

Decision of the European Ombudsman on complaint 1613/2000/GG against the European Commission

Decision

**Case 1613/2000/GG - Opened on 20/12/2000 - Recommendation on 20/12/2000 -
Decision on 30/11/2001**

Strasbourg, 30 November 2001

Dear Mr W.,

On 5 December 2000, you lodged, on behalf of Internationaler Hilfsfonds e.V., a complaint with the European Ombudsman against the European Commission concerning the Commission's treatment of several applications for financial assistance made by the complainant.

On 20 December 2000, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 23 April 2001, and I forwarded it to you on 27 April 2001, with an invitation to make observations, if you so wished. On 2 July 2001, you sent me your observations on the Commission's opinion. Further observations were submitted by the complainant in its letter of 9 July 2001.

On 19 July 2001, I addressed a draft recommendation to the Commission.

On 27 July, 30 July and 27 September 2001, the complainant made observations on my letter to the Commission of 19 July 2001. Further comments were submitted by you on 10 September 2001.

The Commission sent its opinion on this draft recommendation on 5 November 2001, and I forwarded it to you on 15 November 2001 with an invitation to make observations, if you so wished. On 27 November 2001, you sent me your observations on the Commission's opinion.

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

THE COMPLAINT

Background

The complainant is a non-governmental organisation (NGO) from Germany which is supporting refugees, war victims and handicapped persons. Between 1993 and 1997, the complainant



submitted six applications to the European Commission for financial assistance with regard to projects in Africa. The Commission rejected the first four applications, three of them in 1993 and the fourth in 1995. The fifth application that was made in December 1996 and the sixth one made in September 1997 were still pending before the Commission at the time when the present complaint was lodged.

The reasons for rejecting the first four applications were set out in a letter addressed to the complainant by the Commission on 29 July 1996. In this letter, the Commission took the view that the complainant had failed to meet the following criteria: (1) All decisions relating to the relevant projects had to be taken at the seat of the body concerned; (2) the majority of the financial resources had to be of European origin and (3) when assessing the eligibility of an NGO, the following factors could be considered: Its ability to mobilise private solidarity and private funds within the EU for its projects, the nature and extent of its links to other NGOs and its administrative capacity. The Commission claimed that it had not been able clearly to distinguish the relevant fields of action, sources of financing and competencies of the complainant and two other NGOs. The Commission also argued that the operating costs of the complainant presented an unacceptable ratio as compared to the amounts passed on to the beneficiaries.

Complaint 338/98/VK

In March 1998, the complainant submitted a complaint to the Ombudsman (complaint 338/98/VK). In its opinion on this complaint, the Commission claimed *inter alia* that it had provided the complainant with a list (dated 23 February 1998) of all the documents on its file in relation to the applications (apart from certain letters from the complainant itself).

In the course of the inquiry into complaint 338/98/VK, the Ombudsman's services inspected the Commission's file. It emerged that the file presented to the Ombudsman's services by the Commission contained *inter alia* an internal note dated 15 July 1996, a letter from a German body of 8 June 1993 (which referred to a previous discussion with the Commission on 4 June 1993) and a letter from Deutsches Zentralinstitut für soziale Fragen (DZI) dated 1 September 1993.

In its reply to a request for information made by the Ombudsman, the Commission pointed out that it had based its reasoning *inter alia* on information provided on a confidential basis by a body called "Plattform deutscher NRO" ('platform of German NGOs') according to which the complainant's operating costs had amounted to 37,7%.

In his decision on complaint 338/98/VK of 11 July 2000, the Ombudsman considered that the Commission had based its assessment not only on the letter from DZI but had had "written and oral contact with several different sources other than the DZI". The Ombudsman took the view, however, that the Commission had provided the complainant with clear reasoning for its decisions only in a letter it had addressed to the complainant on 29 July 1996, that is to say three years after the first application had been made. A critical remark was made in that context and also with regard to the time it had taken the Commission to deal with the applications. The complainant's other allegations were rejected.

