

Decision of the European Ombudsman on complaint 190/2000/OV against the European Commission

Decision

Case 190/2000/OV - Opened on 01/03/2000 - Decision on 26/06/2001

Strasbourg, 26 June 2001

Dear Mr B.,

On 31 January 2000 you made a complaint to the European Ombudsman on behalf of the Algemeene Schippers Vereeniging concerning a claim for reimbursement of overpaid scrapping contributions.

On 1 March 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 27 April 2000 and I forwarded it to you with an invitation to make observations, if you so wished. On 12 July 2000, I received your observations on the Commission's opinion. On 14 May 2001 I wrote to apologise for the time it has taken to deal with your complaint and to inform you that a decision would soon be taken on your file.

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:

The complainant is the General Shipping Association (Algemeene Schippers Vereeniging - ASV) based in Rotterdam. The association is member of the European Shipping Organisation (ESO) which defends the interests of private shippers. The association claims the reimbursement to the shipping branch of scrapping contributions which were overpaid.

From 1990 to 1998 there was a Community action plan for scrapping interior navigation ships. The shipping branch had mostly to finance the scrapping itself by paying annual scrapping contributions. Regulation 718/99/EC of the Council of 29 March 1999 created the "Reserve Funds" financed by fines which have to be paid for building new ships.

When the scrapping activities came to an end, it appeared that there was a financial surplus in the scrapping contributions for tankers in 1998, and for dry cargo ships in 1999 (respectively 7



million and 5,5 million Dutch guilders). The European Commission asked the shipping branch what should be done with the surplus. Two options existed, namely reimbursing to the shipping branch the contributions which had been overpaid, or depositing the surplus in the Reserve Funds which had still to be created at that time. The Commission and the Member States preferred the second option.

The Shipping branch could never decide unanimously. However, most of the individual shippers and the shipping companies (the International Union of Fluvial Navigation - IUFN) wanted back the contributions which were overpaid. The Commission decided to reimburse the financial surplus of the Member States, to repay the financial surplus of 1999 for tankers to the shipping branch and to deposit the financial surplus of 1998 for tankers and of 1999 for dry cargo ships in the Reserve Fund.

The complainant asked that the Commission would nevertheless reimburse the overpaid scrapping contributions. The Commission however maintained that there had been an unanimous request from the IUFN and the ESO.

Not satisfied with this outcome, the complainant wrote to the Ombudsman on 31 January 2000 alleging that 1) the scrapping contributions had not been used for their intended purpose as laid down in Council Regulation 1101/89/EEC of 27 April 1989, but had instead been used for a different purpose under 718/99/EC, 2) there was no unanimity within the shipping branch to deposit the surplus in the reserve fund, 3) there was a difference in treatment between the tankers (for which the financial surplus was reimbursed for 1999) and the dry cargo ships and 4) it is a completely normal practice in our society that sums which are overpaid are reimbursed.

THE INQUIRY

The Commission's opinion

With regard to the first allegation, the Commission observed that the Regulation 1101/89/EEC provided explicitly that the costs of the scrapping fell upon the shipping branch which had to pay annual contributions as well as special contributions for bringing into service new ships ("old for new" rule).

Article 3 of Regulation 718/99/EC provides that the reserve fund shall be financed by the surplus funding from the structural improvement schemes conducted up until 28 April 1999. This fund may be used, in case of a severe market crisis, for suitable measures such as scrapping. The organisations representing the inland waterway transport may also, if requested unanimously, use the reserve fund for promotion measures referred to in Article 8 of the Regulation (see the reaction of the organisations of 20 March 1998 on the Commission's working document of 22 January 1998).

The profession (ESO - European Organisation of Shippers, and the IUFN - International Union of Fluvial Navigation, which are the two representative organisations on Community level) in fact wanted to have available in future a reserve fund with financial means which would allow to react to overcapacity, by scrapping actions for instance, in case of a severe crisis of the market.



