

Decision of the European Ombudsman on complaint 926/2000/IP against the European Commission

Decision

Case 926/2000/IP - Opened on 18/10/2000 - Decision on 27/04/2001

Strasbourg, 27 April 2001

Dear Mr A.,

On 17 July 2000, you lodged a complaint with the European Ombudsman, on behalf of ENEA (*Ente per le nuove tecnologie, l'energia e l'ambiente*), Agency for new technologies, energy and environment, against the European Commission, concerning the participation of ENEA in the LIFE -Nature project "B4-3200/97/272" in the framework of the NATURE 2000 programme.

On 18 October 2000, I forwarded the complaint to the European Commission for its opinion. The Commission sent the translation into Italian of its opinion on 12 December 2000 and I forwarded it to you with an invitation to make observations, if you so wished. I have received your observations on 1 February 2001.

To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into this complaint have been directed therefore towards examining whether there had been maladministration in the activities of the European Commission.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

ENEA, the complainant's agency on behalf of which the complaint was lodged, was the beneficiary of the LIFE-Nature project B4-3200/97/272 in the framework of the NATURA 2000 programme. The areas concerned by the project were *Bosco Pantano di Policoro, S. Vittorino* and *Palo Laziale* , in Italy.



On 28 March 2000, in view of some difficulties encountered during the implementation of the project, ENEA asked the Commission for a time extension until 1 March 2002, to carry out it.

By letter of 22 May 2000, the Commission refused to concede the extension. According to the institution, there were no grounds to concede the requested extension, namely because the very limited activities that have been carried out by the beneficiary in all the concerned areas. Moreover, in this letter the Commission made comments on the interim report that had been forwarded by the beneficiary and considered not satisfactory by the institution. The complainant was given some indications for the drafting of the final report.

On 19 June 2000, the complainant requested the institution to reconsider its position. The Commission answered him on 4 July 2000 and reaffirmed its original decision.

The complainant therefore lodged a complaint with the Ombudsman, in which he made the following allegations:

- The decision not to agree to the request of a time extension was unfair, and the Commission did not consider all the relevant aspects put forward by the complainant in his correspondence.
- The Commission failed to comment on the complainant's observations made in his letter of 19 June 2000.

THE INQUIRY

The Commission's opinion

In its opinion on the complaint, the Commission stated in summary the following:

On 22 May 2000, the Commission addressed a letter to the beneficiary in which it gave a detailed description of the situation concerning the three sites targeted by the project (*S. Vittorino*, *Bosco Pantano di Policoro* and *PaloLaziale*).

Concerning the area of *S. Vittorino* , the Commission pointed out that a third party sent a complaint alleging the incorrect implementation, by the Italian authorities, of Directives 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (1) , and 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (2) . The case related to a trout plant built in this area by a private company.

By letter of 11 December 1998, 1 February 1999 and a fax of 1 April 1999, the Commission asked ENEA, as beneficiary of the project to be carried out in the concerned area, if the trout plant could have a significant negative impact on the objective of the LIFE project. On 31 March 1999, ENEA replied stating that the impact of this infrastructure would constitute a serious obstacle for the achievement of the objective fixed in the LIFE project.

On 7 April 1999, a formal complaint was registered and the Commission therefore decided to suspend all actions related to the project until the case would be solved.

On 4 August 1999, a letter of formal notice has been addressed to the Italian authorities. In view



of the unsatisfactory reply received, and in order to find a solution, a meeting took place on the site on 7 March 2000. However, it was not possible to achieve a solution and when the complainant asked for a time extension, the reasons for which all actions targeting this site have been suspended, were still valid. A postponement of the deadline to carry out the project was therefore not justified, since ENEA would have been unable to pursue any work on that site.

Concerning the *Bosco Pantano di Policoro*, the Commission stated that only a limited batch of actions had been implemented.

Concerning the site of *Palo Laziale*, the Commission argued that, on the basis of the information given by the complainant, almost no action had been carried out.

Regarding the rate of expenditure, the Commission stressed that less than 1/3 of the budget had been spent by the end of the project.

The institution furthermore underlined that ENEA had not provided sufficient elements of guarantee that in the case an extension was granted the new deadline would have been respected.

As regards the complainant's allegation that the Commission failed to comment on the points raised in its letter of 19 June 2000, by which he asked the Commission to reconsider its decision, the institution pointed out that in this letter, ENEA did not add any substantial factual element. By letter of 4 July 2000, the Commission could only confirm its original decision.

Furthermore, the Commission stated that in its letter of 22 May 2000, it gave to ENEA some advice for the drafting of the final report that should have been presented within 30 days after the receipt of the letter. However, on 19 June 2000, ENEA asked the Commission to postpone the deadline. The Commission accepted the request and a new deadline was fixed to 31 July 2000. On 6 October 2000, a new letter was sent to ENEA, in which the Commission indicated that the period of 30 days after receipt of this letter would be the last deadline to receive the final report by ENEA. This, in accordance with article 22 of the LIFE-Nature Standard Administrative Provisions annexed to the Commission decision C (97) 2114 final V39 notified to ENEA on 1 August 1997 and accepted by ENEA with its note of 23 September 1997 no 6522/CON. On 14 November 2000, the Commission had not received the report yet.

Enclosed to its opinion, the Commission also sent information of a confidential nature. The Ombudsman would like to underline that he cannot take a stand based on information, which the complainant can not be given the possibility to comment on. This would be in breach of the principle of the right to be heard. This information will thus not be taken into account by the Ombudsman in deciding on this complaint.

