European Ombudsman

Emily O'Reilly
European Ombudsman

Recommendation

of the European Ombudsman in case 428/2016/JAS on the European Commission's response to a request for internal review of its decision to grant market authorisation for a genetically modified oilseed rape

Made in accordance with Article 3(6) of the Statute of the European Ombudsman[1]

This case concerned the European Commission's reply to a request to review its decision to authorise products containing a genetically modified oilseed rape. Such requests can be submitted by NGOs under the so-called "Aarhus Regulation". The complainant, a German NGO active in the area of biotechnology, disagreed with the way in which the Commission had handled the environmental concerns put forward in its review request. The complainant also argued that the Commission had not replied within the applicable deadline of 18 weeks.

The Ombudsman inquired into the issues and asked the Commission to provide the complainant with additional explanations on its environmental concerns. The Ombudsman observed that, particularly in areas that are the subject of significant public debate, as is the case with genetically modified organisms, public bodies should be particularly citizen-friendly and should address reasonable concerns raised by the public. The Commission then provided the complainant with additional explanations and clarifications. The Ombudsman thus found that the Commission had resolved this aspect of the complaint.

Regarding the delay in replying to the review request, the Ombudsman found that it had taken the Commission an unreasonable length of time—35 weeks instead of 18—to respond to the complainant's request. This constituted maladministration.

The Ombudsman therefore recommends that the Commission review its procedures with a view to ensuring that the time limits for dealing with review requests made under the Aarhus Regulation are met. She also recommends that if, very exceptionally, the Commission is unable to comply with a deadline, it should inform the NGO of the reasons for this and of the right to start legal proceedings.

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15, available at: https://www.ombudsman.europa.eu/en/resources/statute.faces

1 avenue du Président Robert Schuman
CS 30403
F - 67001 Strasbourg Cedex

T. + 33 (0)3 88 17 23 13
F. + 33 (0)3 88 17 90 62

www.ombudsman.europa.eu
eo@ ombudsman.europa.eu

Background to the complaint

1. The complainant, a German non-governmental organisation active in the area of biotechnology, disagrees with the European Commission's decision of April 2015 to authorise the placing on the EU market of products containing the genetically modified oilseed rape "MON 88302"[2].

2. The EU rules on genetically modified organisms ('GMOs') used in food and feed[3] govern the authorisation of such products. According to these rules, no such products shall be authorised unless the company applying for authorisation has adequately and sufficiently demonstrated that they, among other things, do not have adverse effects on human health, animal health or the environment[4]. Following an application by a company, the European Food Safety Authority (EFSA) prepares a scientific opinion on the product. EFSA checks, in particular, whether the GMO-based food or feed complies with the above criteria[5]. Within EFSA, the scientific assessment is done by the Panel on Genetically Modified Organisms, the members of which are scientists from across Europe[6].

3. In this case, in August 2011, an agrochemical and agricultural biotechnology company submitted an application[7] for the placing on the EU market of products containing the genetically modified MON 88302 oilseed rape. The application did not cover cultivation[8]. MON 88302 oilseed rape was developed to confer tolerance to the herbicide *glyphosate*.

4. In June 2014, EFSA's Panel on Genetically Modified Organisms issued a favourable opinion[9] on the application, concluding that MON 88302 was as safe as its conventional counterpart and non-GM oilseed rape commercial varieties. According to the panel, MON 88302 was unlikely to have adverse effects on human and animal health and the environment in the context of the scope of the application.

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[2] Commission Implementing Decision (EU) 2015/687 of 24 April 2015 authorising the placing on the market of products containing, consisting of, or produced from genetically modified oilseed rape MON 88302 (MON-883Ø2-9) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council, OJ 2015 L 112, p. 22, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.112.01.0022.01.ENG

[3] Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, OJ 2003 L 268, p. 1, consolidated version available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1508832423352&uri=CELEX:02003R1829-20080410

[4] Articles 4(3) and 18(3) of Regulation 1829/2003.

[5] Article 6 of Regulation 1829/2003.

[6] https://www.efsa.europa.eu/en/panels/gmo

[7] Reference EFSA-GMO-BE-2011-101.

