

## **Decision in cases 1234/2016/EIS, 1241/2016/EIS, 1717/2016/EIS and 1841/2016/EIS on the European Commission's alleged failure to reach a timely decision on an infringement case concerning an alleged abuse of fixed-term contracts in the public sector in Italy**

Decision

**Case 1234/2016/EIS - Opened on 21/12/2016 - Decision on 19/06/2017 - Institution concerned** European Commission ( No further inquiries justified ) |

**Case 1241/2016/EIS - Opened on 21/12/2016 - Decision on 19/06/2017 - Institution concerned** European Commission ( No further inquiries justified ) |

**Case 1717/2016/EIS - Opened on 21/12/2016 - Decision on 19/06/2017 - Institution concerned** European Commission ( No further inquiries justified ) |

**Case 1841/2016/EIS - Opened on 21/12/2016 - Decision on 19/06/2017 - Institution concerned** European Commission ( No further inquiries justified ) |

These complaints concerned an alleged failure by the European Commission to reach a timely decision on an infringement case concerning fixed-term contracts in the public sector in Italy. The Ombudsman decided to deal with all four cases together.

In the course of the Ombudsman's inquiry, the Commission explained that it had received hundreds of infringement complaints from Italian citizens about the same matter. With a view to finding a speedy resolution, the Commission opened the file as an "EU Pilot" case in 2014. Since the EU Pilot was not successful, the Commission opened formal infringement proceedings in 2015. In 2015 and 2016, the Italian authorities adopted important legislative reforms, and in late 2016, an Italian court made a reference for a preliminary ruling to the Court of Justice of the European Union concerning similar issues to those raised in the infringement case.

In these circumstances, the Commission took the view that it needed to await the judgment of the Court before it could decide which actions to take in the infringement investigation.

The Ombudsman found the Commission's view reasonable and considered that further inquiry was not justified at this stage. She thus closed the cases but asked the Commission to inform her, within three months of the delivery of the judgment, of the action it has taken in the



infringement case.

### **The background to the complaints**

1. In 2014 and 2015, the Ombudsman received complaints from Italian citizens concerning the Commission's processing of an infringement complaint regarding an alleged abuse of fixed-term contracts in Italian schools [1]. The complainants alleged that Italy had not complied with the judgment of the Court of Justice of the European Union ('CJEU') in the *Mascolo* [2] case.
2. In 2015, the Commission opened formal infringement proceedings into the matter. The scope of the proceedings was subsequently extended to cover the **whole public sector in Italy**.
3. In 2016, the Ombudsman received four complaints concerning the Commission's alleged delay in its handling of the infringement issue. She decided to deal with these complaints together.

### **The inquiry**

4. The Ombudsman opened an inquiry into the four complaints and identified the following allegation:

The Commission is unnecessarily delaying its handling of the infringement complaint.

5. In the course of the inquiry, the Ombudsman received a copy of the replies of the Commission to the four complaints. She also carried out a thorough analysis of the correspondence that had taken place between the Commission and the complainants before the complainants turned to the Ombudsman. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

### **Delay in the Commission's handling of the infringement case**

Arguments presented to the Ombudsman

6. The complainants argued that the Commission had failed to deal with the infringement case in a timely manner and urged the Commission to take Italy to the CJEU without further delay.
7. In its replies, the Commission noted that it had received hundreds of complaints from Italian citizens concerning the same issue. Since the Commission's initial contacts with the Italian authorities in 2014, using the EU Pilot [3], did not resolve the problem, it opened formal infringement proceedings [4] in 2015.
8. In July 2015, the Italian authorities introduced an important legal reform referred to as the "Jobs Act" ("decreto legislativo" N:o 81/2015). This reform was notified to the Commission in



March 2016. In addition, in April 2016, the Italian authorities made a further important reform through a delegated act (“legge delega”) N:o 2015/124 which also provides for several implementing acts.

9. Finally, in September 2016, an Italian court made a reference for a preliminary ruling [5] to the CJEU asking for clarifications on questions similar to those at stake in these complaints.

10. The Commission concluded that, in this complex situation, it needed to await the judgment of the CJEU in order to be able to decide how to proceed on the infringement case.

The Ombudsman's assessment

11. The Ombudsman accepts the Commission's argument that it needs to await the outcome of the pending court proceedings concerning similar issues before deciding on the next step in the infringement case. The subject-matter of the court proceedings [6] is indeed clearly linked to the legal issues at stake in these complaints. The outcome of the court proceedings will in all likelihood influence the Commission's legal position on the infringement case. In these circumstances, and at this stage, the Ombudsman finds that her further inquiry into these complaints is not justified.

12. The Ombudsman notes, however, that the infringement case is important for the everyday life of many Italian citizens. The Ombudsman trusts that once the judgment in the pending court proceedings has been delivered, the Commission will act without delay in the matter. The Ombudsman asks the Commission to inform her, within three months of the delivery of the judgment, of the action it has taken in the infringement case.

## Conclusion

On the basis of the inquiry into these complaints, the Ombudsman closes it with the following conclusion [7] :

**At this stage, a further inquiry into the complaints is not justified. The Ombudsman notes, however, that the infringement case is important for the everyday life of many Italian citizens. She trusts that once the judgment in the pending court proceedings has been delivered, the Commission will act without delay in the matter. The Ombudsman thus asks the Commission to inform her, within three months of the delivery of the judgment, of the action it has taken in the infringement case.**

The complainants and the Commission will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 19/06/2017



[1] The Ombudsman opened inquiries into cases where the Commission had not replied to citizens' letters about the state of play of the case.

[2] Judgment of the Court in joined Cases C-22/13, C-61/13 to C-63/13 and C-418/13, *Mascolo and Others*, ECLI:EU:C:2014:2401. By this judgment, the CJEU ruled that national legislation, which authorises the renewal of fixed-term employment contracts to fill posts of teachers and administrative staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding any possibility of obtaining compensation for any damage suffered on account of such a renewal, is contrary to Clause 5(1) of the framework agreement on fixed-term work. This framework agreement and the Clause are set out in the Annex to Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC (European Trade Union Confederation), UNICE (Union of Industrial and Employers' Confederations of Europe) and CEEP (European Centre of Enterprises with Public Participation).

[3] "EU Pilot" is a scheme designed to resolve compliance problems without having to resort to formal infringement proceedings.

[4] This means issuing a letter of formal notice to the Member State concerned.

[5] Case C-494/16, *Santoro v Comune di Valderice and Presidenza del Consiglio dei Ministri*.

[6] The questions referred are available here:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CN0494&qid=1493207322940&from=FI>  
[Link].

[7] 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>  
[Link].