

Decision of the European Ombudsman on complaint 396/2001/ME against the European Commission

Decision

Case 396/2001/ME - Opened on 28/03/2001 - Decision on 31/10/2001

Strasbourg, 31 October 2001

Dear Mr B.,

On 18 September 2000, you submitted a complaint on behalf of Suède-Maroc Marzipan to the European Ombudsman concerning payment within the ECIP programme (governed by Council Regulation (EC) 213/96). The complaint was registered as 1141/2000/ME. On 3 October 2000, the Ombudsman informed you that he could not deal with complaint 1141/2000/ME since it appeared that you had not made any administrative approaches to the European Commission (Article 2 (4) of the Statute of the European Ombudsman). On 15 November 2000, you complained again to the Ombudsman concerning lack of reply by the Commission. The complaint was registered as 1467/2000/ME. Following the Ombudsman's intervention, the Commission replied to you and the Ombudsman therefore closed complaint 1467/2000/ME on 28 November 2000.

On 14 March 2001, you made a new complaint (369/2001/ME) concerning the ECIP programme.

On 28 March 2001, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 12 June 2001. I forwarded it to you with an invitation to make observations, which you sent on 7 July 2001. From April to August 2001, you further called the Ombudsman on several occasions.

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

THE COMPLAINT

The complainant wrote to the Ombudsman in March 2001 on behalf of the Moroccan company Suède-Maroc Marzipan. The complaint related to the European Community Investment Partners (ECIP), a programme governed by the European Commission under Regulation 213/96 (1) . On 20 May 1998, the complainant applied for an ECIP grant through its financial institution, the BMCE Bank in Morocco, for the establishment of textile industry in Morocco with Swedish



technology. On 26 November 1998, a decision was taken to finance the complainant (ref. 3495) and on 15 December 1998, the Commission informed the financial institution, BMCE Bank, thereof.

According to the complainant, despite the Commission's decision of 26 November 1998, the grant was never paid. The establishment in Morocco should have commenced in June 1999, but was now faced with difficult delays. The complainant had tried to contact the Commission by phone, but did not receive any explanation. It contacted the Commission by letters of 27 January and 28 March 2000 which were not replied to. On 2 November 2000, Suède-Maroc Marzipan wrote again to the Commission. On 15 November 2000, the complainant turned to the Ombudsman concerning lack of reply by the Commission (complaint No. 1467/2000/ME). Following the Ombudsman's intervention in that case, the Commission sent a holding reply on 23 November and a substantive reply in French on 30 November 2000 and in Swedish on 21 December 2000. The Commission confirmed that the project was considered eligible for funding on 26 November 1998 but explained that the Commission could not proceed with the contract since the framework agreement between the Commission and the financial institution, the BMCE Bank, had expired in June 1997.

On 21 November and 4 December 2000, the Commission wrote to BMCE Bank to explain that there was no longer any framework agreement between the two. On 15 January 2001, BMCE Bank wrote to the Commission and stated that it was prepared to sign an agreement in order to allow the complainant's project to be financed. Further on 26 January 2001, the complainant wrote to the Commission to inform that BMCE Bank was prepared to sign an agreement. On 9 March 2001, the Commission wrote to both the complainant and to the BMCE Bank. It stressed the fact that the ECIP programme was based on Regulation 213/96 that expired on 31 December 1999. There was therefore no legal basis for the Commission to proceed with the financing of the complainant's project.

Against this background the complainant lodged a complaint with the Ombudsman. The complainant alleged that the Commission (i) failed to inform the financial institution, BMCE Bank, that an agreement between it and the Commission was necessary, (ii) that the Commission failed to send BMCE Bank a new agreement and, (iii) that the Commission failed to inform the complainant of the reasons for not paying the approved grant.

The complainant claimed that payment should be made.

THE INQUIRY

In its opinion, the Commission referred to Regulation 213/96 as the legal basis for ECIP and the fact that the Regulation expired on 31 December 1999. On 22 December 1999, the Commission decided not to suggest a prolongation of the Regulation to the European Parliament and the Council of the European Union, which meant that the programme ceased to exist. A new Regulation (2) was adopted in April 2001 but it only foresees the financing of the closure and liquidation of ongoing projects.