[8] The application was for the placing on the market of foods, food ingredients, and feed containing, consisting of, or produced from MON 88302 oilseed rape as well as the placing on the market of MON 88302 oilseed rape in products consisting of it or containing it for any other uses than food and feed as any other oilseed rape (Recitals 1-2 of Commission Implementing Decision 2015/687).

[9] EFSA Panel on Genetically Modified Organisms (GMO), 2014. Scientific Opinion on application (EFSA-GMO-BE-2011-101) for the placing on the market of herbicide-tolerant genetically modified oilseed rape MON 88302 for food and feed uses, import and processing under Regulation (EC) No1829/2003 from Monsanto (the 'EFSA opinion'). EFSA Journal 2014;12(6):3701, 37 pp. doi:10.2903/j.efsa.2014.3701,available at: http://onlinelibrary.wiley.com/doi/10.2903/j.efsa.2014.3701/epdf

5. On the basis of this opinion[10], the Commission submitted a draft decision[11] authorising MON 88302 oilseed rape to the Standing Committee on Plants, Animals, Food and Feed, a committee composed of representatives of all Member States and presided over by a representative of the Commission[12]. This committee votes[13] on Commission draft decisions on marketing authorisation applications for genetically modified food[14]. In the case of MON 88302 oilseed rape, however, the committee failed to issue a (positive or negative) opinion on the Commission's draft decision[15]. In such cases, the Commission may then submit the draft to an appeal committee[16].

6. In November 2014, the appeal committee also failed to decide[17] on whether to agree or disagree with the Commission's draft decision[18]. The Commission was thus free to decide whether to adopt its draft decision[19]. In April 2015, in line with EFSA's opinion, the Commission issued a decision authorising the import into the EU of MON 88302 oilseed rape for the purpose of its subsequent processing into food and animal feed and the placing on the market of products (food for human consumption and animal feed) containing MON 88302 oilseed rape[20]. It did not authorise MON 88302 oilseed rape for cultivation.

7. In June 2015, the complainant filed a request for internal review of the Commission's decision[21], which was later supported by eight other organisations[22]. This request was made according to the rules of the Aarhus

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[10] Article 7(1) of Regulation 1829/2003.
[11] More information available at: http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.documentdetail&Dos_ID=10132&DS_ID=36170&Version=1
[12] More information available at: https://ec.europa.eu/food/committees/paff_en
[13] Article 5 of Regulation 182/2011 (Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ 2011 L 55, p. 13, available at: http://data.europa.eu/eli/reg/2011/182/oj). The committee delivers its opinions by so-called 'qualified majority' of at least 55 % of the Member States, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union. A blocking minority must include at least four Member States (Article 16(4) of the Treaty on European Union, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1508835020492&uri=CELEX:12016M016).
[14] Article 35(1) of Regulation 1829/2003.
[15] Summary report of the Standing Committee on Plants, Animals, Food and Feed held in Brussels on 24 October 2014, pages 3-4, available at: https://ec.europa.eu/food/sites/food/files/plant/docs/sc_modif-genet_sum_20141024_en.pdf
[16] Article 5(4), third subparagraph, of Regulation 182/2011. The appeal committee is also made up of representatives of all Member States and chaired by a Commission representative.
[17] 10 Member States representing a population of 149 million people voted in in favour, 12 Member States representing a population of 150 million citizens voted against 5 Member States representing 160 million people abstained (http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.documentdetail&Dos_ID=10383&DS_ID=37491&Version=1). The voting patterns of the individual Member States are not published.
[18] Summary report of the appeal committee, genetically modified food and feed, 28 November 2014, page 2, available at: https://ec.europa.eu/food/sites/food/files/safety/docs/app-comm_gmffer_20141128_sum.pdf
[19] Article 6(3) of Regulation 182/2011.
[20] Commission Implementing Decision 2015/687.
[21] The Commission made the request (http://ec.europa.eu/environment/aarhus/pdf/requests/31/TestBiotech.pdf) and the attached technical background (http://ec.europa.eu/environment/aarhus/pdf/requests/31/TBT%20complaint%20_MON_88302_.pdf) available on its website.
[22] More information available at: http://ec.europa.eu/environment/aarhus/requests.htm

Regulation[23], which states that "*any non-governmental organisation which meets the criteria set out in Article 11*[24] *is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law*". The Aarhus Regulation implements the Aarhus Convention[25], an international agreement on government accountability, transparency and responsiveness in environmental matters.