Complaint 1160/2000/GG



In its lawyer's letter of 25 July 2000, the complainant asked the Ombudsman to review his decision in so far as the allegations that had been rejected were concerned. This letter was registered as a new complaint (1160/2000/GG).

The Ombudsman considered that parts of this complaint that concerned the merits of his decision did not need to be re-examined. The complainant was informed accordingly on 19 October 2000.

The Ombudsman took the view, however, that the following allegations needed to be examined further:

- (1) The Commission had failed to grant the complainant proper access to its file
- (2) The list of documents that the Commission had provided to the complainant on 23 February 1998 was incomplete and misleading
- (3) The Commission had infringed the complainant's right to be heard by basing its decisions on information from third parties without giving the complainant the opportunity to make observations on this evidence

These allegations are dealt with in the Ombudsman's decision on case 1160/2000/GG that has also been adopted today.

Complaint 1613/2000/GG

On 5 December 2000, the complainant lodged a new complaint (1613/2000/GG) in which he made the following allegations:

- (1) The Commission had failed to award the complainant's applications a fair and objective consideration
- (2) The Commission had failed to decide on the last two applications submitted in 1996 and 1997 within a reasonable period

The complainant argued that the Commission had based its decision to reject the first four applications not on objective facts, but on the subjective opinions of organisations that had no legal mandate for their activities, especially the Deutsches Zentralinstitut für soziale Fragen (DZI). According to the complainant, the Commission had at the same time failed to take account of official sources (e.g. the German tax authorities) and of documents (accounting data, statements of KPMG, the complainant's accountants) submitted to it by the complainant.

THE INQUIRY

The complaint was sent to the Commission for its comments.

The Commission's opinion

In its opinion, the Commission made the following comments:



Fair and objective consideration of the complainant's applications

When dealing with applications for cofinancing for aid and development projects, the Commission exercises its discretionary power in the selection of projects according to the budgetary resources available. In this context, the Commission takes its decisions strictly in accordance with the rules applying. It satisfies itself that the NGO and the project satisfy the eligibility criteria set out in the 'General Conditions for the cofinancing of projects undertaken in developing countries by non-governmental organisations' and the Financial Regulation applicable to the general budget of the European Communities.

The Commission considered that the complainant's applications did not meet two main criteria, namely (1) the requirement for the NGO to be independent and autonomous and (2) the requirement for sound financial management (reliable and non-fraudulent management).

As regards the first criterion, NGOs had to be autonomous and non-profit making and had to have their headquarters in the EU. The headquarters had to be the effective centre for all decisions relating to the cofinanced operations. The majority of the funds had to originate in the EU. In the light of the information obtained by the Commission, it was apparent that the complainant had various functional and financial links with other organisations. The complainant had never been able to prove that it had become independent of its parent organisation in the USA, "Interaid International". This lack of clarity was aggravated by the fact that the complainant's chairman, Dr. Koch, was at the same time acting for another German NGO, "Welthilfe e.V.", and was active in private business (as a consultant). The confused situation as regards the intermeshing of for-profit and non-profit interests in the relations between these persons and bodies did not allow the precise role of the complainant and the source of its funds to be determined.

As regards the second criterion, the relevant rules required good administrative and financial management capacity. This included the ability to ensure reliable and non-fraudulent management in the execution of projects. In 1993, when the information on the complainant was scrutinised by the Commission, its administrative management capacity was found to be inadequate. This was highlighted by the German NGO platform which had rejected a membership application by the complainant on the grounds that its operating costs were excessive, amounting to 37.7 % of its total revenues. Furthermore, the complainant, a medium-sized NGO located near Frankfurt, was financing a branch office in one of the most expensive areas of Brussels at a time when the budget for development activities in the developing countries was only ECU 1.5 million. Such a ratio was incompatible with the stated principles of sound financial management.

