

## **Decision on how the European Commission dealt with a complaint that Poland is in breach of EU law in relation to service of non-professional drivers (CHAP(2021)04147) (Case 1951/2022/ABZ)**

Decision

**Case 1951/2022/MIK - Opened on 25/11/2022 - Decision on 27/03/2023 - Institution concerned** European Commission ( No maladministration found ) |

Dear Mr X,

In October 2022, you submitted a complaint to the European Ombudsman against the European Commission concerning the above issue. You argued that Polish authorities breached EU law by imposing on you an administrative fine for providing driving services without a permit. In your view, according to the applicable EU rules and case-law, the requirement to obtain such a permit should apply to the company through which you provided your services, and not to you personally.

The Commission had replied to you that the provision of transport service by non-professional drivers was not regulated at EU level and that Member States are free to adopt their own rules. The Commission considered that the requirement that drivers are responsible for obtaining permits does not breach of EU law. The Commission moreover explained why certain provisions of EU law that you invoked were not applicable to your case.

As you were not satisfied with the Commission's reply to your concerns, you turned to the Ombudsman. The Ombudsman decided to open an inquiry and asked the Commission to explicitly address your concern, in light of recent case-law (case C-434/15) [1] , about the fine being imposed on you personally, rather than the company responsible for the online platform through which you provided your services. The Ombudsman also asked the Commission to clarify how it assessed your concern about a breach of the Charter of Fundamental Rights.

After careful analysis of all the information provided with your complaint and based on the Commission's reply in the context of this inquiry (attached to this letter), we have decided to close the inquiry with the following conclusion:

**There was no maladministration by the European Commission.**



The Commission enjoys wide discretion in deciding whether and when to commence an infringement procedure. Its policy on infringements of EU law is set out in its Communication 'EU law: Better results through better application'. [2] The Ombudsman's role in such cases is to assess whether there was a manifest error of assessment and that the Commission provided clear and reasonable explanation to the complainant.

In its reply in the context of this inquiry, the Commission explained that in case C-434/15, the Court of Justice of the EU ruled that an 'intermediation service' that connects non-professional drivers using their own cars with passengers should be considered a service in the field of transport. By doing so, the Court of Justice clarified which EU provisions are applicable in such cases. However, as the Commission pointed out, neither EU legislation nor the Court's ruling establish whether the driver working with similar services could receive a fine for a failure to obtain an administrative permit. There is no secondary EU legislation setting out the conditions under which Member States allow such transport services. EU law also does not stipulate which type of person is required to obtain a permit and should be liable for sanction if a permit is lacking. Moreover, the Commission explained that in the absence of relevant EU provisions, the case falls outside the scope of the Charter of Fundamental Rights.

The Ombudsman considers that the Commission has provided you with a reasonable and comprehensive explanation.

I realise that you might find this reply disappointing. You are welcome to turn to the Ombudsman again, should you encounter problems with an EU institution, body, office or agency.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 27/03/2023

[1] Judgment of the Court of Justice of the European Union of 20 December 2017 in case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain SL, paras. 39-41, 44-48: <https://curia.europa.eu/juris/liste.jsf?num=C-434/15> [Link]

[2] [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)