

Preliminary findings of the European Ombudsman on how the European Commission handled two infringement complaints about planning laws and retail space in Germany, submitted by IKEA and Decathlon (2008/4946 and 2015/4207)

Correspondence - 15/07/2022

Case 2238/2021/MHZ - Opened on 01/02/2022 - Decision on 16/12/2022 - Institution concerned European Commission (Maladministration found) |

Case 2249/2021/MHZ - Opened on 01/02/2022 - Decision on 16/12/2022 - Institution concerned European Commission (Maladministration found) |

Ms Ursula von der Leyen

President

European Commission

Dear President,

I am writing to share with you my preliminary findings in my inquiry into the above complaints, concerning the time taken by the Commission to deal with an open infringement procedure based on two infringement complaints, 2008/4946 and 2015/4207.

In 2008, following unsuccessful litigation in national courts, IKEA Retail Germany submitted a complaint (2008/4946) to the Commission against Germany, concerning planning restrictions on retail establishments in two German federal states (Nordrhein-Westfalen and Baden-Württemberg). These restrictions apply to large retail premises of more than 800 square metres. IKEA argued that these planning laws do not comply with the principle of freedom of establishment [1] and with the Services Directive [2] .

On 25 June 2009, the Commission opened an infringement procedure [3] into the complaint, sending a 'letter of formal notice' to Germany. In 2014, Decathlon Germany submitted a complaint to the Commission about the same matter (2015/4207). The Commission decided to



deal with the complaints of IKEA and Decathlon jointly. On 18 June 2015, it sent the German authorities an additional letter of formal notice. Germany replied in August 2015.

Since then, IKEA and Decathlon have been in a regular contact with the Commission about the infringement procedure, including through meetings with the relevant Commission staff members and through correspondence.

In their complaint to the Ombudsman, the complainants take issue with the fact that the infringement procedure has been unresolved for an unduly long period of time - thirteen years - and that the reasons given by the Commission for the delay are not acceptable.

Among other things, the Commission has attributed the delay to: internal discussions within the Commission; ongoing dialogue with authorities in Germany and elsewhere concerning the matter; a related case in the Court of the Justice of the EU (CJEU), which concluded in 2018 (Visser case) [4] ; changes in the political landscape in Germany; and mooted proposals to amend related domestic law.

This case concerns the administrative stages of an infringement procedure. [5] The principles of good administration imply that procedures should not be unduly delayed.

During the inquiry [6] , the Commission acknowledged that this is among the longest-running infringement procedures to date. Over thirteen years have passed since the Commission opened the infringement procedure, but it has not yet been able to indicate when the procedure will end.

As Ombudsman, I take the view that such a significant delay is not reasonable. The different arguments put forward by the Commission to explain the delay appear, in part, to be cumulative and the result of the Commission's own failure to take a decision on whether or not to proceed with the matter. By any objective view, thirteen years is a disproportionately long amount of time for dealing with the administrative stages of an infringement procedure. The delay has had undeniably negative implications for the complainants.

Against this background, **I believe it is incumbent on the Commission to take a decision on the next stage in this infringement procedure and I invite the Commission to do so without any further unjustified delay** . I would be grateful if the Commission could inform me by 15 October 2022 of its views on these preliminary findings and my suggestion above.

I will also share this letter with the complainants for their views. Once I have obtained the views of the Commission and the complainant, I will take the next step in this inquiry.

Yours sincerely,

Emily O'Reilly



European Ombudsman

Strasbourg, 15/07/2022

[1] As set out in article 49 of the Treaty on the Functioning of the European Union.

[2] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0123> [Link]

[3] More information on EU infringement complaints and procedures:

https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en [Link]

[4] C-31/16 *Visser v Raad van de gemeente Appingedam*:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=175926&pageIndex=0&doclang=EN&mode=lst&d> [Link]

[5] The first two steps of the formal infringement procedure - the decision to send a letter of formal notice and the decision whether or not to send a reasoned opinion:

https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en [Link].

[6] Report on the meeting between the Commission and the Ombudsman inquiry team, and the inspection of the Commission's documents. The complainants' comments on the report are attached to this letter.