

Decision in case 969/2017/LM on the European Commission's failure to prepare a report, within the statutory deadline, on Member States' compliance with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

Decision

Case 969/2017/LM - Opened on 28/06/2017 - Decision on 23/03/2018 - Institution concerned European Commission (No further inquiries justified) |

The case concerned the European Commission's failure to submit a report to the European Parliament and to the Council assessing the extent to which Member States have taken the necessary measures in order to transpose Directive 2010/64/EU [1] .

The Ombudsman inquired into the issue and found that the Commission had not fulfilled its obligation to submit the report within the statutory deadline of 12 months following the transposition deadline set for the Member States. In fact, at the time of the conclusion of this inquiry, the Commission has not yet submitted the required report.

In the course of the inquiry, the Commission said that the 12 month deadline, set out in the Directive, did not provide sufficient time for it to produce the kind of comprehensive report which it wished to submit. While the Ombudsman accepts that this was likely to have been the case, she points out that it was always open to the Commission to make an interim report, within the 12 month deadline, and follow up later with a more comprehensive report. However, the Ombudsman concludes that there was no intentional breaching by the Commission of its statutory obligation and that further inquiries are not justified.

The Ombudsman notes that the Commission is now committed to submitting the report "at the latest at the beginning of 2018" and trusts that the Commission will do so without further delay.

Background to the complaint

1. Directive 2010/64/EU ("the Directive") lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant. The Directive required EU Member States to bring into force the laws, regulations and administrative provisions necessary to transpose it into the national legal systems by 27



October 2013.

2. The Directive states that the “ *European Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals* ” [2] .

3. On 26 June 2015, a representative of the European Commission stated, in a written reply to a parliamentary question [3] , that all Member States had communicated the national measures that transpose the Directive [4] .

4. In 2016, a Member of the European Parliament submitted another parliamentary question to the Commission, asking why the Commission had not yet submitted its report assessing the extent to which Member States have taken the necessary measures to comply with the Directive [5] . On 25 July 2016, the Commission replied that it “ *is currently closely monitoring the effective application of Directive 2010/64/EU in all Member States, [...]. If, after the assessment of the national measures transposing the directive, non-conformity issues arise, the Commission will take every appropriate measure, including where necessary initiating infringement proceedings [...]. Furthermore, now that all Member States have communicated national measures transposing the directive, the Commission is in a position to prepare a report assessing the extent to which the Member States have taken the necessary measures in order to comply with the directive* ” [6] . On 30 May 2017, the Commission replied to a similar parliamentary question [7] that the “ *preparation of this report requires a thorough assessment of the national measures transposing the directive in all the Member States. The report will be published as soon as this assessment is finalised, at the latest at the beginning of 2018* ” [8] .

5. The complainant is an interpreter. In 2016, he brought an infringement complaint to the European Commission, arguing that Italy and France have not correctly transposed Directive 2010/64/EU into their respective national legal systems. In particular, he argued that Italy had failed to establish a register of translators and interpreters [9] and that a French court had unlawfully set a maximum numbers of registered interpreters. He also approached the Commission in relation to its delay in preparing the report on the Member States’ compliance with the Directive.

6. In January 2017, the Commission closed the complainant’s infringement complaint against Italy and France because it considered that the points raised by the complainant do not violate the Directive. It stated that the Directive does not oblige Member States to set up registers of qualified translators and interpreters, nor does it set out rules for the registration or engagement of translators and interpreters. However, the Commission stated that it was examining how Member States transposed the Directive and that it would open infringement proceedings, should it find that some Member States transposed it incorrectly [10] .

7. Regarding the report, the Commission stated that, since all Member States had communicated transposing measures, it was in a position to prepare a report assessing to what extent the national measures comply with the Directive.



8. When the Commission had not submitted the report in June 2017, the complainant turned to the Ombudsman.

The inquiry

9. The Ombudsman opened an inquiry into the complainant's position that the Commission had failed to prepare the obligatory report on the Member States' compliance with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings within the statutory deadline.

10. In the course of the inquiry, the Ombudsman received the Commission's reply and the comments of the complainant in response to the Commission's reply. The Ombudsman's decision takes into account the arguments and views put forward by the parties.

Failure to submit report to the European Parliament and the Council

Arguments presented to the Ombudsman

11. The complainant argued that the Commission was obliged, by 27 October 2014, to submit to the European Parliament and to the Council a report assessing the extent to which Member States had taken the necessary measures to comply with the Directive. The complainant pointed out that the Commission had failed to produce the report by the statutory deadline and that, at the time of his complaint to the Ombudsman (32 months after the deadline), it had not yet submitted the report.

12. The Commission stated that, before it could prepare the report, the Member States would have to have transposed it into national law. Only then could the Commission assess the completeness and conformity of the national measures transposing the Directive. In other words, the transposition of the Directive is a prerequisite for it to be able to assess the extent to which Member States have taken the necessary measures to comply with the Directive. As soon as the Member States communicated transposing measures, the Commission started to assess the compliance of the national measures with the Directive.

