

Decision of the European Ombudsman on complaint 1305/2000/(BB)ADB against the European Commission

Decision

Case 1305/2000/ADB - Opened on 29/11/2000 - Decision on 28/08/2001

Strasbourg, 28 August 2001

Dear Mr A.,

On 6 October 2000, you lodged a complaint with the European Ombudsman on behalf of the Association " *Agence pour le Vietnam d'Etudes économiques et de Conseil* " (AVEC) concerning the handling of the E.I.C.P. (European Community Partners financial instrument) *Facilité 1* programme by the European Commission.

On 29 November 2000, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 28 February 2001 and I forwarded it to you with an invitation to make observations, if you so wished. I received your observations on 2 May 2001.

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

THE COMPLAINT

The complainant is the president of the Association A.V.E.C. (*Agence pour le Vietnam d'Etudes économiques et de Conseil*). On 12 August 1999, the Association presented its application to the European Commission on the *E.I.C.P. Facilité 1* programme, via the financial intermediary institution, Eurosud Capital (hereafter "the FI").

According to the provisions of the E.I.C.P. *Facilité 1* programme, after a 10-days period for observations, the Commission should have decided on the application within 60 days, i.e. before 23 October 1999. In April 2000, after a number of requests, the FI received a letter from the Commission informing it that the E.I.C.P. *Facilité 1* funding programme had been discontinued on 31 December 1999.

The complainant contacted the Commission on several occasions. On 6 October 2001, the complainant lodged a complaint with the European Ombudsman.



He alleged that the Commission failed to examine the file presented by A.V.E.C. via its financial intermediary Eurosud Capital within the required deadline of two months set in the framework contract. Furthermore, the complainant claims that the Commission should pay compensation for the damage suffered. This compensation should be equal to the part requested as the subsidy to the *E.C.I.P. Facilité 1* programme, i.e. the sum of 76.330 ₣.

THE INQUIRY

The Commission's opinion

The validity of Council Regulation (EC) 213/96 on which the financial instrument E.C.I.P. was based expired on 31 December 1999. On 31 January 2000, a new Regulation was adopted in order to finance the costs linked to the discontinuation of the programme and the projects carried out under E.C.I.P.

Regarding the complainant's allegation and claim, the Commission in summary stated the following:

An acknowledgement of receipt of the application was sent to the FI on 12 August 1999. The Commission stated that it was not a decision. It informed that the decision would be taken at a later stage.

Concerning the 60-day deadline during which the Commission allegedly had to decide on the complainant's application, article 3.9 of the framework contract provides that:

" The EC shall notify the FI within 60 working days from the date of receipt of a complete application, of its decision on this application "

Nevertheless, article 3.10 provides that:

" It is the EC's intention to reduce the period of time referred to in Clause 3.9 above to a maximum of 60 working days from the date of receipt of a complete application. Nevertheless, the parties to this Agreement acknowledge that the final decision of the EC may be subject to legal requirements of procedure that may result in longer periods of time. "

It appears therefore that the 60-day deadline is only an aim to achieve in normal circumstances. In 1998, the *E.I.C.P. Facilité 1* programme underwent a crisis following a growing number of applications and staff cuts. The Commission therefore could not notify Eurosud Capital of its decision on the complainant's application within the timetable set by the contractual provisions.

Moreover, no contractual provision of the framework contract provides that a failure to comply with the deadline leads to a tacit acceptance of the application and a right to be granted funds. The complainant's application had been examined like all the others.

According to the framework contract, the Commission has only to inform the FI, which, in turn, has to inform the applicants about the handling of their file. The Commission considers that it



has adequately informed the FI of the developments in the E.C.I.P. programme. On 14 January 2000, the FI was informed that the programme had been stopped. Further letters were sent on 6 March, 14 April and 18 May 2000.

In applying for the *E.C.I.P. Facilité 1* programme, the complainant had the choice between presenting its application directly to the Commission or via a financial intermediary in accordance with the E.C.I.P. framework contract. The complainant chose the second possibility.