8. EFSA provided the Commission with scientific advice on the complainant's request. This advice was also published online[26]. EFSA concluded that none of the arguments put forward in the request invalidated the previous risk assessment conclusions and risk management recommendations. The complainant provided the Commission with its comments on EFSA's scientific advice.

9. In February 2016, the Commission replied to the complainant's request for internal review. It argued that certain concerns brought forward by the complainant did not relate to environmental issues and therefore did not fall within the scope of the Aarhus Regulation. The Commission provided the complainant with an in-depth response to those concerns which it regarded as falling within the scope of the Aarhus Regulation. The Commission made its reply available on its website[27].

10. Dissatisfied with the Commission's response, the complainant turned to the Ombudsman in March 2016.

The inquiry

11. The Ombudsman opened an inquiry into the complaint. The complainant's position is that:

1) The Commission's reply to the request for internal review of its decision to grant market authorisation for the genetically modified oilseed rape MON

[23] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ 2006 L 264, p. 13., available at: http://eur-lex.europa.eu/eli/reg/2006/1367/oj

[24] Article 11(1) of the Aarhus Regulation: "*A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that: (a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice; (b) it has the primary stated objective of promoting environmental protection in the context of environmental law; (c) it has existed for more than two years and is actively pursuing the objective referred to under (b); (d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.*"

[25] The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted, including by the European Union, on 25th June 1998 in the Danish city of Aarhus. Full text of the Convention available at: http://www.unece.org/env/pp/treatytext.html

[26] EFSA (European Food Safety Authority), 2015. Scientific advice to the European Commission on the internal review submitted under Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention against the Commission Implementing Decision 2015/687 to authorise genetically modified oilseed rape MON88302. EFSA supporting publication 2015:EN-864. 44 pp. Available at: http://onlinelibrary.wiley.com/doi/10.2903/sp.efsa.2015.EN-864/epdf

[27] Consisting of a letter (http://ec.europa.eu/environment/aarhus/pdf/31/letter_TB_redacted.pdf), an annex on the legal framework (http://ec.europa.eu/environment/aarhus/pdf/31/Annex_I.PDF) and an annex on the grounds of the complaint (http://ec.europa.eu/environment/aarhus/pdf/31/Annex_II.PDF).

88302 is flawed with respect to the environmental issues put forward in the request for review.

2) The Commission failed to respond to the request for internal review within the time limits of the Aarhus Regulation.

12. The Ombudsman first asked the complainant to clarify certain aspects of the complaint. The Ombudsman then asked the Commission to reply to a number of questions based on the complainant's arguments. The Ombudsman also received the comments of the complainant on the Commission's reply. The Ombudsman's recommendation takes into account the arguments and views put forward by the parties.

The Commission's reply to the request for internal review

Arguments presented to the Ombudsman

13. The complainant argued that the Commission's reply to the request for internal review was flawed. In particular, the complainant claimed that:

(a) EFSA had failed to properly assess new information regarding the potential invasiveness and persistence of oilseed rape in general (in particular, a study on feral oilseed rape populations[28]);

(b) EFSA had failed to investigate the specific invasiveness and persistence of MON 88302 oilseed rape in feral populations;

(c) EFSA had not assessed the environmental risks as required by law and by EFSA's own guidance (in particular, concerning risk characterisation and alleged permanent release into the environment); and

(d) contrary to the Commission's and EFSA's statements, the post-market environmental monitoring plan was not sufficient (the measures provided for in the monitoring plan should continue after the expiration of the authorisation, which is granted for 10 years).

The Ombudsman's assessment

The Ombudsman's role in relation to scientific evaluations

14. The arguments in the complaint to the Ombudsman mainly concern the substantive scientific assessment of the application for authorisation of MON 88302 oilseed rape as well as of the subsequent substantive scientific assessment of the complainant's request for internal review.

