

## **Decision of the European Ombudsman on complaint 331/99/OV against the European Commission**

Decision

**Case 331/99/OV - Opened on 30/03/1999 - Decision on 14/12/2000**

Strasbourg, 14 December 2000 Dear Mr G., On 24 March 1999, you made a complaint to the European Ombudsman on behalf of the Mouvement Ecologiste Indépendant concerning alleged maladministration and delay by the European Commission in handling your complaint of 6 January 1998. On 30 March 1999, I forwarded the complaint to the President of the European Commission. On 18 May 1999 you sent me further information concerning the handling of your complaint by the Commission. The Commission sent its opinion on 7 July 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 5 August 1999 you sent me your observations on the Commission's opinion. On 12 January 2000 you sent me further information on your complaint. On 3 March 2000, the Commission sent complementary comments on your complaint and I forwarded them to you with an invitation to make observations. On 10 April 2000 you sent me your observations on the Commission's additional comments. I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

According to the complainant, the relevant facts were as follows : On 6 January 1998 the complainant made an Article 226 complaint to Directorate General XXIV (Consumer Policy and Consumer Health Protection) of the Commission because of the French authorities' failure to comply with Community law in the field of agricultural food controls. In his complaint, the complainant alleged that the French agricultural food controls did not comply with the objectives of the Treaty on European Union concerning a high level of public health and consumers' protection, the protection of the environment and the rational use of natural resources. On 9 February 1998 the complainant wrote a letter to DG XXIV asking the Commission to take into consideration some complementary allegations in the inquiry of the initial complaint. On 7 May 1998 DG XXIV sent a letter to the complainant informing him that since 30 April 1997 the Commission has been adopting a new policy based on the separation of the responsibility for legislation from the responsibility for inspections. Therefore, the veterinary inspection and the control of food security fall within the competence of DG XXIV, whereas questions related to the application of Community law and the handling of complaints fall under the responsibility of the Directorate General for Agriculture (DG VI) which is responsible for the launching of an infringement procedure. The complaint had therefore been forwarded to DG VI in order to be examined. On 8 May 1998, DG VI informed the complainant by fax that a copy of his complaint had also been forwarded to DG XI (Environment), as some aspects of the complaint were falling



within its competence. DG VI also asked him whether he had no objection that the documentation which he had sent was communicated to the competent French authorities. On 12 June 1998 the complainant confirmed by letter to DG VI that he had no such objection. On 12 August 1998 the complainant sent to DG XXIV a complementary file containing allegations against the control services of the French Ministry of Agriculture which simultaneously hold the functions of supporting the agricultural activity and of controlling the legality. On 24 March 1999, the complainant had still not received information from the Commission on the inquiry and the outcome of his complaint. Moreover, the complainant alleged that, notwithstanding the separation of responsibility between those who elaborate the directives and those who control their application, the agricultural food controls still fall under the responsibility of DG VI and its Director General who was responsible for the management of the "mad cow disease" file. The complainant therefore made the present complaint to the Ombudsman alleging 1) that the Commission had still not informed him on the follow-up of the complaint he lodged on 6 January 1998 with the Commission because of the French authorities' failure to comply with Community law in the field of agricultural food controls, and 2) that the agricultural food controls still fall under the responsibility of DG VI.

