

## Decision in case 64/2017/NF on a European Commission public consultation not being available in all official EU languages

Decision

**Case 64/2017/NF - Opened on 03/02/2017 - Decision on 07/12/2017 - Institution concerned** European Commission ( Maladministration found ) |

A German association representing consumer interests complained about the European Commission's decision to conduct a public consultation for the wider public in English only. The complainant contended that the Commission's decision meant that EU citizens who do not have a sufficient knowledge of English could not take part in the public consultation.

Given that the public consultation in question was about to close, the Ombudsman immediately, upon opening her inquiry, asked the Commission to extend the consultation period and to provide the complainant with a German translation of the consultation documents. The Ombudsman also asked the Commission to allow other citizens to request translations into their preferred EU language.

The Commission responded by stating that it was committed to the principle of multilingualism. However, as its translation resources were limited, it said it could not accept the Ombudsman's solution proposal. It argued that to do so would set a precedent that the Commission would have difficulties in honouring.

The Ombudsman regrets that the Commission did not accept her proposal for an immediate solution in this specific case. The Ombudsman finds that the Commission's decision to conduct the public consultation in English only constituted maladministration.

However, the Ombudsman notes that, had the new rules on public consultations recently adopted by the Commission applied in this case, the public consultation in question would have been made available in at least German, English, and French and possibly even in all official EU languages. Moreover, there is currently an ongoing Ombudsman inquiry into the Commission's general language regime for public consultations. Against that background, the Ombudsman takes the view that it would serve no useful purpose to continue the inquiry, or to make a recommendation, in the present case.



## The background

1. The complainant is a German association that promotes e-cigarettes. At the end of 2016, the complainant contacted the European Commission with its concern that the Commission's public consultation on "excise duties applied to manufactured tobacco" [1] was available in English only, and not in any of the other official EU languages. The complainant stated that it represents about 1,000 persons who would like to participate in the consultation but were not able to understand the consultation documents as they were available in English only. In response, and without giving any further explanations, the Commission confirmed to the complainant that the public consultation, which was open for contributions from 17 November 2016 to 16 February 2017, would be held in English only.
2. The complainant was not satisfied with the Commission's reply and turned to the Ombudsman in January 2017.
3. The Ombudsman opened an inquiry into the complainant's concern that, by providing the public consultation in English only, the Commission had discriminated against much of the EU's citizenry; that it had effectively excluded EU citizens who do not have a sufficient knowledge of English from taking part in the consultation; and that it had indirectly influenced the outcome of the public consultation. The complainant wanted the Commission to make the public consultation available in all 24 official EU languages and to extend the consultation period to allow all interested EU citizens to participate in the consultation (once it had been made available in all official languages).
4. The Ombudsman initiated her inquiry by proposing an immediate solution to the Commission (see below) with the intention of enabling EU citizens not proficient in English to participate in the consultation. The reason for proposing an immediate solution was that the Commission's public consultation identified its target audience as "*all interested parties*" and that the consultation was scheduled to close within two weeks from the Ombudsman's opening of the inquiry.
5. Subsequently, following the Commission's adoption of new rules on the languages of its public consultations, the Ombudsman made further inquiries by asking the Commission how the particular public consultation would have been dealt with, had it been launched under the new rules.
6. This decision takes into account the Commission's replies to the Ombudsman's proposal for an immediate solution and her further inquiries.

## The Commission's public consultation not being available in all official EU languages

### The Ombudsman's proposal for an immediate solution



7. The Commission's language policy for public consultations is a matter of great importance to EU citizens and therefore also to the Ombudsman. The Lisbon Treaty has strengthened the right of citizens and associations to participate in the democratic life of the Union. It requires, among other things, that the EU institutions maintain an open, transparent, and regular dialogue with representative organisations and civil society. [2]

8. While there is no general principle of EU law that confers on every citizen a right to have, in all circumstances, a version of anything that might affect his or her interests drawn up in his or her language, the public consultation complained about in this case identified **its target audience as “ all interested parties ” and stated that it was seeking the views of “ EU citizens and stakeholders ”**. The Ombudsman would thus have expected the Commission to ensure that as many EU citizens as possible could inform themselves about the subject-matter of the public consultation and take part in it, if they so wished.

9. Against this background, the Ombudsman found no obvious acceptable reason why the public consultation in this case should have been made available in English only. Neither had the Commission provided any explanation to the complainant on why the consultation was available in English only. Mindful that the public consultation was about to close, the Ombudsman made the following proposal for an immediate solution to the Commission:

**The Ombudsman invites the Commission to**

**(i) provide the complainant with a German translation of the consultation documents as soon as possible;**

**(ii) inform citizens, by way of information published on its dedicated website in the other 23 official EU languages, that they will be provided with a translation of the relevant public consultation documentation into their own official language at their request; and**

**(iii) extend the deadline for the submission of contributions to the relevant consultation by an appropriate time period, so that the citizens represented by the complainant, and other interested citizens, have sufficient time to submit their contributions.**

10. The Ombudsman made it clear that her inquiry concerned this particular public consultation only. Given that the Ombudsman was already conducting a more general inquiry into the Commission's language regime for its public consultations, the Ombudsman informed the Commission that she would deal with the general matter of the Commission's language policy in this area in her forthcoming decision closing that inquiry [3] .

11. In reply to the proposal for an immediate solution, the Commission stated that it shares the view that its language policy for public consultations is a matter of great importance. The Commission said that it is firmly committed to the principle of multilingualism and it ensures full respect for the right of all citizens to communicate with it in any of the official EU languages. The Commission thus accepts contributions to public consultations in any of the official EU



languages, irrespective of the language in which the public consultation is itself available.