The E.C.I.P. framework contract does not foresee any legal link between the Commission and tenderers like A.V.E.C. The framework contract does not create any right to be granted funds or compensations in case of negative decisions on applications.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his reply, the complainant stated the following:

In accordance with contractual provisions, it is provided that, if within a period of 10 working days the Commission makes no observation after the sending of the acknowledgement of receipt, the application is said to be eligible for examination. By failing to make any observation within the above-mentioned deadline, the Commission had already accepted to examine the complainant's application.

As regards the 60-day deadline during which the Commission failed to decide on the complainant's application, the institution argues that it is due to a crisis in its management of the applications. This argument is an obvious confession of an instance of maladministration and poor management of the Commission in the handling of the *E.C.I.P. Facilité 1* programme.

By arguing that no contractual provision of the framework contract provides that a failure to comply with the deadline leads to a tacit acceptance of the application and a right to be granted funds, the Commission explicitly admits the existence of such a deadline.

The Commission only informed the FI about the progress of the *E.C.I.P. Facilité 1* programme on 14 January 2000, i.e. after its discontinuation on 31 December 1999 and long after the complainant's application. During a two-year period, (1998-1999), the Commission never informed the FI or A.V.E.C. of its management difficulties concerning the *E.C.I.P. Facilité 1* programme. This lack of information led A.V.E.C. to tender on 1999, being unaware of those difficulties. A.V.E.C. therefore suffered a financial damage and a definitive loss of its investment.

Following the E.C.I.P. framework contract, there also is a legal link between the Commission and the tenderer A.V.E.C. The applicants fill in a form which is supplied by the Commission. In accordance with the principle of subsidiarity, A.V.E.C. was definitely linked with the Commission. Finally, the complainant never alleged that applying for a financing programme implied automatically the right to be granted funds.

THE DECISION



1 Failure to examine the application in due time

1.1 According to the complainant, the European Commission failed to examine the file presented by A.V.E.C. via its financial intermediary Eurosud Capital (the FI) within the required deadline of two months set in the framework contract.

1.2 The Commission stated that the deadline set in the framework contract merely constituted an indicative timetable. A crisis in the management of the programme, a large number of applications and staff cuts, had made it impossible to achieve the objective of deciding upon applications within the indicative 60-day period.

1.3 The Ombudsman notes that the Commission's announced intention was to make a decision within 60 days, however, the contract also foresaw that the Commission might not respect the 60-day timetable set in the framework contract.

1.4 In the present case, the Commission gave a reasonable explanation as to why the 60-day time limit for the decision on the application could not be respected. Therefore, the Ombudsman finds that there is no instance of maladministration in relation to this aspect of the case. However, if such delays occur in future, it would be good administrative behaviour for the Commission to inform promptly the citizens involved that the time limit cannot be respected and of the reasons for that situation.

The Ombudsman therefore considers it appropriate to make a further remark below.

2 The payment of compensation

2.1 The complainant claims that the Commission should pay compensation for the damage suffered. This compensation should be equal to the part requested as the subsidy to the *E.C.I.P. Facilité 1* programme, i.e. the sum of 76.330 ₣.

2.2 The Commission stated that the E.C.I.P. framework contract foresees no legal link between the Commission and tenderers like A.V.E.C. The framework contract does not create any right to be granted funds or compensation in case of negative decisions on applications.

2.3 The Ombudsman notes that neither the framework contract, nor the acknowledgement of receipt of the application sent on 12 August 1999 confers any right to funding. The complainant's claim for compensation does not therefore appear to have any legal basis. The Ombudsman finds that there is no instance of maladministration in relation 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 therefore closes the case.

FURTHER REMARK

In the present case, the Commission gave a reasonable explanation as to why the 60-day time



limit for the decision on the application could not be respected. Therefore, the Ombudsman finds that there is no instance of maladministration in relation to this aspect of the case. However, if such delays occur in future, it would be good administrative behaviour for the Commission to inform promptly the citizens involved that the time limit cannot be respected and of the reasons for that situation.

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

Yours sincerely,

Jacob SÖDERMAN