## THE INQUIRY

**The Commission's opinion** In its opinion, the Commission first observed that by letters of 6 January and 9 February 1998 the complainant brought to the attention of DG XXIV a series of elements which constituted in his eyes a violation of public health, consumer's protection and the environment by the French authorities. He also denounced a confusion in the roles and a potential conflict of interests within the French administration, between the different services. He qualified his correspondence as a complaint asking the Commission to take all the necessary measures to put an end to those infringements. The Commission indicated that by letter of 7 May 1998, DG XXIV informed the complainant that his file had been forwarded to DG VI (Agriculture) because of the new separation of responsibilities between the services of the Commission, in execution of the Commission communication COM(97)183 final, adopted after the so-called "mad cow disease" file. One of the effects of this crisis for the internal organisation of the Commission was the transfer to DG XXIV of the tasks of veterinary inspection and the control of food safety which were previously conferred to DG VI. DG XXIV also informed the complainant that the information he had provided would have been considered in the context of an audit of the French official system of food control which had to be carried out in the future. The Commission further observed that, by fax of 8 May 1998, DG VI had acknowledged the receipt of the complaint and had informed the complainant that a copy of his file had also been forwarded to DG XI (Environment) for its questions of competence. DG VI also asked the complainant's permission to communicate to the French authorities the documents sent by him and his name. The complainant was also asked to provide documentary evidence for his allegations. The Commission indicated that it sent a reminder on 17 June 1998, which crossed the complainant's letter of 12 June 1998, in which he accepted to communicate his identity and transmit the file to the French authorities. He observed however that he could not obtain the documentary evidence concerning the absence of veterinary certificates of exportation. As regards the complainant's first allegation that he was not informed about the outcome of his complaint, the Commission observed that it appeared from the previous paragraphs that it kept a correspondence with the complainant. More particularly, the letter of DG XXIV of 7 May 1998



explained to the complainant why this service could not treat the complainant's file in the context of an infringement procedure against France. In its letters of 8 May and 17 June 1998, DG VI asked the complainant for complementary evidence which could facilitate the instruction on the file. The Commission pointed out that the complaint in fact consisted of a series of allegations from different sources concerning various matters related to environmental, public health and veterinary problems, but did not contain detailed proof which could justify an infringement procedure against the Member State concerned. The Commission regretted however that, after the first exchange of correspondence and because of the absence of new concrete elements from the complainant, the investigation of the file was delayed because of other priorities. On 5 and 10 May 1999 the Commission sent two letters to the complainant, informing him of the conclusions of its services concerning two subjects of his complaint, namely the use of certain phyto-pharmaceutic products in France and the organisation of veterinary and phyto-sanitary controls in France. The Commission further observed that it would inform the complainant on the other aspects of his complaint in the near future and that a complementary communication will be sent to the Ombudsman. As regards the second allegation of the complainant concerning the responsibility of DG VI, the Commission indicated that since 1997 the agricultural food controls have fallen within the competence of DG XXIV, as well as the missions for veterinary inspections. DG VI on the other hand is competent for the elaboration of veterinary legislation and its application. The instruction of complaints and infringement procedures fall within its responsibility in the context of the control of the application of Community law.

**The complainant's observations** On 18 May 1999 the complainant sent additional information to the Ombudsman which showed the unsatisfactory way in which his complaint had been dealt with by the Commission: On 26 April 1999 the Secretary General of the Commission acknowledged the receipt of the complainant's letter of 12 June 1998 and indicated that it was registered as a complaint, whereas the original complaint was already lodged on 6 January 1998. On 5 May 1999, the Director General of DG VI sent a letter to the complainant clarifying some elements raised in his complaint, without however answering the complainant's question concerning the conditions of the use of phyto-pharmaceutic products. Finally, the Commission's answer of 10 May 1999 did not contain an answer on the elements put forward by the complainant. The complainant therefore considered that the Commission had not properly dealt with his complaint and had not respected the procedures foreseen in Article 226 of the Treaty. In his observations of 5 August 1999, the complainant maintained his complaint and stated that the Commission was not diligent enough in its inquiry of the case. He was also astonished by the fact that the documents attached to his complaint were not considered as sufficient proof in order to justify an inquiry. On 12 January 2000, the complainant sent to the Ombudsman a copy of his letter of 10 January 2000 to DG XXIV of the Commission.

**The Commission's additional opinion** As indicated in its opinion, the Commission sent further information on the dealing of the complaint to the Ombudsman on 3 March 2000: The Commission observed that its services did not cease in providing the complainant with answers on the questions raised in his complaint. As a complement to the partial conclusions of 5 and 10 May 1999, the Commission services wrote on 9 June 1999 to the complainant to assure him that, as regards the allegations concerning certain insufficiencies and wrong practices from the official veterinary surgeons in France, it was proposed to the Food and Veterinary Office to control those questions during future veterinary inspection missions in France. Further to an intervention of the Commission services, the French authorities forwarded on 12 July 1999 their



