

Decision of the European Ombudsman on complaint 295/2004/JMA against the European Commission

Decision

Case 295/2004/JMA - Opened on 15/03/2004 - Decision on 07/04/2005

The complainant lodged a formal complaint with the Commission in January 2003, against the lack of food safety in Spain, and pointed to the responsibility on this matter of a number of public authorities and private enterprises. According to the complainant, this situation was in breach of existing EU legislation on this matter, in particular the provisions of Regulation 178/2002 laying down the general principles and requirements of food law. In November 2003, the complainant was informed of the Commission's intention to close the complaint. In his complaint to the Ombudsman, the complainant alleged that the Commission's decision to close his formal complaint was arbitrary. He complained about the long delay in the handling of his case; the lack of information received; and the institution's flawed legal interpretation of the applicable EU legislation.

The Commission argued that the assessment of the complaint had been carried out within the normal time for the review of complaints and furthermore that the information included with the complaint did not allow its services to clearly identify its object. As regards the alleged failure by the Spanish authorities to inform consumers of existing risks, the Commission noted that the provisions of the Regulation concerning information to consumers were not applicable, since Member States enjoy a transitional period until 1 January 2007.

The Ombudsman noted that the procedures to be followed by the Commission in its handling of complaints are set out in its Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law [\[1\]](#) [\[Link\]](#). He therefore assessed whether the specific allegations made by the complainant had any foundation in the light of the provisions of that Communication.

As regards the time taken to handle the case, the Ombudsman noted that the complainant submitted his complaint to the Commission in January 2003 and that, having completed its inquiry, the Commission informed him in November 2003 of its proposal to close the case. Accordingly, the Ombudsman concluded that the Commission had completed its examination of the complaint within the one-year rule set out in its own Communication.

In his decision the Ombudsman also assessed whether or not the complainant had received sufficient information. The Ombudsman concluded that the complainant had been informed in



writing through several communications of all the steps taken by the Commission in relation to his complaint, in accordance with the criteria set out in its own Communication.

As regards the Commission's interpretation of the pertinent EU rules in this case, the Ombudsman carefully reviewed the general principles and requirements governing the Union's food law laid down in Regulation (EC) no 178/2002 and concluded that the Commission's reliance on Article 4 (3) of the Regulation which requires that "*[e]xisting food law principles and procedures shall be adapted as soon as possible and by 1 January 2007 at the latest [...]*" appeared to be reasonable.

The Ombudsman therefore took the view that the Commission acted within its legal authority when it decided to close the case after having considered that, on the basis of the information contained in the complaint, there were no grounds to initiate infringement proceedings against Spain.

[1] [\[Link\]](#) OJ C 244 of 1.10.2002, p. 5.

Strasbourg, 7 April 2005

Dear Mr L.,

On 19 February 2004, you lodged a complaint with the European Ombudsman against the European Commission. Your complaint concerned the Commission's decision to close a formal complaint you had lodged with that institution, in which you alleged that the Spanish authorities were not complying with the existing EC Directives on health safety.

On 15 December 2003, you had sent a previous complaint to the Ombudsman concerning the same subject matter (reference 168/2004/JMA), which was declared inadmissible on 13 February 2004.

On 15 March 2004, I forwarded your new complaint to the President of the European Commission. The Commission sent its opinion on 23 June 2004, and I forwarded it to you with an invitation to make observations. You sent me your observations on 3 and 25 July, 29 August 2004, and 27 January 2005.

I am writing now to let you know the result of the inquiries that have been made. I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

On 15 December 2003, the complainant had first lodged a complaint with the Ombudsman against the Commission. The complaint was registered under file number 168/2004/JMA.

The facts of that case were, in summary, as follows:



On 17 January 2003, the complainant lodged a formal complaint with the Commission in which he generally complained against the lack of food safety in Spain, and pointed to the responsibility on this matter of a number of public authorities, private enterprises and associations. He stated that, as a result of the situation, systemic violations of the public right to health were taking place in Spain. He also explained that the existence of cartels in the food industry and their monopolistic practices were detrimental to the interests of consumers. He referred to the existing EU legislation on this matter, in particular to the provisions of Regulation 178/2002 laying down the general principles and requirements of food law which, in his view, were blatantly ignored in Spain.

