

## **Decision on how the European Commission dealt with a complaint that Spain violates EU environmental law by allowing the construction of a wind farm in Cantabria (CHAP(2021)2758) (case 970/2022/ABZ)**

Decision

**Case 970/2022/ABZ - Opened on 07/06/2022 - Decision on 07/06/2022 - Institution concerned** European Commission ( No maladministration found ) |

Dear Mr X,

You recently submitted a complaint to the European Ombudsman against the European Commission concerning the above issue.

In your complaint to the Commission of 24 June 2021 (CHAP(2021)2758), you argued that the Spanish authorities are in breach of EU environmental law, such as the Habitats Directive [1] and the Environmental Impact Assessment Directive [2] , when approving the construction of a wind farm in Cantabria, Spain. You argued that the project assessment was conducted with incorrect data, which did not reflect the existence of priority natural habitats on the project site, requiring special protection under EU law [3] .

In your complaint to the Ombudsman, you contend that the Commission was wrong to close your infringement complaint and that it has failed to ensure proper enforcement of EU law.

After a careful analysis of all the information provided with your complaint, we have decided to close the inquiry with the following conclusion:

**There was no maladministration by the European Commission [4] .**

The Commission has wide discretion in deciding whether and when to commence an infringement procedure [5] . Its policy on infringements of EU law is set out in its Communication “ *EU law: Better results through better application* ” [6] .

The Ombudsman would question the Commission’s position on an infringement complaint only in case of a manifest error of assessment. In the present case, I note that the Commission provided you with clear information about its position. In particular, it said that the national administrative and judicial authorities are primarily responsible for ensuring the correct



application of EU law and it advised you to turn to the Spanish authorities. The Commission also informed you that pursuing individual instances of an incorrect application of EU law, which do not indicate a systemic problem, does not fall within the priorities set out in its Communication. It has the discretion to take this view.

In light of the above, we find nothing to suggest that the Commission manifestly misinterpreted the facts or the law, or that it acted beyond the limits of its discretion.

In addition to the advice provided by the Commission, you may also consider contacting the national Ombudsman in Spain on the matter:

<https://www.defensordelpueblo.es/en/about-the-complaint/how-to-file-a-complaint/> [Link]

Although we understand you may be disappointed with this outcome, we nevertheless hope you find these explanations helpful.

Yours sincerely,

Tina Nilsson

Head of the Case-handling Unit

Strasbourg, 07/06/2022

[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01992L0043-20130701> [Link] .

[2] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052> [Link]

[3] Article 1 d) of the Habitats Directive, see footnote 1.

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

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

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

[6] [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]