13. The Commission contended that its main priority was to ensure that all Member States transpose the requirements of the Directive into national law, so that the rights set out in the Directive are effectively protected throughout the European Union. The Member States had to have transposed the Directive into national law by 27 October 2013. On that date, 16 Member States had not communicated transposition measures to the Commission. In November 2013, the Commission therefore started infringement proceedings for non-communication or partial communication of transposing measures against these 16 Member States.



14. When replying to the Ombudsman's inquiry in September 2017, the Commission stated that all Member States had communicated national measures transposing the Directive and the Commission was thus in a position to prepare the report assessing the extent to which Member States have taken the necessary measures in order to comply with the Directive. The Commission stated that it was preparing the report, which would be published as soon as the compliance assessment of the national measures is finalised, in the beginning of 2018 at the latest.

15. The Commission added that recent Directives which give the Commission the same reporting obligation towards Parliament and Council give the Commission a considerably longer period to draw up such reports [11] .

16. In his comments to the Commission's reply, the complainant stated that the Commission does not act consistently. Whilst it is very strict regarding Member States' compliance with their obligations under EU law, it is not equally rigorous as regards its own obligations.

The Ombudsman's assessment

17. The Commission clearly did not respect its obligation to submit the report by 27 October 2014. At the time of this Ombudsman decision, 41 months after the deadline, the Commission has not yet submitted the report despite its recent stated intention to publish it “ *at the latest at the beginning of 2018* ”. This very long delay in submitting the report inevitably leaves citizens with the impression that the Commission does not comply with its duties diligently. This undermines citizens' trust in the EU.

18. The Commission's argument is that the purpose of the report was not merely to set out which Member States had transposed the Directive and which had not, but that the report would also have to consist of an assessment of whether the transposition measures are in conformity with the Directive. The Commission's argument is that the statutory deadline for submitting its report, within 12 months after the transposition deadline for the Member States, was simply too short.

19. The Ombudsman appreciates that, in submitting its report to the Parliament and the Council, the Commission would like to be able to give a comprehensive account of the extent to which transposition measures taken by the individual Member States implement the Directive correctly. Undertaking such a conformity exercise is a lengthy and complex business given that the Directive is likely to impact on a range of existing pieces of legislation within each of the Member States. The Commission must also be satisfied that it has itself taken the same approach, in the interests of consistency, across all 28 Member States. The Ombudsman accepts that the Commission would need more than 12 months, following the transposition deadline for the Member States, in order to produce such a report.

20. However, it seems to the Ombudsman that it would have been possible for the Commission



to have met its obligation to submit a report within 12 months without any compromising of its overall objective. There was nothing to prevent the Commission from submitting an interim report, within the 12 month deadline, which simply communicated the position as of the date of the report. Given that the Commission would intend to report comprehensively at a later date, an interim report could have been expressed in quite general terms and need not have required a significant administrative effort on the Commission's part. Most importantly, such a report would have demonstrated the Commission's diligence in meeting its statutory obligations.

21. It is no longer possible, at this stage, for the Commission to report within the statutory 12 month deadline. The Ombudsman accepts that there was no intentional breach by the Commission of its statutory obligation to report by 27 October 2014. The Commission, it would seem, was focused on the substantive issue of producing a comprehensive conformity assessment across all of the Member States. At the same time, the Commission missed an opportunity to show that it respects the obligations laid on it by the particular Directive. Nevertheless, and in the particular circumstances, the Ombudsman does not find that the Commission's failure amounted to maladministration. In all the circumstances, the Ombudsman concludes that further inquiries into this complaint are not justified.

22. The Ombudsman notes the Commission's current commitment to submit the report "*at the latest at the beginning of 2018*" and notes also that we are now three months into 2018. The Ombudsman trusts that the Commission will indeed submit the report without further delay.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

No further inquiries are justified into the present case and the Ombudsman trusts that the Commission will submit to the European Parliament and to the Council, without further delay, the report assessing the extent to which Member States have taken the necessary measures to transpose Directive 2010/64/EU . The Ombudsman wishes to obtain a copy of the report when submitted.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 23/03/2018

[1] Directive (EU) 2010/64 of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280/1. 26.10.2010).



[2] Article 10 of Directive (EU) 2010/64.

[3] Parliamentary question E-005875-15.

[4]

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-005875&language=EN>

[5] Parliamentary question E-004113-16.

[6]

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-004113&language=EN>

[7] Parliamentary question E-001239-17, follow up of question E-004113-16.

[8]

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-001239&language=EN>

[9] Article 5(2) of Directive 2010/64/EU states that “ *In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities* ”.

[10] Under Article 258 of the Treaty on the Functioning of the European Union (TFEU), “ *If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union* .”

[11] For instance, Article 25 of Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings provides that the Commission shall submit a report by 11 June 2022