The principle of sound financial management presupposed an atmosphere of reciprocal trust between the Commission and the NGO. Such a relationship could not exist when the NGO sought to establish its eligibility by fraudulent means. In this case, the complainant had relied improperly, seeking to deceive the Commission as to the nature and quality of its organisation on the label of the DZI (a German organisation responsible for awarding a quality label to organisations which after detailed scrutiny were judged fit to receive it). However, a letter from DZI of 1 September 1993 in which the DZI declared categorically that there was no question of



granting a quality label to the complainant, provided objective evidence that the label had been fraudulently misappropriated. This was clearly an act of bad faith, conflicting both with the ethical principles and need for reciprocal trust, and with the pertinent legal instruments. The Commission dealt with this fraud with the necessary severity.

Regarding the position of the German tax authorities, the Commission stressed that it was untrue to say that they are competent to determine the NGO's eligibility.

Handling of the last two applications

Regarding the last two applications still under consideration, the Commission did not deny that a particularly long period had elapsed since they were made. However, according to the case-law of the Court of Justice the question whether the duration of an administrative proceeding was reasonable had to be determined in relation to the particular circumstances of the case. The Commission stressed the many efforts it had made to try to establish the NGO's current eligibility. Despite these efforts, because of the complexity of the case and the complainant's conduct at the various meetings arranged with the Commission staff, its eligibility was still under consideration. In order to resolve the dispute, the Commission suggested that the complainant have itself audited by a firm of its choice.

The complainant's observations

In its observations, the complainant maintained its complaint and made the following comments:

Already in 1990, the DZI informed the Commission that the complainant had separated from the American parent organisation and was now an independent association. The Commission itself (and more specifically, its Directorate-General VIII, now DG Development) had given the complainant a grant for victims of Chernobyl of ECU 103.000 in 1991. Dr. Koch was not and had never been a member of "Interaid International". Nor had he ever received any remuneration from this organisation or had had any other kind of involvement. Dr. Koch worked for "Welthilfe e.V.", a charity without links to the complainant, in an honorary capacity. There was at no time any intermeshing of for-profit and non-profit interests in the relationship between Dr. Koch and the complainant on the one hand and "Welthilfe e.V." on the other hand. Dr. Koch gave courses at the University of Antwerp, but the remuneration for this activity was minimal.

The statement of the German NGO Platform according to which the complainant's operating costs amounted to 37.7 % of total revenues was contradicted by KPMG, the complainant's auditors, which had calculated these costs to amount to 22 % of revenues in 1993. This information had been brought to the Commission's attention on various occasions. Rent for the complainant's office in Brussels was very moderate and the area was by no means one of the most expensive in Brussels (1). Moreover, the complainant's budget dedicated to projects amounted to \approx 3.4 million (and not \approx 1.5 million as the Commission had claimed).

The complainant never claimed improperly to be in the possession of the DZI label and never attempted to deceive the Commission as to the nature and quality of its organisation.

It was striking that the Commission based itself on misleading sources such as the DZI whilst failing to take into account the documents emanating from the tax authorities.



In so far as the two pending applications were concerned, none of the circumstances and/or arguments put forward by the Commission justified the length of time that had lapsed. The Commission was wrong to claim that it had made "many efforts" to try to establish the complainant's eligibility. It was the complainant that had asked the Commission over and over again to decide and that had presented documents and evidence.

The Commission's suggestion that the complainant should have itself audited was unsatisfactory. The complainant had proposed such an audit already in 1997 and released KPMG from their duty of confidentiality. However, nothing had happened. The complainant considered that the Commission was only interested in further delaying the case. In its view, the Commission should finally decide on the applications without further delay.