On 20 March 1998, Suède-Maroc Marzipan applied for a grant under the ECIP programme (Facility No 4) through the financial institution, BMCE Bank. Following the favourable opinion of the ECIP Steering Committee on 26 November 1998, the Commission notified the financial institution, the BMCE Bank on 15 December 1998 that it was in favour of granting the complainant's project \approx 150,000. The examination of the file revealed that the Commission could not proceed with the signing of the contract for the grant since the necessary framework agreement between the Commission and BMCE Bank had expired on 30 June 1997 and had not been renewed. The Commission could therefore neither sign the contract with BMCE Bank nor decide to finance the project presented by Suède-Maroc Marzipan. Moreover, since Regulation 213/96 had expired and no legal basis existed, no new financial commitment was possible which the Commission informed BMCE Bank and Suède-Maroc Marzipan of by letters of 21 and 30 November, 4 and 21 December 2000 and 9 March 2001.

The Commission pointed out that the framework agreement that was signed under Regulation 213/96 between the financial institution and itself did not create any legal link between the Commission and the final beneficiary, in this case the complainant. Moreover, the agreement did not create any rights, such as a right to receive a grant or compensation in case the application was turned down, for the final beneficiary. The letter of 15 December 1998 explicitly explained that it was without prejudice to the formal approval of the proposal by the Commission and as such the letter did not constitute any commitment on the Commission's part.

As regards the complainant's first allegation that the Commission failed to inform BMCE Bank that an agreement between it and the Commission was necessary, the Commission pointed out that an agreement did exist, however, it expired on 30 June 1997. The Commission referred to Article 13(4) of the agreement which stated "*After the termination of this Agreement, the FI [Financial Institution] shall no longer be entitled to present new actions*". The Commission was therefore of the opinion that BMCE Bank, as the financial institution, knew that no project applications could be accepted without an agreement in force.

Regarding the second allegation that the Commission failed to send BMCE Bank a new agreement, the Commission referred to Article XI of the agreement, which stated "*This Agreement shall enter into force on the date of signature and shall remain in force until 30 June 1997. It can be renewed for successive periods of one year by an express exchange of letters between the parties to this Agreement*". The Commission stated that BMCE Bank therefore knew when the agreement expired. BMCE Bank did not at any stage inform the Commission that it wished the agreement to be renewed. Since the Commission handled 150 similar agreements at the time, it did not itself take the initiative to renew the agreement but considered that such an initiative should naturally come from the financial institution.

In respect of the third allegation that the Commission failed to inform the complainant of the reasons for not paying the approved grant, the Commission stated that according to the framework agreement, its contacts were with the financial institution, in this case the BMCE Bank, and not with the complainant as the final beneficiary.



It followed from the Commission's opinion that it rejected the complainant's claim for payment.

The complainant's observations

In its observations, the complainant maintained its complaint. It pointed out that the Commission's letter of 15 December 1998 approving the grant, did not mention the fact that the framework agreement had expired. According to the complainant, the Commission had a duty to immediately inform BMCE Bank when the application arrived that the agreement had expired. The complainant also referred to the fact that from January to September 2000 it tried to get in contact with the person responsible for the ECIP programme. Only when it contacted the Ombudsman did the Commission react. The complainant was of the view that the letter of 15 December 1998 was a legally binding contract that it expected the Commission to follow.

Moreover, in a telephone conversation with the Ombudsman's secretariat, the complainant proposed, in case of a negative decision, that the project could be funded through another Commission programme.

The Ombudsman notes that it is not the role of the Ombudsman to try to obtain funding for complainants for specific projects. The complainant itself is however free to apply for funding from the Commission.

THE DECISION

1 The failure to inform about the necessity of the agreement

1.1 The complainant alleged that the Commission failed to inform the financial institution, BMCE Bank, that an agreement between it and the Commission was necessary.

