

Decision in case 1637/2016/AMF on the European Commission's closure of an infringement complaint against France

Decision

Case 1637/2016/AMF - Opened on 02/03/2017 - Decision on 02/03/2017 - Institution concerned European Commission (No maladministration found) |

The case concerned the European Commission's closure of an infringement complaint about the application by French authorities of the Directive on the promotion of the use of energy from renewable sources [1] . The Ombudsman inquired into the issue and found that there was no maladministration by the European Commission.

The background to the complaint

1. The complainant, a Dutch national residing in France, has a company that produces clean energy from photovoltaic panels. The complainant requested permission from the local authorities ("prefecture") to install a current transformer that would allow him to provide energy to the general energy network. The local authorities denied his request. The complainant therefore complained to the European Commission, alleging that the French authorities had infringed EU law [2] , namely the Directive on the promotion of the use of energy from renewable sources [3] . The complainant argued that France did not respect its obligations under the provisions of the Directive, particularly those concerning the issuing of licenses for producing electricity from renewable energy sources and access to the energy network for electricity produced from renewable energy sources.

2. The European Commission closed the complainant's infringement complaint in August 2016. The Commission considers that France is respecting the obligations derived from the Directive on the promotion of the use of energy from renewable sources. The Commission found that the French local authorities' decision to refuse the complainant authorisation to install a current transformer was within their competence in town planning matters, which is an area falling outside the competence of the European Commission.

3. Not being satisfied with the Commission's handling of the matter, the complainant turned to the European Ombudsman in September 2016.

The inquiry



4. The Ombudsman opened an inquiry into the complaint that the European Commission was wrong to close the complainant's infringement complaint and that the European Commission should reopen the infringement complaint and initiate action against France before the European Court of Justice.

5. In the course of the inquiry, the Ombudsman's inquiry team duly considered the information provided in the complaint. In particular, the inquiry team carried out a thorough analysis of the correspondence that had taken place between the Commission and the complainant before the complainant turned to the Ombudsman. The Ombudsman's inquiry team carried out its own research in relation to the matter complained about.

The closure of the infringement complaint

Arguments made by the complainant

6. In his complaint to the Ombudsman, the complainant maintains that France is not respecting the obligations derived from the Directive on the promotion of the use of energy from renewable sources. The complainant argues that the Commission was wrong in its assessment of his infringement complaint.

The Ombudsman's assessment

7. In accordance with the established case-law of the Court of Justice of the European Union, the Commission enjoys discretionary power in deciding whether or not [4] and when [5] to commence infringement proceedings against a Member State and whether or not and when to refer a case to the Court [6]. Furthermore, the Commission's discretion means that individuals have no right to require it to adopt a specific position on issues of infringement of EU law [7]. The Commission's discretion is further developed in its Communication "EU Law: Better Results through Better Application" [8], in which it sets out "[a] more strategic approach to enforcement in terms of handling infringements". This means that the Commission will "focus and prioritise its enforcement efforts on the most important breaches of EU law affecting the interests of its citizens and business". In its Communication, the Commission also describes which cases it will investigate as a matter of priority.

8. In the present case, there is nothing to suggest that the Commission acted outside its margin of discretion in its handling of the complainant's infringement complaint. In addition, the Commission has kept the complainant informed of all steps taken in relation to his complaint and it has set out the reasons for closing it. There was thus no maladministration by the Commission.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion [9]:



There was no maladministration by the European Commission.

The complainant and the European Commission will be informed of this decision.

Strasbourg, 02/03/2017

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[1] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0028&from=fr>

[2] The Commission registered his complaint under CHAP (2014) 03744.

[3] Directive 2009/28/CE,
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0028&from=fr>

[4] See in particular: judgment of 6 December 1989 in Case C-329/88, *Commission v Greece* [1989] ECR 4159; judgment of 27 November 1990 in Case C-200/88, *Commission v Greece* [1990] ECR I 4299; judgment of 21 January 1999 in Case C-207/97, *Commission v Belgium* [1999] ECR I 275; judgment of 25 November 1999 in Case C 212/98 *Commission v Ireland* [1999] ECR I 8571; Judgment of 6 July 2000 in Case C-236/99, *Commission v Kingdom of Belgium* , [2000] ECR I-05657. Judgment of 14 May 2002 in Case C-383/00, *Commission v Federal Republic of Germany* , [2002] ECR I-04219.

[5] See judgment of 1 June 1994 in Case C-317/92, *Commission v Germany* [1994] ECR I 2039; judgment of 10 May 1995 in Case C-422/92, *Commission v Germany* [1995] ECR I 1097

[6] See judgement of 6 October 2009 in Case C-562/07, *Commission v Spain* [2009] ECR I-9553

[7] See judgement of 14 September 1995 in Case T- 571/93; *Lefebvre and others v Commission* [1995] ECR II 2379.

[8]
<https://ec.europa.eu/info/sites/info/files/communication-from-the-commission-eu-law-better-results-through-better-ap>

[9] Information on the review procedure can be found on the Ombudsman's [website \[Link\]](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark):
<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>
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