THE DRAFT RECOMMENDATION

By decision dated 19 July 2001, the Ombudsman addressed a draft recommendation to the Commission in accordance with Article 3 (6) of the Statute of the European Ombudsman (2) . The basis of the draft recommendation was the following:

1 Failure to consider the applications fairly and objectively

1.1 Between 1993 and 1997, the complainant, a non-governmental organisation (NGO) from Germany which is supporting refugees, war victims and handicapped persons, had submitted to the Commission six applications for financial assistance with regard to projects in Africa. The Commission had rejected the first four applications, three of them in 1993 and the fourth in 1995. The complainant claimed that the Commission had failed to award the applications a fair and objective consideration. It alleged in particular that the Commission had based itself on misleading sources such as the 'Deutsches Zentralinstitut für soziale Fragen' (DZI) whilst failing to take into account other evidence submitted by the complainant, e.g. documents emanating from the German tax authorities.

1.2 The Commission took the view that it had considered the applications strictly in accordance with the applicable rules. It submitted that the applications had not met two main criteria, namely (1) the requirement for the NGO to be independent and autonomous and (2) the requirement for sound financial management (reliable and non-fraudulent management). In this context, the Commission claimed that the complainant had relied α improperly, seeking to deceive the Commission as to the nature and quality of its organisation α on the label of the DZI (a German organisation responsible for awarding a quality label to organisations which after detailed scrutiny are judged fit to receive it) although the DZI had declared categorically that there was no question of granting a quality label to the complainant.

1.3 The Ombudsman noted that the Commission had put forward a number of specific points to support its view that the complainant had not been eligible for aid. These points were disputed, also at great length, by the complainant. The Ombudsman considered that at least for some of these points, the complainant's criticisms did not appear to be without justification. For example, the Commission relied on a statement by the 'German NGO Platform' according to which the complainant's operating costs amounted to 37.7. % of its total revenues at the time. In the



absence of further information as to the basis on which it was made, the probative value of this statement appeared to be rather limited. At the same time, the Commission omitted to take any account of the statements made by KPMG, the complainant's accountants, according to which the real percentage was much smaller.

1.4 However, the most serious argument on which the Commission relied was its claim that the complainant had fraudulently relied on the label issued by the DZI. The Ombudsman noted that the complainant had addressed a letter (3) to the Commission on 26 March 1993 in relation to one of the first four applications lodged by the applicant. The letterhead used by the complainant comprised a box at the bottom which contained the following words: "Die Förderung des Internationalen Hilfsfonds e.V. wird vom DZI empfohlen" ('The DZI recommends furthering the Internationaler Hilfsfonds e.V.' [i.e., the complainant]). In its letter of 1 September 1993, the DZI informed the Commission as follows: "Von einer Empfehlung der Förderung des Vereins kann also keine Rede sein. Wir werden den Verein auffordern, auf den entsprechenden Hinweis auf seinem Briefpapier in Zukunft zu verzichten." ('There can be no question of a recommendation [by the DZI] to further the association [the complainant]. We will request the association to refrain from using the relevant phrase in its letterhead in the future.')

1.5 The Ombudsman noted that the DZI appeared to play (or to have played) an important role in the sector concerned. It was not unreasonable to assume that this information could have influenced the result of the examination of the complainant's applications by the Commission. The Ombudsman further noted that the complainant had offered no explanation for its behaviour although the Commission's opinion clearly invited it to do so (4). The Ombudsman concluded that by rejecting the complainant's applications on that basis, the Commission appeared to have acted within the limits of its legal authority.

1.6 In these circumstances, the Ombudsman concluded that there appeared to have been no maladministration in so far as the complainant's first allegation was concerned.

2 Failure to decide on applications within a reasonable period

2.1 The complainant claimed that the Commission had failed to deal with its last two applications within a reasonable period. These applications had been lodged in December 1996 and September 1997 and had still not been decided upon by the Commission.

