



Speech

Improving the implementation of environmental legislation: the possible role of the European Network of Ombudsmen

Lunch time speech by the European Ombudsman.

Environment Policy Review Group Meeting, Brussels 17 November 2011

1. Introduction

First of all, I would like to thank Mr Falkenberg for inviting me to speak to you today.

I am going to talk about the role that the European Network of Ombudsmen could play in improving the implementation of environmental legislation.

I shall first make clear what the European Network of Ombudsmen is and what it does.

Then I shall explain how the Network fits into the institutional framework of EU environmental law.

Finally, I shall say what I think needs to be done in order to help members of the Network to be more active in the environmental field.

2. About the European Network of Ombudsmen

The European Network of Ombudsmen brings together the national and regional ombudsmen of the Member States and the European Ombudsman. Its members also include the Petitions Committees of the European Parliament, of the German Bundestag and of the German *Länder*, as well as the ombudsmen of certain other European countries.

We co-operate voluntarily on the basis of a clear division of labour, which is implicit in the Treaty. As European Ombudsman, I am competent to deal only with complaints against the European Union institutions. The authorities of the Member States fall outside my mandate, even when they are applying Union law. It is my colleagues in the Network who can inquire into complaints that public authorities in the Member States have failed to fulfil their obligations under Union law.

Our decisions on complaints are not legally enforceable. That means we are a **complement** to the courts, not a **substitute** for them.



Usually, the public authorities accept our findings and follow our recommendations, because we explain convincingly why we have made them and because we are recognised as being independent and impartial.

Co-operation through the Network plays an important role in the European Ombudsman's Strategy, which I adopted last year to cover the period up to 2015. (*The Strategy is available on my website in all languages and paper copies are also available here today*).

We offer a number of services to the Network in order to facilitate the exchange of information about developments in Union law and its implementation, and the benchmarking of best practices in complaint-handling. We also share information about complaints and transfer them to another ombudsman within the Network, when appropriate.

An important service which the European Ombudsman offers to members of the Network is to provide written answers to their queries about EU law and its interpretation, including queries that arise in their handling of specific cases.

In most cases, we consult the Commission to find the correct reply to the query.

The answers are not legally binding, but they make it possible for the ombudsman concerned to encourage and assist the relevant national authorities to interpret and apply Union law correctly.

3. The European Network of Ombudsmen and the environment

I shall now focus on the role played by the European Network of Ombudsmen in environmental matters.

As far as my own competence as **European** Ombudsman is concerned, the task mainly consists of supervising two EU institutions: the European Investment Bank and the European Commission.

The Ombudsman and the EIB signed a Memorandum of Understanding in 2008. This provides for the EIB to inform the public about the environmental policies and standards that apply to the projects it finances.

A key provision of the Memorandum is that the EIB must provide an effective internal complaints procedure for complainants to use before they can turn to the Ombudsman.

This works well for a number of reasons.

First, the internal complaints procedure has the resources needed to carry out inspections and take evidence on the spot, be it in Serbia, Uganda, Panama or the Sinai desert.

Second, the EIB is responsible for the internal complaints procedure and so has a reputational interest in ensuring its credibility.

Finally, if the complainant turns to the Ombudsman, the issues involved are clearly defined by the report of the internal complaints procedure and the



complainant's arguments as to why the report, or the EIB's response to its findings and conclusions, are not satisfactory.

The Commission and infringement complaints

However, most of the environmental complaints that come to the European Ombudsman are against the Commission. They are made by citizens or, more often, by non-governmental organisations, which have complained to the Commission against a Member State.

By complaining to the Commission, citizens hope to activate the so-called "infringement procedure", through which the Commission, as the "Guardian of the treaties", can investigate allegations that a Member State is failing to fulfil its obligations under EU environmental law and, eventually, bring cases to the Court of Justice.

The complainants turn to me when they are dissatisfied by the Commission's handling of their complaint against the Member State. In most cases, they are unhappy because they think the Commission is not pursuing the case vigorously enough, or because the Commission has closed the case on the grounds that there is no infringement.

