



Decision on how the European Commission dealt with a complaint about an unauthorised landfill in Italy (case 1234/2022/LM)

Decision

Case 1234/2022/LM - **Opened on** 25/07/2022 - **Decision on** 25/07/2022 - **Institution concerned** European Commission (No maladministration found) |

Dear Mr X,

In June 2022, you complained to the European Ombudsman about how the European Commission dealt with your infringement complaint [CHAP (2021)03429] against Italy.

In your complaint to the Commission, you alleged that an unauthorised landfill in the Municipality of Reggio Calabria, Italy, was in breach of EU environmental law. You argued that the landfill was used to disperse hazardous waste into the environment, such as used motor oil, photocopier toner and batteries. You also informed the Commission that you had made multiple complaints to the Italian authorities about the landfill, but that all of them remained unanswered. You consider that the Italian authorities are in breach of Directive 2004/35/CE [1] and Directive 2008/99/EC [2] .

In your complaint to the Ombudsman, you argue that, in assessing your infringement complaint, the Commission took no effective action and relied on false information provided by the Italian authorities. In your view, the Commission was wrong to close your complaint with the finding that there was insufficient evidence of systematic non-compliance with EU law.

After a careful analysis of all the information submitted to me, I have decided to close my inquiry with the following conclusion:

There was no maladministration by the European Commission [3] .

The Commission has wide discretion in deciding whether and when to launch an infringement procedure [4] . Its policy on infringements of EU law is set out in its Communication " *EU law: Better results through better application* " [5] . 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. Regarding the substance of an infringement complaint, however, 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 about its position. The Commission found that the issue at stake was not related to lacking environmental legislation or relevant sanctions for non-compliance, since Italian Law No. 68/2015 [6] has established a series of environmental crimes, including environmental pollution and environmental disaster. The issue was rather a problem of ensuring compliance with EU law. The Commission said that the obligation to ensure compliance with EU law lies primarily with the Member States' administrative and judicial authorities, which must ensure appropriate controls and take action in the event of breaches of the law. The Commission also described its settled practice to focus, as a matter of priority, on the most significant breaches of EU law that reveal a *general*, *persistent* and *systematic* non-compliance. The Commission said that it will not open an infringement procedure on the issue you complained about because it seems to be an isolated case without evidence that the same problem occurred on other sites. [7] It has nevertheless contacted the Italian authorities about the issue. The Italian authorities have informed the Commission that the waste on the site has been removed, as confirmed by an inspection report, and that a preliminary investigation to assess the level of environmental contamination is ongoing.

We consider the Commission's explanations to be reasonable. We find nothing to suggest that the Commission manifestly misinterpreted the facts or the law. It is within the Commission's discretion to focus on general, persistent and systematic non-compliance with EU law. The Commission has sufficiently explained why it does not consider your complaint to fall within this category.

We appreciate this may not be your desired outcome, but we hope you find these explanations helpful.

Yours sincerely,

Tina Nilsson

Head of the Case-handling Unit

Strasbourg, 25/07/2022

[1] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.



[2] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law.

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

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

[4] Judgment of the Court of 14 February 1989, *Starfruit v Commission*, 247/87:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61987CJ0247#:~:text=the%20EEC%20Tre>

[5] See

[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)

[6] Law No. 68 of May 22, 2015, relating to environmental crime provisions.

[7] See section 3 of the Commission Communication, cited above: Better results through better application: “[In] *individual cases of incorrect application not raising issues of wider principle, where there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law [...] if there is effective legal protection available, the Commission will, as a general rule, direct complainants in this context to the national level*”.