



European Ombudswoman  
Ms Emily O'Reilly  
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Contact:  
Mag. Karin Wagenbauer

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Date:  
Vienna, 9 October 2017

Dear Ms O'Reilly,

Regarding your letter from 25 July 2017 to my colleagues, Ombudsman Dr. Peter Fichtenbauer and Ombudsman Dr. Günther Kräuter, and myself, concerning the implementation of REGULATION (EC) No 1005/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 September 2009 on substances that deplete the ozone layer (hereafter: *EU Ozon Reg.*), I would like to communicate to you the following:

The Austrian Ombudsman Board is carrying out investigation procedures on potential cases of maladministration on account of individual complaints or ex officio. The Ombudsman Board has not received any complaints about Austrian authorities concerning an inadequate implementation of the EU Ozon Reg. or concerning inadequate control of implementation of the provisions stated in the Regulation. To date, there has been no reason to carry out an ex-officio-investigation, since no media reports or other indicators have made such a step appear necessary.

In Austria, several laws and regulations which deal with issues such as industrial emissions and the emission of greenhouse gasses (e.g. Waste Emission Certificate Act 2011, Fluorinated Greenhouse Gases Act 2009, Climate Protection Law 2011, IPPC-facilities – and Seveso II-Factory-Acts of the *Laender*) exist.

In 2012, the EU-Ozon Reg. was incorporated in the Austrian legal system in the course of an amendment of the Chemicals Act 1996 in 2012. § 5 par. 1 clause 6 of the Chemicals Act 1996 stipulates the implementation and enforcement of several EU-acts, such as the EU Ozon Reg.

The aim of the Chemicals Act is defined in § 1: „The aim of this federal act is the precautionary protection of the life and health of people and the environment from direct or indirect harmful effects that can be created by the production and circulation, the purchase, use or waste treatment of substances, mixtures and products, especially by preventing their creation or by making them recognizable and averting them.“

The competent authority according to Art. 26 and 27 of EU-Ozon Reg. is the Austrian Federal Minister of Agriculture, Forestry, Environment and Water Management. According to Art. 26 par. 1 lit. a to c of EU-Ozon Reg, he has to electronically transmit the data for every year to the European Commission by 30 June of the following year.

The respective governor of the nine *Laender* is responsible for monitoring the compliance with the regulations. According to § 37, customs authorities can temporarily seize objects if suspicion arises that the product was manufactured, circulated or used contrary to the EU-Ozon Reg. Acting against this regulation can be penalized with an administrative penalty of at least 500 € up to 20.180 €, and in the case of recurrence, up to 40.375 €. If the act also constitutes an element of a criminal offence, legal penalties can also apply.

In connection with the COUNCIL DIRECTIVE 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC Directive), and after an investigation in 2017 in Styria, the Austrian Ombudsman Board determined that the Styrian district authorities, at least in part, have not dealt sufficiently with the deadline of implementation and consequential obligations. The Austrian Ombudsman Board informed the governor about this deficiency and will elaborate on it in the next report to the national parliament. However, although the IPPC-directive includes regulations on industrial emissions, it does not directly refer to emission of greenhouse gasses. As mentioned earlier, there is no experience on investigation procedures regarding the EU-Ozon Regulation.

I hope the Austrian Ombudsman Board was able to provide an insight into its legal situation and experiences.

Yours sincerely,

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Dr. Gertrude Brinek

Chairperson of the Austrian Ombudsman Board