

Decision of the European Ombudsman on complaint 1453/2000/OV against the European Commission

Decision

Case 1453/2000/OV - Opened on 28/11/2000 - Decision on 23/08/2001

Strasbourg, 23 August 2001

Dear Mr M.,

On 1 November 2000 you made a complaint to the European Ombudsman on behalf of the Association of ACP National Chambers of Commerce, Industry and Other Economic Operators concerning the conduct of a Commission official. On 20 November 2000, the Association's secretariat in Brussels sent additional documents with regard to your complaint.

On 28 November 2000, I forwarded the complaint to the President of the European Commission. On 18 December 2000, the Commission sent me a copy of its letter to you dated 29 November 2000. The Commission sent its opinion on 13 March 2001 and I forwarded it to you with an invitation to make observations, if you so wished. On 19 April 2001 you informed me that you would submit observations. However, finally no observations have been received from you.

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 complaint is made on behalf of the Association of ACP National Chambers of Commerce, Industry and other Economic Operators, based in Harare, Zimbabwe and with a secretariat based in Brussels. It concerns the conduct of a Commission official, Mr Cesar Deben, in the DG Development. The framework of the complaint is a request for funding that the association made to Commission for different projects that aim to promote intra-ACP and ACP-EU trade and private sector capacity building.

According to the complainant, on 5 and 8 June 2000, the Association received two letters from the official in question.



The complainant firstly alleged that both letters contained erroneous information and inconsistencies which aimed to damage the credibility of the Association. The official for instance claimed not to have received the files, but was nevertheless in a position to analyse the projects which were proposed. The complainant also stated that the letters had an extremely rude and crude tone.

The complainant secondly alleged that the Association could not find funding for its projects because of the negative, destructive and undermining attitude of the official, who leads the responsible unit, and his deputy. The official ensured that the Chamber would not get funding from the European Development Fund or from any other source.

The complainant therefore wrote to the Ombudsman on 1 November 2000, alleging that 1) the letters sent by the Commission official on 5 and 8 June 2000 contained erroneous information and inconsistencies which aimed to damage the credibility of the Association, and that 2) the Association could not find funding for its projects because of the negative, destructive and undermining attitude of the official and his deputy.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission observed that, since its creation in 1996, the Association has had the Commission's backing. Despite this support, none of the actions presented during its four years of activity met the conditions necessary for obtaining funds under the European Development Fund (EDF).

The first letter of 5 June 2000 reiterated the Commission's position concerning two requests for funding submitted by the Association since 1977, concerning structural financial support under the EDF and the funding of a project called "Business initiative for women".

As regards the first funding request, the Association sought the funding of certain costs linked to its creation and operation. The Commission replied that the EDF cannot satisfy requests of this kind, as the funds available in the context of the ACP-EU agreements concern the objectives of cooperation policy. The putting in place of Community policy to support the private sector excludes the funding of this kind of structure, which would have no direct impact on the objectives in question. Mr Deben recalled this principle in his letter of 8 June 2000, pointing out that *"the Commission is keeping a close eye on the development of these initiatives without privileging or sponsoring any particular one"*.

As regards the request concerning the project "Business initiative for women", the Commission considered that both the procedural and the substantive rules governing ACP-EU co-operation made it ineligible for funding.

As regards the procedural rules, Article 164 of the revised 4th Lomé Convention sets out the general procedures governing requests for financing from funds earmarked for regional cooperation. In accordance with these procedures, only certain bodies are entitled to submit



such requests. In this particular case, the Association did not meet these formal conditions.

As regards the substance, when examining a project submitted to it for funding, the Commission applied the rules of good financial management in order to determine whether a given action is eligible. The Commission is bound by Article 5 of the Financial Regulation of 29 July 1991 applicable to development finance cooperation under the 4th ACP-EEC Convention. For its part, the "Business initiative for women" project, as it was pointed out on several occasions to the complainant, *"does not meet any of the minimum criteria for mounting an action which might be eligible for Community funding (badly defined objectives, vague list of activities, unstructured, inconsistency with the declared objectives; illusory results; mismatch between the Association's experience and capacity and the amount of funds requested)"* (letter of 5 June 2000).

However, with a view to providing the Association with the best possible information on the opportunities for funding its project and for structural aid, the Commission advised it to submit a proposal for funding in the framework of the EBAS programme for aid to the private sector under the European Development Fund. To the Commission's great regret, the Association did not act on this advice.

The Commission wanted to draw the Ombudsman's attention to the fact that it has on several occasions clearly explained to the Association its position regarding the two requests for funding. The letter of 5 June 2000 merely reiterates this position and, contrary to the complainant's allegation, does not contain any erroneous information. The Commission re-examined the situation on the occasion of this complaint and can but confirm the position taken earlier by its services.