**12.** The Commission also stated, however, that resources available for translation are limited and primarily needed to meet the Commission's legal obligations, such as translating all legislative and key political documents into all official EU languages. Not all consultation documents can thus be made available in all EU languages.

**13.** In response to the concrete proposal for an immediate solution in the present case, the Commission argued that providing the complainant with a translation of the consultation documents, and extending the deadline for the submission of contributions, would set a precedent that the Commission would have difficulties in honouring. It could also have led stakeholders, who were unaware of the possibility of requesting a translation into a language other than English, to argue that they had not been treated equally. In addition, offering the possibility of providing translations at the request of stakeholders, as well as extending the consultation period, would have created considerable planning uncertainties and would have put the timely adoption of Commission initiatives at risk. Making available translations on request would not have been particularly effective, given the limited resources available for translation.

**14.** The Commission concluded that it is seeking a more viable solution to strengthen translation requirements for public consultations in general, by updating the guidelines for Commission staff on the language policy of public consultations, a copy of which it would share with the Ombudsman in the context of her more general inquiry into the Commission's language regime for its public consultations. The Commission assured the Ombudsman that it is strongly committed to further improving its practices and to extending the reach of public consultations.

**15.** The complainant did not make any comments on the Commission's reply.

**16.** In response to the Ombudsman's further inquiries, the Commission stated that had its new rules on the languages of public consultations been in place, it would have made its public consultation on "excise duties applied to manufactured tobacco" available in at least German, English and French. As it was a consultation of *broad public interest*, the Commission said it would have also considered publication into additional, possibly even all, official EU languages. Furthermore, it would have made the consultation page, or a summary thereof, available in all official EU languages. [4]

## The Ombudsman's assessment after the proposal for an immediate solution and her further inquiries

**17.** The Ombudsman regrets that the Commission did not accept her proposal for an immediate solution in this case, and that the public consultation in question, available in English only, therefore closed on 16 February 2017, as originally scheduled. This means that it is no longer possible to achieve a satisfactory outcome in the individual complaint that triggered the present inquiry. It appears that the Commission's failure to act on the Ombudsman's proposed solution



has had the consequence that, in particular, the complainant was deprived of the opportunity to contribute to the public consultation. The Ombudsman finds that the Commission's decision to conduct this public consultation in English only disadvantaged not just the complainant but also other "*interested parties*" who might have wished to contribute to the consultation. The Ombudsman finds that this constituted maladministration.

**18.** The Ombudsman agrees with the Commission's view that a general solution is needed for the use of languages in all of the Commission's public consultations. The Ombudsman notes that the Commission has recently adopted new rules [5] on the languages of its public consultations with a view to making public consultations more widely accessible.

**19.** The Ombudsman is already conducting an inquiry into the Commission's general language regime for its public consultations and the concern that the Commission, by not making its consultations available in all official languages of the EU, fails to ensure that citizens can exercise their rights to participate in the EU decision-making process effectively and equally. The Ombudsman will make known her view on the Commission's new rules on the languages of its public consultations in the context of that inquiry.

**20.** The Ombudsman is also currently considering what contribution she might make on the issue of the use of EU languages by all EU institutions and bodies, given the importance of reconciling the language rights of EU citizens, and the related obligations on EU institutions and bodies, with the need for administrative efficiency and the protection of the EU budget.

**21. Meanwhile,** the Ombudsman notes that, had its new rules on the languages of public consultations been in place, the Commission says **it would have made its public consultation on "excise duties applied to manufactured tobacco" available in at least German, English and French** . As it was a consultation of **broad public interest** , the Commission says it would have also considered **publication into additional, possibly even all, official EU languages** . Furthermore, it would have made the **consultation page, or a summary thereof, available in all official EU languages**.

**22.** Given that the Commission has introduced new rules on the languages of its public consultations, and given that she is currently inquiring in a general way into the Commission's practices in relation to public consultations, the Ombudsman is of the view that it would serve no useful purpose to continue the inquiry into the present case or to make a recommendation arising from it.

## Conclusion

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

**The Commission's decision to conduct the public consultation in question in English only constituted maladministration. However, this public consultation has now been**



**closed. The Commission has recently adopted new rules on the languages for its public consultations. Had these new rules applied to the public consultation in question here, it would have had been available in at least two additional languages (German and French). Given that the Ombudsman has an ongoing inquiry into the Commission's general language regime for its public consultations, the Ombudsman concludes that no further inquiries are justified in this particular case. The Ombudsman is of the view also that a recommendation, arising from her finding of maladministration in this particular case, would not be useful at this stage.**

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

Emily O'Reilly

European Ombudsman

Strasbourg, 07/12/2017

Final English version of the decision on complaint **64/2017/NF**

[1]

[https://ec.europa.eu/taxation\\_customs/consultations-get-involved/tax-consultations/public-consultation-excise-duties](https://ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations/public-consultation-excise-duties)  
[Link]

[2] See Articles 9, 10(3), 11(1), 11(2), 11(3) Treaty on European Union.

[3] Further information on case 7/2016/PL is available at:

<https://www.ombudsman.europa.eu/cases/caseopened.faces/en/66794/html.bookmark> [Link]

[4] The Ombudsman's request for further information is available at:

<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/86634/html.bookmark>  
[Link]

The Commission's reply to the Ombudsman's request for further information available at:

<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/86635/html.bookmark>  
[Link]

[5] Note for the attention of Heads of Cabinets, Directors-General and Heads of Services;



Subject: Language coverage of public consultations launched by the Commission, 28 April 2017, Ref. Ares(2017)2209890.