The Commission has regularly consulted the group of experts "structural improvement of the inland waterway transport" and has proposed a Regulation which took over globally the aspirations of the profession. This proposal was adopted politically by the Council according to normal procedures. It resulted from the above that there was no divergence concerning the use of the contributions of Regulation 1101/89/EEC which were foreseen for scrapping.

As regards the second allegation that there was no unanimity within the shipping branch to deposit the surplus in the reserve fund, the Commission observed that, contrary to the complainant's allegation, the representative professional organisations on the Community level agreed unanimously to place the financial surplus of the scrapping actions organised until 28 April 1999 into the reserve fund. The Commission referred to a letter of the Secretary of the IUFN of 30 September 1997 and to a letter of the President of the ESO of 14 October 1997, as well as to a common position of the two organisations of March 1998.

It is on this common basis that the Commission adopted on 28 September 1998 its proposal for a Council Regulation (COM(98)541 final). The Commission recalled that the General Shipping Association is one of the various national organisations which are member of the ESO and that the ESO has, as every representative organisation on the Community level, to report the positions of the majority of its members to the Commission, even if the General Shipping Association does not always share them.

From the above it appears that there was an unanimous agreement of the profession, at the moment of the adoption of the Commission's proposal, about the transfer of the financial surplus of the scrapping actions carried out until 28 April 1999 into the reserve fund.

As regards the third allegation that there was a difference in treatment between the tankers, for which the alleged financial surplus was reimbursed for 1999, and the dry cargo ships, the Commission observed that at the meeting of the group of experts "structural improvement of the inland waterway transport" of 28 September 1998, the profession recalled that it had explicitly and unanimously asked that there would be two separate accounts (one for tankers and one for dry cargo ships) and that the surplus relating to the tankers would be placed in the future reserve fund.

At the meeting of the group of experts of 12 February 1999, the question of the financial surplus was raised again with regard to the scrapping actions of 1996-1998. For both the tankers and the dry cargo ships, the profession in general seemed rather to be in favour of transfer to the future reserve fund but requested the reimbursement only of the 1999 contributions for tankers, as they had not been used for the scrapping actions 1996-1998 and because the economic situation of this sector was considered to be more difficult than the one of the dry cargo ships.

The Commission has thus decided to fix, according to Article 6 of Regulation 1101/98/EEC, the annual contributions for the tankers at zero for the year 1999 (Regulation 812/99/EC of the Commission of 19 April 1999).

It appears from the above that the difference of treatment between the tankers and the dry



cargo ships resulted from the request from the profession and that this difference appears explicitly in the Regulation 718/99/EC. The reimbursement for tankers only concerned the contributions of the year 1999, and not the entire financial surplus, and had been requested unanimously by the profession.

As regards the fourth allegation that it is only normal that sums which are overpaid are reimbursed, the Commission observed that the Council decided to place the surplus in the reserve fund (Article 3 of Regulation 718/99/EC) and that this surplus constitutes one of the sources for filling the fund. Since the entry into force of this Regulation (29 April 1999), it is no longer possible to reimburse these sums of money. It appears therefore that the Commission strictly followed the Community legislation.

The complainant's observations

The complainant observed that his complaint only concerned the fact that the inland waterway companies had to pay the costs of the scrapping actions. These amounts were meant for the scrapping actions in the period 1989-1992.

The complainant stated that both the ESO and the IUFN had asked to use the financial means to combat overcapacity, namely through scrapping activities. The ESO asked this preferably for the years 2000 and 2002 and asked to use the rest of the money for scrapping round 3. The IUFN had the same position. The Commission did not accept this extra scrapping round and it does not appear that there will be a scrapping action in 2003.

The financial surplus are now serving a completely different objective for which no consent was given. The complainant did not agree with the Commission's statement that the aspirations of the sector were globally given effect, because there were still a lot of candidates for scrapping their ships for which there was still money left. The complainant did not accept the Commission's point with regard to his allegation that it is only normal that sums which are overpaid are reimbursed.

