

Decision on how the European Commission dealt with a complaint that Poland breached EU law in how it managed EU funding of a local project - CHAP(2019)01233 (case 2181/2021/DL)

Decision

Case 2181/2021/DL - Opened on 26/01/2022 - Decision on 26/01/2022 - Institution concerned European Commission (No maladministration found) |

Dear Mr X,

You recently submitted a complaint to the European Ombudsman about how the European Commission dealt with your infringement complaint CHAP(2019)01233 against Poland.

In your complaint to the Commission, you argued that the Polish authorities ('the Managing Authority') failed to comply with the EU Regulation on the European Regional Development Fund [1] and the Charter of Fundamental Rights of the EU [2] when managing EU funds granted to your company. In particular, you contended that due to alleged mismanagement, such as delayed payments and finalisation of the audit report only after the termination of the grant agreement, your company went bankrupt. You requested the Commission to ensure that your investment capital be refunded.

In your complaint to the Ombudsman, you argue that the Commission failed properly to address your allegations and your request.

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

The Commission enjoys wide discretion in deciding whether and when to commence an infringement procedure [3] .

The role of the Ombudsman is limited to ensuring that the Commission has adequately addressed the main concerns of a complainant and that its reply is clear and reasonable, as well as that it has given the complainant the opportunity to provide comments before it closed the case. The Ombudsman could question the substance of the Commission's reply only in case of a manifest error of assessment. In addition, please note that, in relation to your specific case, it is not within the Ombudsman's mandate to assess whether the actions of the Polish



Managing Authority constituted a breach of EU law.

The Commission informed you in detail of its assessment of your allegations against the Managing Authority, which it considered unfounded. The Commission said, in summary, that rather than delaying the payments to you, the Managing Authority had asked you several times to submit the payment requests and to correct mistakes contained therein. In addition, the Commission considered that the financial corrections made were justified due to the serious irregularities detected during the audit of the project. While the findings of the audit report became definitive in March 2012, the Managing Authority had informed you about its results already in February 2012. The Commission also found that the activities of the Managing Authority were transparent and in compliance with the principles of competition law, and that the Managing Authority was thus not responsible for the failure of the investment.

We note that the Commission clearly explained to you why it considered that there was no breach of EU law and that it gave you the opportunity to comment on its position before it closed the case. The Commission also engaged in further exchanges with you on the matter, providing you with comprehensive and reasonable explanations.

We thus find nothing to suggest that the Commission failed to comply with the principles of good administration and, in particular, its duty to give reasons for its decision to close the infringement complaint. Nor do we find anything to indicate a manifest error in the Commission's replies to you, which, we consider, address your main concerns in an appropriate manner.

In light of the above, the Ombudsman has closed the case. [4]

While you may be disappointed with the outcome of the case, we hope that you will find the above explanations helpful.

Thank you for having contacted the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 26/01/2022

[1] Regulation 1080/2006 on the European Regional Development Fund:
<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32006R1080> [Link] (no longer in force).

[2] Articles 16, 36, 41 and 42 of the Charter of Fundamental Rights of the EU:



https://www.europarl.europa.eu/charter/pdf/text_en.pdf [Link].

[3] Judgment of the Court (Second Chamber) of 14 February 1989, *Starfruit v Commission* , case 247/87: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61987CJ0247>.

[4] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/70707> [Link].