The complainant indicated that, as an owner of a meat-processing company, he has been unable to trace the origin and health conditions of his supplies. The complaint included a number of press clipping concerning food safety in Spain, as well as copies of the complainant's correspondence with various national authorities.

As regards his complaint to the Commission, the complainant argued that the institution had not properly investigated it. His complaint to the Ombudsman, however, did not include any information on his exchanges with the Commission, or the representations made by the Commission services.

In view of the available information, the Ombudsman considered that the object of the complaint could not be identified, as required by Article 2 (3) of his Statute. He therefore declared the complaint inadmissible on 13 February 2004.

On 19 February 2004, the complainant forwarded additional information, including some of the correspondence he had had with the Commission services regarding his formal complaint. In view of this new evidence, the Ombudsman decided to register the complainant's letter as a new complaint (reference 295/2004/JMA) and to start a new inquiry.

The complainant also enclosed a copy of his original complaint to the Commission, which had been filled out on a standard Commission complaint form. In section 7 of the complaint regarding the organisation against which the complaint was addressed, the complainant referred to the Spanish administration, the regional authorities, business organisations, in particular the food industry, the Institute for the Defence of Consumers, as well as television and national press. The complainant alleged in section 8 that current practices by both private and public entities would lead to the collapse of the regulatory scheme, as a result of the lack of information given to consumers on food safety and on "traceability" (1), in breach of Regulation 178/2002/EEC [the Regulation, henceforth]. The complaint included nine enclosures concerning essays on food safety and traceability; speeches given by the complainant; announcement of a seminar being cancelled; documents from the Spanish Ministry of Agriculture on the slaughter of one animal; the development of a traceability system; examples of slaughter practices on a pig; examples of cheese production; a plan to develop a website; and a practical example of the situation of a herd of cows.

The complainant also included a letter from the Commission services dated 17 November 2003,



informing him of their intention to propose that the Commission close the complaint. The grounds for this decision were that some of the allegations contained in the complaint did not concern the public authorities of the Member State, and therefore the Commission was not competent under Article 226 of the EC Treaty to deal with the matter. As regards those allegations involving the Spanish authorities, the Commission stated that the relevant EU rules in the Regulation would not enter into force until 1 January 2007.

The complainant took the view that the manner in which the Commission had handled the complaint was inadequate because of the long delay in dealing with the case (ten months), the lack of information which he had received; and its legal interpretation of the Regulation. He noted that the Regulation also contains obligations for private firms (Articles 17, 18 and 19), and that some of its obligations were to enter into force at an earlier date, namely on 1 January 2005 (Article 18).

In the light of the information submitted in the complaint, the Ombudsman opened an inquiry against the Commission. The allegation on which the Ombudsman asked the Commission to submit an opinion was the following:

The complainant alleges that the Commission's decision to close the complaint he had lodged with that institution was arbitrary.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first described the factual and legal aspects of the case. It explained that, on 17 January 2003, the complainant submitted a formal complaint to the Commission in which he denounced the violation of the EU rules on food safety, in particular of Regulation 178/2000/EC, as a result of a "systematic obstruction and the refusal to give access to information to the detriment of consumers". The complaint was registered under file number 2003/4208.

The Commission explained that, as a result of the large number of documents enclosed with the complaint, which often had to be translated, the assessment of the situation took a certain time, even though it was carried out within the normal time for the review of complaints, and therefore within the limits of good administration.

As regards the aspects of the complaint concerning private firms, the Commission concluded that it had no power to intervene under Article 226 of the EC Treaty. In connection to actions undertaken by public authorities, the Commission explained that the information included with the complaint did not allow its services to clearly identify its object, in particular the allegations against the Spanish authorities. The Commission pointed out, however, that pursuant to Article 4 (3) of the Regulation concerning the communication of risks and information to consumers, Member States enjoy a transitional period to amend their national legislation until 1 January 2007.