[28] Banks G (2014) Feral oilseed rape populations within a Scottish landscape: Implications for GM coexistence and environmental risk assessment, available at: http://discovery.dundee.ac.uk/portal/files/4838849/Banks_phd_2014.pdf

15. The Office of the European Ombudsman is not a scientific body. The Ombudsman deals with complaints about *administrative* activities and it is not within her mandate[29] to examine the merits of scientific evaluations carried out by specialised scientific agencies.

16. However, the Ombudsman may seek to assess whether scientific bodies such as EFSA have the necessary procedural safeguards in place to ensure that the scientific advice provided by expert committees is as complete as possible and independent, and whether these safeguards have been properly applied in any given procedure[30].

17. In the present case, the complainant does not argue that any procedural rules or safeguards were violated during the marketing authorisation procedure of MON 88302 (the complainant's argument that the applicable time limits were violated by the Commission in its handling of the request for internal review is analysed separately below).

18. However, particularly in areas that are the subject of a significant public debate, as is the case with genetically modified organisms, public bodies should, as far as possible, be citizen-friendly and try to address reasonable concerns raised by the public[31]. This will serve to enhance citizens' trust and confidence in the EU's environmental rules and actions[32].

The Commission's additional explanations

19. While the Commission had already provided the complainant with a detailed response to its request for internal review (see paragraph 9), the Ombudsman asked the Commission to provide the complainant with *additional* explanations on the remaining concerns set out above.

20. The Commission replied on the substance of all points, mainly arguing that the complainant's concerns had already been addressed in the Commission's reply to the request for internal review. The Commission provided additional explanations on some of the points raised. It stated, however, that some aspects had already been comprehensively dealt with in the reply to the request for internal review and it was therefore not in a position to provide meaningful additional explanations on some of the points raised by the complainant.

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[29] Article 228(1) TFEU: "*A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State* ***concerning instances of maladministration*** *in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them*" (emphasis added).

[30] See Decision in case 1475/2016/JAS on the European Medicines Agency's handling of the referral procedure relating to human papillomavirus (HPV) vaccines, paragraphs 21-22, available at: https://www.ombudsman.europa.eu/en/cases/decision.faces/en/84736/html.bookmark

[31] See also Decision in case 1375/2016/JAS on the European Commission's handling of concerns regarding the renewal of the approval of the herbicide ingredient glyphosate, paragraphs 15 and 18, available at: https://www.ombudsman.europa.eu/en/cases/decision.faces/en/75832/html.bookmark

[32] See also 7th Environmental Action Programme, paragraph 65(d) (Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', OJ 2013 L 354, p. 171, available at: http://data.europa.eu/eli/dec/2013/1386/oj).

21. The Commission stated, among other things, that EFSA had taken into account the study mentioned by the complainant. In fact, that study was referred to multiple times both in the Commission's response to the complainant's request for internal review[33] as well as in EFSA's scientific advice on that request[34].

22. Regarding the environmental risk assessment, the Commission argued that the complainant seemed to consider that the aim of such an assessment should be to prove the total absence of risk, so that even the very low likelihood of a harmful effect meant that the risk assessment was not exhaustive. According to the Commission, this was a misunderstanding of the concept of risk assessment. To prove the lack of any risk would be both unrealistic—in so far as it is generally impossible to provide such proof in scientific terms since zero risk does not exist in practice[35]—and contrary to the principle of proportionality[36].

23. In this context, the Commission also stated that an authorisation limited to the import of genetically modified organisms, and their subsequent processing into food and animal feed, did not allow for the *deliberate* release of the genetically modified plant into the environment. Therefore, the environmental risk assessment, in import and processing applications, focusses on the possible environmental effects of *accidental* spillage of viable seeds. This could happen, for example, when the oilseed rape is being transported prior to being processed into food or feed[37]. One of these effects is the possible occasional occurrence of feral genetically modified plants. Feral plants are not incompatible with the scope of the application, since their occurrence would, the Commission stated, remain *accidental*. The Commission stated that EFSA had concluded, on the basis of its scientific risk assessment, that this kind of occurrence was not, as such, an "environmental harm". This scientific consideration, that occasional accidental dissemination is not, from the perspective of science, an "environmental harm" does not, however, amount to authorising the *deliberate* release of the genetically modified plant.

