European Ombudsman

Emily O'Reilly
European Ombudsman

Friends of the Irish Environment
Mr Tony Lowes

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Strasbourg, 10/02/2016

Decision of the European Ombudsman concerning complaint 1956/2015/MG against the European Commission

Dear Mr Lowes

I am writing in reply to your letter of 8 December 2015 in which you complained that the European Commission has failed to initiate proceedings against Ireland before the Court of Justice of the European Union regarding the alleged infringement of the Council Directive 98/83/EC ('the Drinking Water Directive').

The Treaty on the Functioning of the European Union and the Statute of the European Ombudsman set certain conditions as to the opening of an inquiry by the Ombudsman. One of these conditions is:

Article 228 of the Treaty on the Functioning of the European Union:
"In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds (...)"

After a careful examination of your complaint, I have concluded that there are not sufficient grounds for opening an inquiry into your complaint.

From its letter to you of December 2015, it appears that the Commission is, at this point, satisfied with the course of action proposed by the Irish authorities as regards the monitoring of the THM exceedances and the notification of such occurrences to the public. It will, however, continue to monitor the issue. You have criticized this position and have argued that the Commission should ensure that the affected consumers should be directly informed of the THM exceedances.

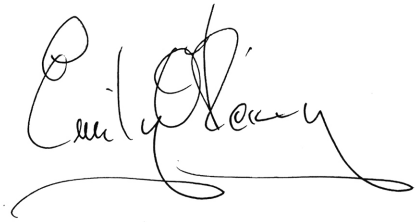
As you are no doubt aware, the case-law of the EU Courts recognises that the Commission enjoys considerable discretion in deciding whether or not[1], and when[2], to commence infringement proceedings and whether or not, and when[3], to refer a case to the Court. It is my view that the Commission is acting well within its margin of discretion in its decision to accept the course of action proposed by the Irish authorities. For this reason, I take the view that I do not have sufficient grounds on which to pursue your complaint further. Accordingly, I have decided to close the case.

At the same time, I appreciate that not all customers of the Irish water service ("Irish Water") will be satisfied with the approach to information provision proposed by the Irish authorities. Some customers may prefer to be informed directly rather than having to consult a website. And of course there will be customers for whom consulting a website proves either difficult or not possible.

Customers of Irish Water have the right to complain on any aspect of service provision and this, I expect, includes any complaint regarding the provision of information on THM exceedances. Complaints in this regard should be made initially to Irish Water which has a Code of Practice on Complaint Handling[4]. In the event that a customer is not satisfied with the response by Irish Water to a complaint, there is a further right of complaint to the Commission for Energy Regulation[5] which has a statutory responsibility to provide a complaints resolution service to customers with an unresolved dispute with Irish Water.

I hope you find this information helpful.

Yours sincerely,



Emily O'Reilly

[1] See in particular: judgment of 6 December 1989 in Case C-329/88, Commission v Greece [1989] ECR 4159; judgment of 27 November 1990 in Case C-200/88, Commission v Greece [1990] ECR I 4299; judgment of 21 January 1999 in Case C-207/97, Commission v Belgium [1999] ECR I 275; judgment of 25 November 1999 in Case C 212/98 Commission v Ireland [1999] ECR I 8571; Judgment of 6 July 2000 in Case C-236/99, Commission v Kingdom of Belgium , [2000] ECR I-05657. Judgment of 14 May 2002 in Case C-383/00, Commission v Federal Republic of Germany, [2002] ECR I-04219.
[2] See judgment of 1 June 1994 in Case C-317/92, Commission v Germany [1994] ECR I 2039; judgment of 10 May 1995 in Case C-422/92, Commission v Germany [1995] ECR I 1097.
[3] See judgment of 6 October 2009 in Case C-562/07, Commission v Spain [2009] ECR I-9553.
[4] http://www.water.ie/docs/Domestic-Complaint-Handling-Code-of-Practice.pdf
[5] Customer complaints regarding the quality of the public water supply are the responsibility of the Environmental Protection Agency.