Having reviewed the situation and on the basis of the above arguments, the Commission services proposed that the case be closed. The complainant was duly informed by letter of 17 November 2003, which also invited him to submit observations before the Commission's adoption of its final decision. In the absence of any comments from the complainant, the Commission closed the case on 30 March 2004.

The Commission considered that its services had acted properly and that, on the basis of the information contained in the complaint, there were no grounds to initiate infringement proceedings against Spain.

The complainant's observations

The complainant repeated the allegations made in the complaint. He stressed that the Commission's interpretation of Article 4 (3) of the Regulation was overly lax. He considered that these provisions could be implemented in a fairly short period of time, and explained that the technical means to trace the existence of dangerous substances in food could be easily developed. In the complainant's view, the Commission chose to ignore Article 65 of the Regulation which establishes that Articles 11, 12 and 14 to 20 should apply from 1 January 2005. The complainant also noted that the Regulation imposes a number of obligations on food and feed business operators.

The complainant also described in detail the failure of most national authorities involved in regulation and control of food safety to reply to his requests.

THE DECISION

1 The Commission's decision to close a complaint

1.1 The complainant lodged a formal complaint with the Commission on 17 January 2003, against the lack of food safety in Spain, and pointed to the responsibility on this matter of a number of public authorities, private enterprises and associations. According to the complainant, this situation was in breach of existing EU legislation on this matter, in particular the provisions of Regulation 178/2002 laying down the general principles and requirements of food law. On 17 November 2003, the complainant was informed of the Commission's intention to close the complaint.

In his complaint to the Ombudsman, the complainant alleges that the Commission's decision to close his formal complaint was arbitrary, because of the long delay with which the case was dealt; the lack of information received; and the institution's flawed legal interpretation of the applicable EU legislation.

1.2 The Commission argues that as a result of the large number of documents enclosed with the complaint, which often had to be translated, the assessment of the situation took a certain time, even though it was carried out within the normal time for the review of complaints. The Commission also argues that, insofar as the complaint was against public authorities, the information included with the complaint did not allow its services to clearly identify its object. The Commission adds, however, that as regards those allegations involving the Spanish authorities concerning its failure to inform consumers of existing risks, Member States enjoy a transitional



period to amend their national legislation until 1 January 2007.

Finally, the Commission explains that its services proposed the closure of the case after having considered that, on the basis of the information contained in the complaint, there were no grounds to initiate infringement proceedings against Spain. The complainant was informed of this proposal by letter of 17 November 2003 and, in the absence of any further information, the Commission closed the case on 30 March 2004.

1.3 The Ombudsman notes that, in its role of "Guardian of the Treaty" under Article 211 of the EC Treaty, the Commission has to ensure that Community law is applied.

In carrying out its duty, the Commission investigates possible infringements of Community law which come to its attention largely as a result of citizens' complaints. If as a result of its inquiry, the Commission considers that a Member State has failed to fulfil its obligations under the Treaty, Article 226 gives it the power to start infringement proceedings against the responsible Member State and, eventually, to bring the matter before the European Court of Justice.

1.4 The procedures to be followed by the Commission in its handling of complaints are set out in a Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (2) .

The Ombudsman will therefore assess whether the specific allegations made by the complainant have any foundation in the light of the provisions of that Communication.

Delay to deal with the complaint

1.5 As regards the time limit for investigating complaints, the Communication establishes in Article 8 of its Annex the following:

"As a general rule, Commission departments will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year from the date of the registration of the complaint by the Secretary-General.

Where this time limit is exceeded, the Commission department responsible for the case will inform the complainant in writing."

1.6 From the available information, it appears that the complainant submitted his complaint to the Commission on 17 January 2003 and that, having completed its inquiry, the Commission informed him on 17 November 2003 of its proposal to close the case. Accordingly, the Commission completed its examination of the complaint within the one-year rule set out in its own Communication.

In the absence of any evidence which may lead one to believe that the Commission unduly deferred action on the case, the Ombudsman therefore concludes that there appears to be no maladministration as regards this aspect of the case.