2.2 The Commission did not deny that a particularly long period had elapsed since the applications were made. It referred, however, to the case-law of the Court of Justice according to which the question whether the duration of an administrative proceeding is reasonable had to be determined in relation to the particular circumstances of the case. The Commission claimed that it had made many efforts to try to establish the complainant's current eligibility. According to the Commission, the complainant's eligibility was still under consideration despite these efforts, and that because of the complexity of the case and the complainant's conduct at the various meetings arranged with the Commission.

2.3 The Ombudsman stressed that already in his decision of 11 July 2000, he had informed the Commission that he considered that there had been an excessive delay and that this constituted an instance of maladministration. A critical remark to that effect had been made in



the decision. The Ombudsman had considered that there was no need for him to make a formal recommendation in that case since he had assumed that the Commission would take heed of his critical remark, given that the applications had already been before the Commission for more than 3 ½ and nearly 3 years respectively at that time. The Commission did not react to this critical remark. It was only when receiving the Commission's opinion in the present case in early April 2001 that the Ombudsman became aware of the fact that the Commission appeared to have decided to disregard his critical remark.

2.4 It is a general principle of Community law that the administration must act within a reasonable time in adopting decisions following administrative proceedings (5) . It is also established case-law that the reasonableness of the relevant period must be appraised in the light of the circumstances specific to each case, and, in particular, the importance of the case for person concerned, its complexity and the conduct of the applicant and of the competent authorities (6) .

2.5 The Commission itself accepted that a particularly long period had elapsed since the applications were made. This period had amounted to between 3 ¼ and 4 years when the complaint had been made and had now grown to between 3 ¾ and 4 ½ years. The Commission referred to the "many efforts" it claimed to have made to try to establish the NGO's current eligibility, the complexity of the case and the complainant's conduct. However, no details were given in this context. The issue of the importance of the applications for the complainant was not even mentioned. The Ombudsman therefore considered that the Commission had been unable to show that despite the length of time that has lapsed, it had acted reasonably quickly. In these circumstances, the Ombudsman could not but repeat the finding in his decision on complaint 338/98/VK that there had been excessive delay on the part of the Commission. This constituted an instance of maladministration.

3 Conclusion

The Ombudsman therefore considered that the Commission's approach in the present case gave rise to an instance of maladministration.

The Ombudsman therefore made the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

The European Commission should decide on the two applications lodged by the complainant in 1996 and 1997 as soon as possible, and at the latest by 31 October 2001.

FURTHER OBSERVATIONS BY THE COMPLAINANT

The complainant's letters

In several letters sent in July and September 2001, the complainant criticised the Ombudsman's conclusions in relation to its first allegation.

Inter alia, the complainant made the following comments in this context:

In its letter of 1 September 1993, the DZI had also pointed out that it informed persons inquiring



about the complainant "daß wir die Arbeit der Organisation seit ihrer Neubegründung grundsätzlich für sinnvoll halten" ("that, in principle, we consider the work of the organisation [the complainant] since it has been re-founded, to be a sensible one"). The conclusion set out in the same letter on which the Commission relied was thus in contradiction with this appraisal.

Furthermore, there were several letters from the DZI that included positive statements in relation to the complainant's work (7) :

- in a letter of 4 December 1992 to a third party , the DZI stated "daß der Verein eine sehr sinnvolle Arbeit leistet" ("that the work of the association [the complainant] is a very sensible one") and that "entscheidend ist aber wohl überhaupt die positive Beurteilung durch uns" ("but what should be decisive is our positive assessment")

- in a letter to the complainant of 21 January 1993, the DZI informed the latter "daß wir auf Anfragen eine positive Auskunft über den IH geben werden" ("that when answering queries we will give a positive reply in relation to the IH [the complainant]")

- in a letter of 29 July 1993 to a third party, the DZI noted "daß wir die Arbeit selbst wie auch die Arbeitsweise des IH für sinnvoll halten" ("that we consider both the work and the working method of the IH [the complainant] as being sensible") and "daß wir meinen, ihn empfehlen zu können" ("that we think we can recommend it [the complainant]")

The complainant's claim that it was recommended by the DZI thus only reflected the appraisals made by the DZI itself. The complainant had never claimed to be in the possession of the label issued by the DZI. In these circumstances, it could not be maintained that the complainant had acted fraudulently.