24. On the issues raised regarding the post-market environmental monitoring plan for MON 88302 oilseed rape, the Commission stated that it had added additional measures to the monitoring plan proposed by the company, and agreed to by EFSA, to prevent loss and spillage of MON 88302 oilseed rape.

25. Concerning monitoring obligations after the expiry of the current authorisation, the Commission stated that food and feed business operators are

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[33] http://ec.europa.eu/environment/aarhus/pdf/31/Annex_II.PDF
[34] EFSA, 2015.
[35] Judgment of the Court of First Instance of 11 September 2002, *Pfizer Animal Health v Council*, T-13/99, ECLI:EU:T:2002:209, paragraph 145, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=47642&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1127839 and Judgment of the Court of First Instance of 11 September 2002, *Alpharma v Council*, T-70/99, ECLI:EU:T:2002:210, paragraph 158, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=47643&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1127240
[36] Judgment of the Court of First Instance of 21 October 2003, *Solvay Pharmaceuticals v Council*, T-392/02, ECLI:EU:T:2003:277, paragraph 130 and case-law cited, available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=48343&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1125953
[37] EFSA opinion, page 2.

generally prevented by law from placing on the market food or feed not covered by an existing authorisation. Further, it remained to be seen whether there will be an application for a renewal of the authorisation of MON 88302 oilseed rape. It could reasonably be assumed that a renewed authorisation would also be accompanied by monitoring obligations.

The Ombudsman's conclusions

26. The Commission has provided the complainant with additional explanations and clarifications on its concerns, and explained why certain points cannot be further clarified. The Ombudsman thus concludes that the Commission has resolved this aspect of the complaint.

27. Inasmuch the complainant disagrees with the Commission's scientific evaluations and conclusions, it is not for the Ombudsman to take a position on issues of science.

The Commission's delayed reply to the request for internal review

Arguments presented to the Ombudsman

28. The complainant stated that it took the Commission more than 30 weeks to respond to its request for internal review. The complainant argued that this constituted a clear violation of the Aarhus Regulation. The Commission had said, in November 2015, that a reply was in the course of being finalised. However, the reply was not sent until February 2016.

29. The Commission explained that, when it had realised that it would not be able to meet the initial 12-week deadline provided for by the Aarhus Regulation[38], it had sent a holding reply to the complainant, informing the complainant about the delay and stating that a reply could be expected within the extended deadline of 18 weeks[39].

30. The Commission acknowledged, however, that it had missed the 18-week deadline by approximately 17 weeks. This was due both to the specific circumstances of the case and to structural issues. In particular, the dossier submitted by the complainant together with the request for internal review[40] was very long and detailed. The complainant had also sent additional information during the review procedure. Finally, the Commission department

[38] Article 10(2) of the Aarhus Regulation: "*The Community institution* [...] *shall consider any such request, unless it is clearly unsubstantiated. The Community institution* [...] *shall state its reasons in a written reply as soon as possible, but no later than* ***12 weeks*** *after receipt of the request*" (emphasis added).
[39] Article 10(3) of the Aarhus Regulation: "*Where the Community institution* [...] *is unable, despite exercising due diligence, to act in accordance with paragraph 2, it shall inform the non-governmental organisation which made the request as soon as possible and at the latest within the period mentioned in that paragraph, of the reasons for its failure to act and when it intends to do so.* ***In any event, the Community institution or body shall act within 18 weeks from receipt of the request***" (emphasis added).
[40] See footnote 21.

dealing with requests for internal review had to deal with several requests simultaneously.

31. Concerning the structural issues, the Commission stated that it had practical difficulties in complying with the deadlines provided for in the Aarhus Regulation. Requests for internal review of authorisations of GMOs usually raise complex technical issues. These issues typically require the assistance of EFSA because they usually concern the risk assessment carried out by it. Both the complexity of the Commission's internal procedures, and the need to consult a body outside the Commission, lengthen the process. Furthermore, in this case, the Commission decided to consult EFSA twice since the complainant provided additional information in September 2015.