1.2 The Commission pointed out that an agreement did exist, however, it expired on 30 June 1997. The Commission referred to Article 13(4) of the agreement which stated "*After the termination of this Agreement, the FI [Financial Institution] shall no longer be entitled to present new actions*". The Commission was therefore of the opinion that BMCE Bank, as the financial institution, knew that no project applications could be accepted without an agreement in force.

1.3 The Ombudsman notes that according to Regulation 213/96 (3) a framework agreement is signed by the Commission with the financial institution. An agreement was signed with BMCE Bank, and it expired on 30 June 1997. The mere signature of the agreement should have made BMCE Bank aware of the fact that it was needed, but also the agreement itself provides that it was requisite. Moreover, the Regulation does not lay down any duty for the Commission to inform about the necessity of an agreement.

1.4 The Ombudsman therefore considers that there was no maladministration by the Commission as regards this aspect of the complaint.

2 The failure to send a new agreement

2.1 The complainant alleged that the Commission failed to send BMCE Bank a new agreement.

2.2 The Commission referred to Article XI of the agreement which stated "*This Agreement shall enter into force on the date of signature and shall remain in force until 30 June 1997. It can be*



renewed for successive periods of one year by an express exchange of letters between the parties to this Agreement" . The Commission stated that BMCE Bank therefore knew when the agreement expired. BMCE Bank did not at any stage inform the Commission that it wished the agreement to be renewed.

2.3 The Ombudsman notes that neither Regulation 213/96 nor the framework agreement appear to oblige the Commission to renew the agreement. The agreement refers to *"an express exchange of letters between the parties"* . Under these circumstances, the Commission cannot be criticised for not having sent a new agreement to BMCE Bank.

2.4 The Ombudsman therefore considers that there was no maladministration by the Commission as regards this aspect of the complaint.

3 The failure to inform about the non-payment

3.1 The complainant alleged that the Commission failed to inform the complainant of the reasons for not paying the approved grant.

3.2 The Commission stated that according to the framework agreement, its contacts were with the financial institution, in this case BMCE Bank, and not with the complainant as the final beneficiary.

3.3 According to the Ombudsman, the Commission has a responsibility not only towards the financial institution but also vis-à-vis the complainant as the beneficiary (4) . In the present case, the Commission informed BMCE Bank on 15 December 1998 that the complainant's project could be funded following the signing of a contract. The complainant contacted the Commission by letters of 27 January and 28 March 2000. The Commission only replied in November and December 2000 following another letter from the complainant of 2 November 2000 and the intervention of the Ombudsman.

3.4 The Ombudsman acknowledges that the Commission has now informed the complainant, in its letters from November and December 2000 and March 2001, of the reasons for not paying the grant. This was however not done in due time.

3.5 Principles of good administration require that the Community institutions and bodies reply to the letters of citizens. In the present case, the Commission did not reply to the complainant's letters and thereby failed to inform it in due time of major difficulties which were likely to affect its interests. This constitutes an instance of maladministration. The Ombudsman will therefore address a critical remark to the Commission.

3.6 It follows from this decision that the complainant's claim could not be met.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

Principles of good administration require that the Community institutions and bodies reply to the letters of citizens. In the present case, the Commission did not reply to the complainant's letters



and thereby failed to inform it in due time of major difficulties which were likely to affect its interests. This constitutes an instance of maladministration.

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 therefore closes 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, OJ L [1996] 28/2.

(2) Regulation (EC) No 772/2001 of the European Parliament and the Council of 4 April 2001 regarding the closure and liquidation of projects adopted by the Commission under Council Regulation (EC) No 213/96 of 29 on the implementation of the European Communities investment partners financial instrument for the countries of Latin America, Asia, the Mediterranean region and South Africa, OJ L [2001] 112/1.

(3) 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, OJ L [1996] 28/2.

(4) See the Further Remarks in the Decision of the European Ombudsman of 12 December 2000 on complaint 573/2000/GG against the European Commission. Available on the Ombudsman's Website: <http://www.ombudsman.europa.eu>.