My experience in dealing with these kinds of complaint shows that that the infringement procedure has several deficiencies from the standpoint of complainants in environmental cases:

- it is not intended to provide a remedy for the complainant;
- it does not provide for the investigation of infringements that have been brought to an end; *and*
- the complainant is not treated as a party in the procedure¹;

However, the major drawback of the procedure is that the Commission has only limited possibilities to examine *factual* issues.

If the question in dispute concerns the *interpretation* of EU law, the Commission has the necessary expertise and resources to pursue the matter vigorously and to refer it to the Court in order to seek a definitive ruling. However, the Commission's capacity to investigate disputes about the *application* of environmental law in the Member States is limited.

The European Investment Bank can carry out on-the-spot investigations because it only finances a limited number of projects. In contrast, the Commission could potentially receive complaints about **every** project or situation with environmental implications, in every Member State.

I don't believe it is feasible, in practice, for the Commission to carry this burden. Nor, is it even desirable in principle for it to try to do so.

¹ See the Commission's *Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law*, 2002 OJ C 244, p. 5.



4. The need for environmental watchdogs at Member State level

That brings me to the core issue that I want to put before you.

It does not matter how well-drafted European Union environmental law may be, it will not be **effective** unless the principles, standards and procedures it lays down are properly applied and enforced.

Proper application and enforcement depend, above all, on what happens at the Member State level. The constitutional architecture of the European Union gives to Member States the preeminent role in the administration of EU laws and policies.

In my view, **administrative** subsidiarity also implies subsidiarity in the **remedies** that citizens and civil society organisations can invoke to call national authorities to account for their application and enforcement of EU law at national level.

In other words, we should not try to make the Commission, in its role as “Guardian of the treaties”, a substitute for effective remedies at the national level. Centralised enforcement from Brussels cannot be the best way to deal with factual disputes about what is happening “on the ground” in a Member State.

What are the implications of this for policy?

In my view, the architecture of European environmental law requires an independent watchdog in each Member State, which can investigate whether the national authorities are properly applying and enforcing EU environmental law, and which can receive complaints on the subject from citizens and civil society.

In the present economic climate, few Member States are likely to welcome proposals to create additional public bodies. The good news is that, in most Member States, this would be unnecessary. Existing bodies, in particular ombudsmen, could carry out this task. Indeed some ombudsmen are already competent and active in the field.

To realise the full potential of the Network, three things are necessary.

The first is to ensure that ombudsmen are equipped with the investigatory powers they need. This is something that only the Member States can do.

The second is to ensure that ombudsmen have the information and knowledge they need. As European Ombudsman, I will do my best to enhance the information flow via the Network and the query procedure. I believe that it would also be valuable to offer the staff of national and regional ombudsmen training in EU environmental law and policy and I am ready to work with the Commission to explore how this could be organised and financed. A first step, that would cost nothing, would be to make available to each members of the Network the correspondence tables which show how the EU environmental directives are transposed into their national law.



Finally, we also need to convince complainants that it is in their interests to complain to the ombudsman in their Member State rather than turn to the Commission in Brussels. That will require action by the Network itself, by the authorities of the Member States and by the Commission.

Within the European Network of Ombudsmen, we have made a start by adopting and publishing a Statement which makes clear that national and regional ombudsmen deal with complaints against public authorities of the Member States about matters within the scope of Union law.

We have also adopted a **logo** for the Network in order to raise its public profile, enhanced the Network's visibility on our website, and created an interactive guide to help potential complainants to identify which body could best deal with their problem.

The Commission and the authorities of the Member States also need to publicise the possibility to complain to ombudsmen, rather than to the Commission, about alleged infringements of EU environmental law.

I am ready to work with the Commission, with my colleagues in the European Network of Ombudsmen and with the authorities of the Member States in order to develop these ideas further and take them forward for the benefit of complainants and, indeed, of our environment.

Thank you for your attention.