Lack of information

1.7 As regards the information which the complainant should receive from the Commission, the



Communication establishes in Article 7 of its Annex ("Communications with the complainants") the following:

"The Commission departments will contact the complainants in writing, after each Commission decision (formal notice, reasoned opinion, referral to the Court or closure of the case), of the steps taken in response to their complaint."

1.8 From the available information, it appears that the Commission addressed a number of communications to the complainant in relation to the handling of his complaint, namely an acknowledgement of receipt, the proposal to close the case, and the decision to close it. In the absence of any evidence which may lead one to believe that the Commission sought to conceal any information, the Ombudsman considers that the complainant was informed in writing of all the steps taken by the Commission in relation to his complaint, in accordance with the criteria set out in its own Communication. The Ombudsman therefore concludes that there appears to be no maladministration as regards this aspect of the case.

Interpretation of Regulation 178/2002/EC

1.9 The Ombudsman notes that the general principles and requirements governing the Union's food law are laid down in Regulation (EC) no 178/2002 (3) . As set out in its Article 1, the Regulation provides the basis for a high level of protection of human health and consumers' interest in relation to food. It establishes common principles and responsibilities, the means to provide a strong science base, efficient organisational arrangements and procedures to underpin decision-making in matters of food and feed safety. It therefore lays down the general principles governing food and feed in general, and food and feed safety in particular, at the Community and national levels.

The main provisions of the Regulation concerning the protection of consumers' interests and the dissemination of information are included in Articles 8, 9 and 10. Article 8 states that food law must aim at the protection of the interests of consumers, and provide a basis for consumers to make informed choices in relation to the foods they consume. Section 2 of the Regulation, including Articles 9 and 10, concerns the "Principles of Transparency" and lays down the need for an open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation, and revision of food law. In the event that food or feed may present a risk for human or animal health, Article 10 requires that authorities take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or feed, the risk that it may present, and the measures to be taken to prevent, reduce or eliminate that risk.

In order to comply with the above provisions, Article 4 (3) of the Regulation requires that,

"[e]xisting food law principles and procedures shall be adapted as soon as possible and by 1 January 2007 at the latest [...]".

1.10 Having reviewed the contents of the complaint lodged with the Commission, it appears that the specific allegations made by the complainant were laid down in section 8 of the complaint. The complainant briefly stated that current practices by both private and public entities would



lead to the collapse of the regulatory scheme, as a result of the lack of information given to consumers on food safety and on traceability, in breach of the Regulation. The additional enclosures included with the complaint did not appear to add any further information to the content of these allegations.

The Ombudsman notes that, in response to these allegations, the Commission argued that the information did not allow its services to identify the object of the complaint, and that as regards the complainant's concerns on the communication of risks and information to consumers, the relevant provisions of the Regulation would not be applicable since Member States had a transitional period to amend their national legislation until 1 January 2007.

1.11 The Ombudsman has carefully considered the provisions of the Regulation, the specific allegations set out by the complainant in his formal complaint to the Commission, and the legal analysis carried out by the institution in response to these allegations. Taking into consideration the nature of the allegations put forward by the complainant, the Ombudsman finds that the Commission was entitled to consider that the object of the complaint was unclear, and that the only specific allegations appeared to be related to the failure of the Spanish authorities to act properly as regards the communication of risks and the information to consumers. On the basis of that judgement, the Ombudsman finds that the Commission's reliance on Article 4 (3) of the Regulation which gives Member States a transitional period to amend the relevant national legislation until 1 January 2007 appears to be reasonable.

The Ombudsman therefore takes the view that the Commission acted within its legal authority when it decided to close the case after having considered that, on the basis of the information contained in the complaint, there were no grounds to initiate infringement proceedings against Spain. The Ombudsman therefore concludes that there appears to be no maladministration as regards this aspect of the case.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) As defined in Article 3 (15) of Regulation 178/2002/EC, "traceability" means the ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution.

(2) OJ C 244 of 1.10.2002, p. 5.



(3) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety; OJ L 031 , 01/02/2002, p.1.