The second letter of 8 June 2000, besides reiterating the Commission's grounds set out above, was a reaction to the erroneous information used by the Association with a view to obtaining financial support from private sector organisations in Europe and notably certain chambers of commerce. Hence, in its correspondence with the Cardiff Chamber of Commerce, the Association claimed that it was being supported by the Commission and referred to funding which the Commission could provide. Mr Mitchell-Heggs claimed that *"the Director General for Development at the EU Commission has agreed that this Federation be one of the projects to be supported with the Secretary General of the ACP in Brussels"*.

In talks with the Commission, other national chambers of commerce said that they had received similar information. When it learnt of this, the Commission reacted both by clarifying its position to the third parties and by urging the Association not to refer to *"non-existent funding agreements on the part of the European Commission or existing possibilities without prior verification (.)"*.

Because of the Commission's reaction, Mr M. has for several months been accusing certain members of DG Development of bringing the association and its President into disrepute. These accusations are reiterated in a letter addressed to the Director-General of DG Development of 10 October 2000. The Commission regrets this attitude, which adversely affects the



reinforcement of cooperation between the ACP And EU chambers of commerce and ACP-EU cooperation as a whole.

The Commission is therefore of the opinion that the complainant's allegations against certain Commission officials are unfounded. Commission staff have always adhered to the Commission's management rules as set out in the revised 4th Lomé Convention.

The complainant's observations

The complainant did not submit comments on the Commission's opinion

THE DECISION

1 The letters sent to the Association

1.1 The complainant alleged that letters sent by a Commission official on 5 and 8 June 2000 contained erroneous information and inconsistencies which aimed to damage the credibility of the Association.

1.2 The Commission stated that the letter of 5 June 2000 reiterated the Commission's position with regard to two funding requests submitted by the Association. Contrary to the complainant's allegation, this letter does not contain erroneous information: the Commission stated that the first request for funding fell outside the scope of the ACP-EU agreements concerning the objectives of cooperation policy; the second request concerning the "Business initiative for women" project was ineligible for funding under both the procedural and the substantive rules governing ACP-EU cooperation. The second letter of 8 June 2000 was a reaction to the erroneous information used by the Association with a view to obtaining financial support from private sector organisations in Europe.

1.3 The Ombudsman notes that principles of good administration require that the administration should examine carefully and impartially all the relevant aspects of the individual case. In the framework of requests for funding, it is clear that the administration cannot be barred from forming a reasoned opinion on the applications submitted. Principles of good administration also require officials to behave courteously towards citizens. Well-founded negative assessments should therefore be expressed in proper language.

1.4 The Ombudsman has carefully checked the information available to him as well as the contents of the two letters referred to by the complainant and signed by the same Commission official. As regards the first letter of 5 June 2000, the Ombudsman notes that it reiterates the reasons why it was impossible to fund the "Business initiative for women" project, namely that this project *"does not meet any of the minimum criteria for mounting an action which might be eligible for Community funding (badly defined objectives, vague list of activities, unstructured, inconsistency with the declared objectives; illusory results; mismatch between the Association's experience and capacity and the amount of funds requested)"*. The letter adds that *"in other words, the confusing, inconsistent and incomplete character of the file excluded every possibility for Community funding"*. As regards the structural funding of the Association, the letter repeats that only the bodies foreseen in the financial protocol of the ACP-EU Agreement can benefit of such funding.



1.5 As regards the second letter, the Ombudsman notes that it reiterates the Commission's previous position and requests that the Association not to refer to *"non-existent funding agreements on the part of the European Commission or existing possibilities without prior verification"*.

1.6 On the basis of the above, the Ombudsman considers that the letters clearly explain the reasons for the Commission's negative evaluation of the complainant's application. The Ombudsman also considers that the negative evaluation is expressed in proper language. Furthermore, the Ombudsman finds that the material disclosed in the inquiry does not provide any evidence to support the complainant's allegation that the Commission's letters contained errors and inconsistencies, nor that their purpose was to damage the credibility of the Association. No instance of maladministration was therefore found with regard to this aspect of the case.

2 The alleged negative attitude of the responsible Commission official

2.1 The complainant alleged that the Association could not find funding for its projects because of the negative, destructive and undermining attitude of the official and his deputy.

2.2 The Commission observed that, because of its negative reaction on the substance, the complainant has for several months been accusing certain members of the DG Development. The Commission is of the opinion that these accusations, which are also repeated in the complainant's letter of 10 October 2000, are unfounded.

2.3 The Ombudsman notes that the complainant has not provided evidence to support his allegation concerning the conduct of the responsible officials. 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 therefore closes the case.

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

Yours sincerely

Jacob SÖDERMAN