

Decision on how the European Commission dealt with a complaint that Spain is in breach of the Birds Directive (CHAP(2021)2524) (case 1511/2022/ABZ)

Decision

Case 1511/2022/ABZ - **Opened on** 09/09/2022 - **Decision on** 09/09/2022 - **Institution concerned** European Commission (No maladministration found) |

Dear Ms X,

You recently submitted a complaint to the European Ombudsman, on behalf of Mis Amigas Las Palomas, against the European Commission concerning the above issue.

In your infringement complaint to the Commission (CHAP(2021)2524), you argued that Spain is in breach of the Birds Directive [1] , by allowing the capture of city pigeons in urban areas and failing to report about such activities to the Commission [2] .

In your complaint to the Ombudsman, you argue that the Commission was wrong not to take action against Spain in relation to this matter.

After careful analysis of all the information you provided with your complaint, we have decided to close the 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 commence an infringement procedure [4] , even if it considers that a breach of EU law has occurred. When it comes to complaints about how the Commission has dealt with infringement complaints, the Ombudsman's role is therefore limited. The Ombudsman may seek to ensure that the Commission has explained properly how it has exercised its discretion but cannot interfere in the Commission's exercise of its wide discretion. The Ombudsman will intervene only if there is an indication of a *manifest error* of assessment by the Commission.

The Commission has informed you that your case does not constitute evidence of *systemic* non-compliance with EU law and it has informed you about the action it took in relation to structural problems it had identified as regards the implementation of the Birds Directive in Spain. It also said that pursuing this matter was not its political priority and it referred you to the



competent authorities at national level, which are primarily responsible for the enforcement of EU law. The Commission has the discretion to take this view.

We consider that the Commission provided you with clear and reasonable explanations about its position and we find nothing to suggest that it manifestly misinterpreted the facts or the law. Please note that the Commission has limited resources to pursue infringements of EU law. In line with the strategic approach set out in its Communication [5] , it generally pursues *systemic* issues of non-compliance with EU law, when there is no mean of redress available at national level.

In light of the above, the Ombudsman has closed the case.

While I understand that this is not your expected outcome, I hope that you find the above explanations helpful.

Thank you for having contacted the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 09/09/2022

[1] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009L0147-20190626> [Link]

[2] Art. 5 a) and b), Art. 6(2) and Art. 9 of the Birds Directive.

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

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

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

[5] Communication from the Commission “EU law: Better results through better application” (2017/C 18/02), available at:
[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]