The complainant further submitted a copy of a letter sent to it by the DZI on 16 September 1993 in which the latter referred to its previous letter of 2 September 1993 asking the complainant not to use a reference to the DZI on its letterhead. The letter of 16 September 1993 includes the following passage: "Falls Sie aus meinem Schreiben vom 02.09.1993 den Schluß gezogen haben sollten, das DZI beurteile den Internationalen Hilfsfonds e.V. als nicht förderungswürdig, so wäre dies ein Irrtum" ("If you should have concluded from my letter of 2 September 1993 that the DZI considers the Internationale Hilfsfonds e.V. as not worthy of furtherance, you would have been mistaken").

The complainant further took the view that the Commission had failed to give it the opportunity to submit its comments regarding the accusation that it had acted fraudulently before rejecting its applications.

The complainant also drew attention to the fact that the Commission's letter of 29 July 1996 that purported to provide the reasons on the basis of which the Commission had rejected the applications, contained no reference to any fraud.

In the complainant's view, the Commission had deliberately resorted to false statements and



thus "criminalised" the complainant.

The Ombudsman's approach

Given that the complainant had raised serious issues and submitted new evidence, the Ombudsman decided to forward this material to the Commission. The Ombudsman invited the Commission to comment on the points raised by 31 October 2001, i.e. the deadline set for its detailed opinion on the Ombudsman's draft recommendation.

THE COMMISSION'S DETAILED OPINION

The Opinion

The Ombudsman informed the Commission that, according to Article 3 (6) of the Statute, it should send a detailed opinion by 31 October 2001 and that the detailed opinion could consist of acceptance of the Ombudsman's draft recommendation and a description of how it had been implemented.

In its detailed opinion, the Commission made the following comments:

For the Commission, and in accordance with its normal practice, all applications for cofinancing received from an organisation which had been formally informed of its ineligibility (in 1993 in this case) were inadmissible and were to be formally considered as rejected even before the NGO received a letter confirming the specific rejection of the said application. This was due to the fact that the decision on the eligibility of an NGO had priority over the decision on the eligibility of a measure. In other words, once an NGO was declared ineligible, the Commission did not examine the eligibility of projects submitted by it since, whatever the intrinsic value of the measure, the formal ineligibility of an applicant organisation made it impossible to conclude a cofinancing contract between the Commission and that organisation.

In order to implement the Ombudsman's recommendation, a letter had been sent to the complainant on 16 October 2001. This letter explained the reasons why the Commission had not pronounced on the two applications earlier and expressly informed the complainant of the decision to reject the applications that were still pending.

The complainant had however also been informed that circumstances might have changed sufficiently to render null and void the reasons justifying the decision on ineligibility. The complainant was invited to submit an application for cofinancing in accordance with the rules in force, which would enable the Commission to examine its current eligibility.

A copy of the letter dated 16 October 2001 was submitted by the Commission. In this letter, the head of unit in charge of the matter apologised for the delay and pointed out that the Commission had waited for the Ombudsman's decision. The Ombudsman now having found that the Commission's decision to consider the complainant ineligible did not constitute maladministration, the Commission regretted to inform the complainant that its last two applications had been rejected.

The Commission did not submit any comments on the issues raised and the evidence submitted



by the complainant after the Ombudsman had sent out his draft recommendation.

The complainant's observations

On 27 November 2001, the complainant informed the Ombudsman that it did not intend to comment on the Commission's last opinion. The complainant stressed, however, that the Ombudsman's views on the on the issues raised and the evidence submitted by the complainant after the Ombudsman had sent out his draft recommendation were of utmost importance to it.

