above-mentioned list. Firstly, the scope of the task encompassed several thousand legislative instruments adopted over a period of decades. Secondly, the exercise involved, distinguishing those tasks which came under the implementing powers conferred by the legislator on the Commission from those which did not and settling a number of questions of legal interpretation which arose as a result. Thirdly, the circumstances in which the work was carried out, i.e. departmental reorganisation following the change of Commission and the reforms requested by the European Parliament, which naturally led to coordination problems between the various departments concerned.

1.6 The Ombudsman concludes that based on Article 7 (4) of Council Decision 1999/468/EC the Commission had a legal obligation to publish the list of all comitology committees by January 2000. The Commission published the above-mentioned list only on 8 August 2000 with a delay of over six months. By not publishing the list of all comitology committees as required by Council Decision 1999/468/EC, the Commission has failed to act in accordance with a rule which is binding upon it. Therefore, the Ombudsman finds an instance of maladministration by the Commission.

1.7 The above mentioned failure is binding upon the Commission as an institution. The legal obligation is an obligation of the European Commission. The European Ombudsman does not find it justified seeking to identify or to hold to account possible individuals.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Ombudsman concludes that based on Article 7 (4) of Council Decision 1999/468/EC the Commission had a legal obligation to publish the list of all comitology committees by January 2000. The Commission published the above-mentioned list only on 8 August 2000 with a delay of over six months. By not publishing the list of all comitology committees as required by Council Decision 1999/468/EC, the Commission has failed to act in accordance with a rule which is binding upon it. Therefore, the Ombudsman finds an instance of maladministration by the Commission.

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,



Jacob SÖDERMAN

(1) OJ L 184, 17/07/1999 p. 23-26.