32. When the Commission received EFSA's second response, the 18-week deadline had already expired. Given that, at this point, some further time was needed to analyse EFSA's input and to draft a reply, the Commission sent an e-mail to the complainant informing it about, and apologising for, the delay. The heavy workload of the Commission department concerned during that period prolonged this final effort. The Commission was, at the same time, processing requests for internal review regarding the authorisations of three genetically modified soybeans. It was also still examining whether six organisations that had supported[41] the request for internal review at issue in this complaint actually qualified under the Aarhus Regulation as NGOs entitled to request a review.

33. However, the Commission acknowledged that it was obliged to comply with the deadlines set out in the Aarhus Regulation for dealing with requests for internal review. Its explanations for the delay in this case did not alter that obligation. The Commission stated that it would continue to make every effort to comply with the deadlines.

The Ombudsman's assessment leading to a recommendation

34. The Commission acknowledges that it missed the deadline set out in the Aarhus Regulation for dealing with requests for internal review of administrative acts adopted under environmental law. The Aarhus Regulation states that "***In any event***, *the Community institution or body shall act within 18 weeks from receipt of the request*"[42] (emphasis added). It is clear from this wording that the legislature envisaged that an EU body dealing with a request for internal review should in principle always be able to reply to the request within 18 weeks.

35. The Ombudsman understands that requests for internal review of decisions on GMOs can raise highly complex questions of science, which might require consultation with outside bodies responsible for the scientific assessment (for example EFSA or the European Chemicals Agency). However, in this case, the

[41] See footnote 22.
[42] Article 10(3) of the Aarhus Regulation.

Commission took almost 35 weeks—that is, almost twice the time provided for in the Aarhus Regulation—to reply to the request. **This is clearly an unacceptable overrun of the time limit**, particularly given that the Commission's review decision was not made until four months **after** EFSA had provided its last input on the request.

36. Requests for internal review under the Aarhus Regulation will almost inevitably involve issues which are difficult scientifically and, sometimes, politically. In setting the review time limit in the Aarhus Regulation, we have to assume that the legislature sought to reconcile the demands such reviews make on the Commission with the rights of the public, and of eligible NGOs, recognised in the Aarhus Convention and the Aarhus Regulation. It is reasonable to expect that the Commission would adapt its review procedures to fit the statutory time limits rather than to unilaterally extend the time limits to suit its procedures. The Commission appears to be saying that it is always unlikely to meet the statutory time limit in the case of requests for internal review involving GMOs. If the Commission believes that this is the case then, in the view of the Ombudsman, it should propose an amendment to the legislation seeking a timescale which it regards as more realistic and achievable. A pattern of continuing failure to conduct reviews within the statutory time limits has to be unacceptable; it deprives review requesters of their rights and it serves to undermine public trust in the institutions of the EU.

37. The Ombudsman finds that the Commission's delay in dealing with the complainant's request for internal review constitutes maladministration. The Ombudsman makes two recommendations to the Commission arising from this inquiry and from the finding of maladministration.

Recommendations

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendations[43] to the Commission:

The Commission should, with a view to complying with the statutory time limits applicable to requests for internal review under the Aarhus Regulation, review its procedures for dealing with such reviews as well as the resources it requires in that regard. This review of procedures and resources should, in particular, take account of the fact that many such reviews will involve complex scientific assessments such as authorisations of products containing genetically modified organisms. In the event that the Commission concludes that the statutory time limits cannot, in many cases, be met, it should propose a legislative amendment of the time limits.

Where in exceptional cases the Commission is unable, despite exercising due diligence, to comply with the 18-week deadline for completion of reviews as provided for in the Aarhus Regulation, it should, as soon as possible (and at the latest within the 18-week period), inform the NGO which made the request of the reasons for the delay in concluding the review and of its right

[43] In accordance with Article 3(6) of the Statute of the European Ombudsman.

to institute proceedings before the Court of Justice in accordance with Article 12(2) of the Aarhus Regulation.

The Commission and the complainant will be informed of these recommendations. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by **16 March 2018**.

Emily O'Reilly
European Ombudsman

Strasbourg, 12/12/2017