THE DECISION

1 Failure to consider the applications fairly and objectively

1.1 Between 1993 and 1997, the complainant, a non-governmental organisation (NGO) from Germany which is supporting refugees, war victims and handicapped persons, had submitted to the Commission six applications for financial assistance with regard to projects in Africa. The Commission had rejected the first four applications, three of them in 1993 and the fourth in 1995. The complainant claimed that the Commission had failed to award the applications a fair and objective consideration.

1.2 The Commission took the view that it had considered the applications strictly in accordance with the applicable rules. In this context, the Commission claimed that the complainant had relied π improperly, seeking to deceive the Commission as to the nature and quality of its organisation π on the label of the DZI (a German organisation responsible for awarding a quality label to organisations which after detailed scrutiny are judged fit to receive it) although the DZI had declared categorically that there was no question of granting a quality label to the complainant. The Commission relied in particular on a letter from the DZI dated 1 September 1993 in this context.

1.3 In his draft recommendation made on 19 July 2001, the Ombudsman noted that at least with regard to some of the factors taken into account by the Commission in its decisions, the complainant's criticisms did not appear to be without justification. The Ombudsman considered, however, that in the light of the DZI's letter of 1 September 1993 and the Commission's interpretation thereof, the Commission appeared to have acted within the limits of its legal authority.

1.4 However, upon receiving the draft recommendation the complainant has submitted substantial evidence to show that the Commission was wrong to assume that the complainant had acted fraudulently. In the complainant's view, the Commission had in any event failed to give it the opportunity to submit its comments regarding this allegation.

1.5 The Ombudsman considers that the material submitted by the complainant appears to support its claim that it had not acted fraudulently. He further notes that the Commission has chosen not to comment on this material, despite being invited to do so by the Ombudsman. The Ombudsman also notes that the alleged fraud on the part of the complainant is not mentioned in the Commission's letter of 29 July 1996 that purported to provide the reasons on the basis of which the Commission had rejected the applications.



1.6 In these circumstances, the Ombudsman is led to the conclusion that at the very least by failing to give the complainant the opportunity to submit its observations on the alleged fraud before rejecting the applications on this ground (as the Commission now claims it did), the Commission failed to handle these applications fairly and objectively.

1.7 In his decision on the related complaint 1160/2000/GG adopted today, the Ombudsman has already found that the Commission has infringed the complainant's right to be heard, and he has made a critical remark in this respect. The Ombudsman considers, therefore, that it is not necessary to make a further critical remark in the present case.

2 Failure to decide on applications within a reasonable period

2.1 On 19 July 2001, the Ombudsman addressed the following draft recommendation to the Commission:

"The European Commission should decide on the two applications lodged by the complainant in 1996 and 1997 as soon as possible, and at the latest by 31 October 2001"

2.2 On 5 November 2001, the Commission informed the Ombudsman that it had rejected the two applications on 16 October 2001. The Ombudsman considers that the Commission has thus accepted his draft recommendation. He therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) A document on the complainant's administrative costs between 1991 and 2000 drawn up by KPMG was submitted to the Ombudsman by the complainant.

(2) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, page 15.

(3) A copy of this letter was obtained by the Ombudsman in the course of his inquiries into complaint 338/98/VK.

(4) A copy of the DZI's letter of 1 September 1993 was attached to the opinion which was forwarded to the complainant. The words cited above were highlighted (presumably by the Commission) on this copy.

(5) See Joined Cases T-213/95 and T-18/96, SCK and FNK v Commission [1997] ECR II-1739, paragraph 56. This paragraph refers to proceedings relating to competition policy, but the



relevant principle is not limited to this area. It may be noted that the Commission itself relies on this judgment to support its own view.

(6) Case C-185/95 P, Baustahlgewebe GmbH v Commission [1998] ECR I-8417 paragraph 29.

(7) Copies of these letters were submitted to the Ombudsman by the complainant.