

Decision of the European Ombudsman on complaint 328/2000/IP against the European Commission

Decision

Case 328/2000/IP - Opened on 27/04/2000 - Decision on 08/12/2000

Strasbourg, 8 December 2000 Dear Mr Z., On 1 March 2000, you lodged a complaint with the European Ombudsman against the European Commission, in your quality as President of an Industrial Association, on behalf of the company S.. The complaint, copy of which was transferred to me by MEP Mr Carraro, concerned the Commission's dealing with the project presented by S. in March 1999, in the framework of the ECIP (European community Investments Partners financial instrument) Programme (1). On 13 March 2000, upon request of my services, you sent further information to me. On 27 April 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion translated into Italian on 24 July 2000 and I forwarded it to you on 4 August 2000 with an invitation to make observations, if you so wished. On 28 September 2000, I received your observations on the Commission's opinion. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

In March 1999, S. presented a joint venture project in the framework of the ECIP Programme. The Programme, in favor of the developing countries of Asia, Latin America, the Mediterranean and South Africa, was operational between 1988 and 1999. It promoted the economic cooperation between the European Union and developing countries by facilitating direct investment by firms in the European Union in joint ventures in the eligible countries. By letter of 14 January 2000, the Directorate General on external Relations of the European Commission informed the complainant that no new ECIP actions would be assessed or approved after 31 December 1999. In the letter it was explained that, on 22 December 1999, the Commission decided to propose to the Council and to the Parliament to continue the legal basis for ECIP until 31 December 2000 in order to finance only the costs of the management of the completion and closure of the existing portfolio of projects, and to finance the necessary technical assistance. On 1 March 2000, the complainant lodged a complaint with the Ombudsman, in which he alleged: 1) The lack of transparency by the Commission in dealing with the request for financing presented by the complainant. 2) The failure by the Commission to reply to the correspondence of 24 August, 15 October and 22 November 1999.

THE INQUIRY

The Commission's opinion In its opinion on the complaint, the Commission explained that the



complainant's application for ECIP financing was received on 29 March 1999 from San Paolo Bank, the financial intermediary, and it was acknowledged the same day. The proposal was examined on 7 October 1999, during a meeting of the Commission's internal interservice ECIP Steering Committee, that concluded that the complainant's financing request was not eligible. The Commission pointed out that this information was immediately communicated to the San Paolo bank by telephone. On 22 December 1999, the Commission decided not to propose to the Council and the Parliament to extend the validity of the ECIP programme. Therefore, Council Regulation (EC) 213/96 of 29 January 1996, which provided the legal basis for the management by the Commission of the ECIP financial instrument expired, as foreseen, on 31 December 1999. The Commission pointed out that it was necessary to take this decision due to a long term reassessment of ECIP's policy purposes and operational design that the institution was making at that period. These reforms were intended to reinforce the sound financial management of EC funds, and to reduce the risks and the complexity of the programmes financed. The adoption of the Regulation proposed by the Commission would imply the restriction on the use of ECIP budget only for operational follow-up of actions already taken before 31 December 1999 or for amendments to contracts already signed and for technical assistance to ensure the completion and closure of ongoing actions. Following the decision not to renew the Programme, the Commission returned the application for financing to the San Paolo, in January 2000. The bank was also informed that its application would not be approved or financed. Moreover, a further registered letter dated 14 April 2000 was sent to the San Paolo bank and, according to the Commission, forwarded to S. Regarding the complainant's allegation that the Commission did not reply to his correspondence, the institution argued that the letters of 24 August, 15 October and 22 November 1999 were not received from the complainant but from the financial intermediary, the San Paolo bank, and were properly replied to. The Commission also stressed that none of the financing requests received in 1999 have been approved for financing. In fact, no contracts were signed in the framework of the ECIP after 31 December 1998. The Commission underlined that S. has been treated in the same manner as all other applicants for ECIP financing in 1999. **The complainant's observations** The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations, that he forwarded to the Ombudsman on 28 September 2000. The complainant underlined that neither himself nor the San Paolo bank have been informed in writing by the Commission of its decision not to retain the project presented by S., decision apparently taken by the ECIP Steering Committee on 7 October 2000. The complainant stressed that by doing so, the Commission has not respected the principle which it states to have respected, thus that an oral communication does not have juridical value. Moreover, in the absence of any written communication, the complainant could not contest the Commission's decision before the end of the programme. Regarding the Commission's allegation that after 31 December 1998, no project was approved in the framework of ECIP programme and that S. was treated in the same way as all the applicants, the complainant considered this explication unacceptable. In the complainant's view, this was an implicit early closing of the programme, a year before its natural end that was foreseen for 31 December 1999.