The complainant's observations

The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his observations the complainant stressed in summary the following:

As regards the site of *San Vittorino*, the complainant underlined that the Commission gave



some contradictory information in its opinion. He was surprised that the institution, almost 4 months before registering the complaint lodged by a third party on 7 April 1999, had already asked ENEA to comment on the same allegations.

Concerning the site of *Bosco Pantano di Policoro*, the complainant stressed that the wildlife reserve "Bosco Pantano di Policoro" has been created by Decree of the Basilicata Region. It underlined the important role played by ENEA to achieve this objective. The complainant recognised that, following these new events, the project needed to be re-discussed on the organisational and financial level which resulted in a certain delay.

As regards the site of *Polo Laziale*, the complainant argued that ENEA should not have been considered responsible for the problems encountered between the regional authorities of Lazio and WWF Italy that entirely managed this area. Furthermore, the complainant stressed that the attitude of WWF against ENEA was not always cooperative, although it was formally one of the supporters of the project.

In relation to the letter sent by the Commission on 6 October 2000, the complainant pointed out that the stamp on the envelope showed that it was posted on 26 October 2000, and ENEA had complied with the compulsory deadline, sending the final report within 30 days from the receipt of the letter.

This was not in dispute in the original complaint to the Ombudsman and does seem not to be relevant for the Commission's decision on the request for a time extension. The Ombudsman will therefore not deal with this matter in his decision.

Moreover, the complainant pointed out that the role of consultancy firms and project monitoring in the implementation of the Life-Nature programme, was the object of a written Parliamentary question addressed to the Commission by MEP Luciana SBARBATI, vice president of the Committee on Petitions of the European Parliament, on 9 June 2000. The the complainant argued that the Commission had not replied yet.

As general conclusion, he repeated his dissatisfaction with the Commission's dealing of the request for a time extension made by ENEA.

THE DECISION

1 The Commission's decision not to accept the request for a time extension

1.1 On 28 March 2000, ENEA, beneficiary of a LIFE-Nature project in the framework of NATURE 2000 programme, asked the Commission for a time extension to carry out it. The Commission rejected the request. The complainant alleged that the decision not to agree to the request for a time extension was unfair, and that the Commission did not consider all the relevant arguments put forward by him.

1.2 In its opinion on the complaint, the Commission gave detailed reasons for its decision. It explained that no relevant actions had been carried out in two of the concerned sites, the *Bosco*



Pantano di Policoro and Palo Laziale .

1.3 As regards the third one, *San Vittorino* , the institution pointed out that on 7 April 1999, a complaint concerning the alleged incorrect implementation of Directives 92/43/EEC and 85/337/EEC has been registered. As a consequence, the Commission decided to suspend all actions related to the project until the case would be solved.

When the complainant asked for a time extension, the reasons for which all actions targeting this site have been suspended, were still valid. A postponement of the deadline to carry out the project was not justified, since ENEA would have been unable to pursue any work on that site.

1.4 The legal basis On 21 May 1992, Council Regulation (EEC) No 1973/92 has established a financial instrument for the environment (LIFE) (3) , as amended by Regulation 1404/96 (4) . According to article 6 of this Regulation, the Commission shall ensure that actions undertaken in the framework of this Regulation are consistent with those undertaken under Structural Funds or other Community financial instruments.

1.5 It appears from the information given the Ombudsman that the Commission duly gave reasons for its decision to not extend the time limit. The Ombudsman is not in possession of evidence to state that the Commission by doing so did not act in order to guarantee the sound management of Community funds.

1.6 In its observations, the complainant stated that the Commission gave some contradictory information in its opinion. He was surprised that the institution, almost 4 months before registering the complaint lodged by a third party on 7 April 1999, had already asked ENEA to comment on the same allegations. In this regard, the Ombudsman notes that the Italian translation of the Commission's opinion might have caused confusion as it states that "*il 7 aprile é pervenuto da terzi un esposto*" whereas the English version states that "*a complaint, issued by a third party, has been registered on 7 April 1999*" (emphasis added by the Ombudsman), on the basis of both the complaint by the third party and the complainant's reply of 31 March 1999. It is unfortunate that the translation lead to confusion on this point.

1.7 The Ombudsman considers therefore that there is no maladministration as regards this aspect of the case.

2 The Commission's dealing with a complainant's letter

2.1 The complainant alleged that the Commission failed to comment on his observations made in the letter of 19 June 2000.

2.2 The Commission stressed that after having carefully examined the concerned letter, it appeared that no factual elements had been added. The institution therefore considered that there were no reasons to modify its previous decision not to grant the time extension.

2.3 In view of the information forwarded by the Commission the complainant and in its opinion to the Ombudsman, it appears that the Institution has now given reasons for its decision. The Ombudsman does not consider it necessary to pursue the matter further.



3 Conclusion

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

FURTHER REMARKS

In his observations, the complainant pointed out that the Commission had not replied to the written Parliamentary question addressed to the Commission by MEP Luciana SBARBATI, vice president of the Committee on Petitions of the European Parliament, on 9 June 2000. The Ombudsman would like to inform the complainant that the Commission has replied to this Parliamentary question on 11 July 2000.

A copy of the reply is enclosed with this decision for the complainant's information.

Yours sincerely,

Jacob SÖDERMAN

(1) O.J. L 206 of 22/07/1992, p. 7

(2) O.J L 175 of 5/07/1985, p. 40

(3) Council Regulation (EEC) No 1973/92 , published in the O.J. L 206 of 22/07/1992, p. 0001-0006

(4) O.J. L 181 of 20/07/96, p.1