comments on the complainant's allegations concerning the insufficiencies of the veterinary controls in France. On 18 October 1999 the Commission services informed the complainant of those comments. On 30 August 1999, the Commission services also sent a letter to the complainant informing him that, with regard to the emission of sanitary certificates for intra-community exchange, the Food and Veterinary Office had included the control of these insufficiencies in its inspection mission to France in July in order to evaluate the efficiency of the anti-brucellosis plan. The report following this mission (n° 1144/99) has been made public and is accessible on the Internet. The services of the Food and Veterinary Office concluded that the brucellosis eradication programme had been correctly executed. As regards the certification of animals for exportation, the report established that the certificates are signed on the day of the sanitary examination and that therefore the practice criticised by the complainant could not be confirmed. France also reinforced its legislation in this field. During the inspection no single deficiency was detected which could justify the opening of an infringement procedure. A letter informing the complainant of the results of the inspection was about to be sent. The French authorities regularly make controls to detect the presence of residues of anti-parasitic products such as ivermectine, and the results of those controls revealed no major problem. The Services of the Directorate General for Health and Consumer Protection reached the conclusion that the elements forwarded by the complainant, the French authorities and the Food and Veterinary Office do not provide a basis for an infringement procedure (Article 226 of the EC Treaty). The Directorate General therefore intended to close the file after having informed the complainant. By letter of 21 May 1999, the DG Environment informed the complainant that the elements in his correspondence relating to the environmental legislation did not allow to establish a violation because of their lack of precision and the absence of elements of proof. The DG asked further information from the complainant and informed him that it had requested information from the French authorities with regard to similar facts further to another more detailed complaint (98/4148). By letter of 24 June 1999, the complainant forwarded other information to the Commission considering that the practices he pointed out therein constituted violations of Directive 79/409/EEC on the conservation of wild birds and of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. This letter was registered as complaint 99/4831 and an acknowledgement of receipt was sent to the complainant on 9 August 1999. The elements contained in the complainant's letter were examined together with those communicated in the context of complaint 98/4148 which was identical but concerned the period 1996/97. In the context of this latter complaint, the Commission sent on 1 March 1999 a request for information to the French authorities which replied on 16 July 1999 that an inspection report of the administration examined the situation. All those elements were subject to an analysis by the DG Environment and the complainant as well as other complainants will be kept informed about the outcome of the instruction. The Commission observed that the complainant's allegations resulted in an exchange of correspondence both with the complainant and the national authorities and that its instruction by the DG Environment was following its normal way. **The complainant's additional observations** The complainant maintained his complaint in his latest observations.

## THE DECISION

**1 The alleged failure of information on the follow-up of the complaint** 1.1 The complainant alleged that the Commission had still not informed him on the follow-up of the complaint he



lodged on 6 January 1998 with the Commission because of the French authorities' failure to comply with Community law in the field of agricultural food controls. More particularly, when the complaint to the Ombudsman was lodged on 24 March 1999, the complainant had still not received information on the inquiry and the outcome of his complaint. The Commission, referring to its letters of 7 and 8 May and 17 June 1998, observed that it kept a correspondence with the complainant on the matter. The Commission however regretted that, after the first exchange of correspondence and because of the absence of new concrete elements from the complainant, the investigation of the file was delayed because of other priorities.

1.2 The Ombudsman notes that, in the context of his own-initiative inquiry into the Commission's administrative procedures for dealing with complaints concerning Member States' infringement of Community law, the Commission undertook to inform the complainant of the action taken in response to a complaint and of the outcome of the investigation (whether no action has been taken on it or infringement proceedings have been opened) within a maximum period of one year.