THE DECISION

1 The Commission's handling of the complainant's request for financing 1.1 S., represented by the complainant in his quality as legal representative, presented a joint venture



project in the framework of the ECIP Programme, in March 1999. The Programme, regulated by Regulation 213/96, was operational between 1988 and 1999 and promoted the economic cooperation between European Union and developing countries by facilitating direct investment by firms in the European Union in joint ventures in Latin America, Asia, the Mediterranean and South Africa.

1.2 The financial intermediary involved in this case was the San Paolo bank. On 14 January 2000, the Commission informed the bank that no ECIP actions would be assessed or approved after 31 December 1999. This information was confirmed in a further letter of 14 April 2000, a copy of which is enclosed for to the complainant since it appears that he had not received it.

1.3 The complainant alleged lack of transparency by the Commission in dealing with the request for the financing to the project presented by S.

1.4 The Commission explained in its opinion that the complainant's proposal was examined on 7 October by the Commission's internal interservice ECIP Steering committee, that concluded that it was not eligible for financing. The Institution informed the San Paolo bank, financial intermediary involved in the case, by telephone. On 22 December 1999, the Commission decided not to renew the ECIP programme that would have ended on 31 December 1999, as foreseen by article 11 of regulation 213/96/EC (2) . On 14 January 2000 it therefore informed the San Paolo bank accordingly and returned the application. A further registered letter was sent to the San Paolo bank on 14 April 2000, in which the Commission explained the reasons why it decided not to propose the Council and the Parliament to extend the validity of regulation 213/96/EC which provided the legal basis for the management by the Commission of the ECIP financial instrument.

1.5 The complainant stressed that neither himself nor the financial intermediary have been informed in writing by the Commission of the negative outcome of the selection procedure and therefore he could not contest the Commission's decision before the end of the programme.

1.6 As Community Courts have consistently held, in assessing the relevant factors to be taken into account for deciding to award a grant following an invitation to tender, the responsible Community institution enjoys a broad discretion (3) . In using its discretion, the institution must ground its decision on some objective criteria and it could be reviewed in case of manifest error in the selection procedure.

1.7 In its decision concerning the project presented by S., it appears that the Commission followed the indication given by the steering committee that decided that the project did not comply with the criteria laid down in the relevant Regulation. From the information received by the complainant and by the institution, the Ombudsman considers that there is no evidence that the Commission has exceeded the limits of its legal authority.

1.8 However, it has to be borne in mind that principles of good administration require that the Commission keeps persons informed about the evolution of the file which concerns them. From the information in possession of the Ombudsman, there is no evidence that the Commission officially informed in writing the financial intermediary or the complainant about the negative decision taken by the Steering Committee on 7 October 1999.

1.9 The Commission should have informed the complainant about its decision in writing and in due time. Furthermore, the Commission should have indicated the reasons on which it based the decision, with the aim to give the complainant the possibility to react before the expiration of the Programme. The fact that the Commission did not act according to these principles, constitutes an instance of maladministration.

2 The alleged failure of reply by the Commission

2.1 The complainant alleged that the Commission did not reply to the correspondence of 24 August, 15 October and 22 November 1999.

2.2 The Commission stressed in its opinion that the letter concerned were received from the financial intermediary and properly replied to.

2.3 It appears



from the evidence produced by both parties that the San Paolo bank was informed only by phone about the rejection of the proposal of S. The Commission also sent two other letters, on 14 January and 14 April 2000, explaining the reasons why it decided not to propose to the Council and to the Parliament to extend the validity of the ECIP programme. These letters could be considered as standard letters sent to all the applicants to inform them of the outcome of the programme. From the information in possession of the Ombudsman, it does not appear that the Commission has replied to the San Paolo bank's request to be informed of the result of the selection procedure concerning S.'s proposal. 2.4 Concerning this aspect of the case, the Ombudsman therefore refers to what has been stressed in point 1.9 of the decision. **3**

Conclusion On the basis of the Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remarks: The Commission should have informed the complainant about its decision in writing and in due time. Furthermore, the Commission should have indicated the reasons on which it based the decision, with the aim to give the complainant the possibility to react before the expiration of the Programme. Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decides to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob Söderman

(1) Council Regulation (EC) No 213/96 of 29 January 1996 on the implementation of the European Communities investment partners financial instrument for the countries of Latin America, Asia, the Mediterranean region and South Africa, Official Journal 028, 06.02.1996 p. 0002-0006.

(2) Article 11 of Council regulation 213/96: *"The Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities and shall expire on 31 December 1999"* .

(3) Case C-19/95, *Adia Interim SA v. Commisison* , [1996], ECR II - 321.