THE DECISION

1 The allegation concerning the measures of Regulation 718/99/EC

1.1 The complainant alleged that scrapping contributions had not been used for their intended purpose as laid down in Council Regulation 1101/89/EEC of 27 April 1989 (1) , but had instead been used for a different purpose under Regulation 718/99/EC (2) . He claimed that the surplus scrapping contributions should have been repaid, not placed in the reserve funds.

1.2 The Commission's opinion stated that Article 3 of Regulation 718/99/EC provides for the reserve fund to be financed by the surplus funding from the structural improvement schemes conducted up until 28 April 1999 and that this was consistent with Regulation 1101/89/EC which foresaw the use of the contributions for scrapping.

1.3 The complainant has presented no evidence to question the validity of Regulation 718/99/EC, nor the way in which it has been interpreted and applied by the Commission. It therefore appears that the complainant's grievances concern the merits of Regulation



718/99/EC, which foresees that the surplus scrapping contributions will be deposited in the reserve funds.

1.4 On the basis of the Ombudsman's inquiries, it appears that the complainant's other allegations and claims (allegation 3 concerning the difference in treatment between tankers and dry cargo ships, and allegation 4 concerning the alleged non reimbursement of the surplus), also concern the merits of Regulation 718/99/EC.

1.5 The European Ombudsman recalls that, as explained in his Annual Report for 1995, it is not his task to examine the merits of legislative acts of the Communities such as regulations and directives. The ombudsman's inquiry has therefore revealed no maladministration by the Commission.

2 The alleged absence of an unanimous proposal from the shipping branch to deposit the surplus in the reserve fund

2.1 The complainant alleged that there was no unanimity within the shipping branch to deposit the surplus in the reserve fund. He observed that most of the individual shippers and the shipping companies wanted back the contributions which were overpaid. The Commission stated that the representative professional organisations on the Community level agreed unanimously to place the financial surplus of the scrapping actions organised until 28 April 1999 into the reserve fund. It referred to the relevant letters of the organisations and to a common position which it annexed to its opinion.

2.2 From the documents of the file, it appears that the Commission has duly taken into account the position of the profession when adopting its proposal for a Council Regulation (COM(98)541 final). This appears for instance from the letter of 30 September 1997 to the Commission, in which the Secretary of the International Union of Fluvial Navigation (IUFN) approved the creation of a reserve fund which would be funded mainly by the resources which have not been used during the 1996-1998 structural improvement campaign. In his letter of 14 October 1997 to the Commission, the President of the European Shipping Organisation (ESO), from which the complainant is a member, stated that two measures had to be taken, namely the maintaining of the "old-for-new" rule and the creation of a reserve fund for scrapping the overcapacity. Finally, in their common position of 20 March 1998, the IUFN and the ESO stated that, apart from annual and special contributions, the new Regulation should foresee other contributions and other financial measures for filling the reserve fund.

2.3 On basis of the above, the Ombudsman notes that the representative professional organisations on the Community level expressed their approval for the creation of a reserve fund under the new Regulation. The Commission took into consideration this position when adopting on 28 September 1998 its proposal for the Regulation 718/99/EC which foresees that the reserve fund will be financed by the surplus funding from the structural improvement schemes conducted up until 28 April 1999. No instance of maladministration was therefore found with regard to this aspect of the case.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore



decided to close the case.

FURTHER REMARK

The Ombudsman notes that the complainant has the possibility to submit a petition to the European Parliament concerning the merits of Regulation 718/99/EC.

The President of the European Commission will also be informed of this decision.

Yours sincerely

Jacob SÖDERMAN

(1) Council Regulation (EEC) N° 1101/89 of 27 April 1989 on structural improvements in inland waterway transport, OJ 1989 L 116/25.

(2) Council Regulation (EC) N° 718/99 of 29 March 1999 on a Community hyphen fleet capacity policy to promote inland waterway transport, OJ 1999 L 90/1.