1.3 In the present case it appears that the complaint to DG XXIV of the Commission was lodged on 6 January 1998 and that on 9 February 1998 the complainant sent complementary allegations to the Commission. DG XXIV informed the complainant by letter of 7 May 1998 that his file had been forwarded to DG VI (Agriculture) because of the new separation of responsibilities between the services of the Commission, in execution of the Commission communication COM(97)183 final adopted after the so-called "mad cow disease" file. By fax of 8 May 1998, DG VI then acknowledged the receipt of the complaint and informed the complainant that a copy of his file had also been forwarded to DG XI (Environment) for its questions of competence. In this fax, DG VI also asked the complainant's permission to communicate to the French authorities his name and the documents he had sent. The complainant was further requested to provide documentary evidence for his allegations, more particularly with regard to his allegation that veterinary exportation certificates are regularly delivered without preliminary control of the animals. The complainant indicated that he had not been able to obtain the documentary evidence related to the absence of veterinary exportation certificates.

1.4 In two letters of 5 And 10 May 1999, the Director General of DG VI informed the complainant of the conclusions of its services with regard to two subjects of his complaint, namely the use of certain phyto-pharmaceutic products and the organisation of veterinary and phyto-sanitary controls in France. As regards the other points of the complaint, the letter indicated that it hoped to inform the complainant of its conclusions in the near future.

1.5 Later, on 9 June 1999, as a complement to their conclusions of 5 and 10 May 1999, the Commission services again wrote to the complainant to inform him that, with regard to the allegations concerning certain insufficiencies and wrong practices from the official veterinarians in France, they proposed that the Food and Veterinary Office control those questions during future veterinary inspection meetings in France.

1.6 On 12 July 1999 the French authorities forwarded their comments on the complainant's allegations on this matter. The Commission forwarded those comments to the complainant on 18 October 1999. Finally, on 30 August 1999, the Commission services sent a letter to the complainant informing him that, with regard to the emission of sanitary certificates for intra-community exchange, the Food and Veterinary Office had included the control of these insufficiencies in its inspection mission to France in July 1999 in order to evaluate the efficiency of the anti-brucellosis plan. The report following this mission concluded that the brucellosis eradication programme had been correctly executed. As regards the certification of animals for exportation, the report established that the certificates were



signed on the day of the sanitary examination and that therefore the practice criticised by the complainant could not be confirmed. During the inspection no single deficiency was detected which could justify the opening of an infringement procedure. 1.7 The services of the DG Health and Consumer Protection finally reached the conclusion that the elements forwarded by the complainant, the French authorities and the Food and Veterinary Office did not provide a basis for an infringement procedure under Article 226 of the EC Treaty. By letter of 27 January 2000, the complainant was thus informed that the Commission services would propose the closure of the complainant's case registered under number 99/4347. 1.8 By letter of 21 May 1999, the DG Environment equally informed the complainant that the elements in his correspondence did not allow the establishment of a violation because of the lack of precision and the absence of elements of proof. However, the DG had requested information from the French authorities with regard to similar facts of another more detailed complaint (98/4148). The complainant's new letter of 24 June 1999 was registered as complaint 99/4831 and the inquiry of this complaint is still going on. 1.9 The Ombudsman notes that it appears from the various letters sent to the complainant that the Commission services regularly kept him informed about the action taken on the complaint and the outcome of the investigation. The Ombudsman notes that the fact that it took the Commission services two years instead of one to inform the complainant of the closure of the case is due to the complexity of the complaint which involved various matters concerning environmental, public health and veterinary problems and necessitated the investigation by different Directorates General, as well as to the numerous contacts with the French authorities and the inspection by the Food and Veterinary Office. No instance of maladministration was therefore found with regard to this aspect of the case. **2 The allegation that the agricultural food controls still fall under the responsibility of DG VI** 2.1 The complainant alleged that the agricultural food controls still fall under the responsibility of DG VI. The Commission observed that since 1997 the agricultural food controls have fallen within the competence of DG XXIV, as well as the missions for veterinary inspections, and that DG VI on the other hand is competent for the elaboration of veterinary legislation and its application. The instruction of complaints and infringement procedures fall within DG VI's responsibility in the context of the control of the application of Community law. 2.2 The Ombudsman notes that it appears from the Commission's opinion that, in the context of an internal re-organisation of the Commission services in execution of the Commission communication COM(97)183 final adopted after the "mad cow disease" crisis, the agricultural food controls were transferred from DG VI to DG XXIV in 1997. No instance of maladministration was therefore found with regard to this aspect of the file. **3 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN