

Special report from the European Ombudsman to the European Parliament following the draft recommendation to the European Commission in complaint 3453/2005/GG

2007/2264(INI) - 03/09/2008 - Text adopted by Parliament, single reading

The European Parliament adopted by 613 votes to 40, with 34 abstentions, a resolution on the Special Report by the European Ombudsman following the draft recommendation to the European Commission in complaint 3453/2005/GG.

The own initiative report had been tabled for consideration in plenary by Proinsias **DE ROSSA** (PES, IE) on behalf of the Committee on Petitions.

MEPs endorse the European Ombudsman's recommendation to the Commission, suggesting that the Commission deal with the complaint as quickly and as diligently as possible.

The resolution stresses that the way in which the Commission handles complaints submitted by citizens, where an infringement of Community law by Member States is alleged, should always be in conformity with principles of good administration. The Commission itself indicated in its communication of 20 March 2002 that, as a general rule, it will decide whether to open infringement proceedings or to close the file within one year from the date of registration of the complaint and that it will inform the complainant in writing when this time-limit is exceeded. While they accept that in difficult and complicated cases the Commission's investigations may require more than one year, MEPs consider that exceeding the one-year time-limit is justified only when investigations are indeed still ongoing.

MEPs note that, in the present case concerning the German Government's failure to properly apply the Working Time Directive, the Commission intended to deal with the complaint in the light of its proposal for an amendment of the Directive and decided to await the outcome of the discussions on its proposal with the other Community institutions. However, the report underlines that that proposal was submitted in September 2004 and there is no evidence that the Commission has taken any further steps since then in order to proceed with its investigation.

While recognising that the Commission has certain discretionary powers with regard to the management of complaints and infringement proceedings, MEPs point out that Article 226 of the EC Treaty stipulates that the Commission is to initiate the pre-litigation phase if it considers that a Member State has failed to fulfil an obligation under the Treaty. These discretionary powers are also subject to legal limits set by general principles of administrative law and should not exceed the limits indicated by the Commission itself in its communication.

In general, MEPs express their concern at the unjustified and excessive amount of time – often spanning several years – which the Commission takes to pursue and conclude infringement proceedings and their dissatisfaction with the frequent examples of non-compliance by Member States with decisions of the Court of Justice. This undermines the credibility of the formulation and coherent application of Community law and serves to discredit the objectives of the EU.

The European Commission is called upon to:

- provide the Parliament with a list naming the Member States whose legislation is not in line with all provisions of the Working Time Directive and specifying the action it is taking with regard to this;
- take prompt action, in accordance with its prerogatives, in all cases and in all Member States where the transposition or implementation of the directive does not comply with the law laid down by the legislature and by the Court of Justice;
- analyse forthwith the new German law adopted on 1 January 2004, and which came into effect on 1 January 2007, in order to establish whether it is in line with all the provisions of the Working Time Directive and all applicable judgments of the Court of Justice;
- keep Parliament, and in particular its Committee on Petitions, fully informed of decisions in infringement files at all stages of the procedure.

In light of the foregoing, the Parliament also urges all the Member States to apply faithfully all the rules relating to health and safety at work on the basis of the principle that, in the event of any doubt, the interpretation of the law which is most favourable to the health and safety of workers should prevail (in dubio pro operario).