

Decision of the European Ombudsman on complaint 1544/2001/IJH against the European Commission

Decision

Case 1544/2001/IJH - Opened on 27/11/2001 - Decision on 18/07/2002

Strasbourg, 18 July 2002

Dear Ms B.,

On 30 October 2001, you made a complaint to the European Ombudsman against the Commission on behalf of Shelbourne Reynolds Engineering Ltd, concerning the Commission's refusal to convert a European Community Investment Partners loan into a grant.

On 27 November 2001, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 22 February 2002. I forwarded the opinion to you with an invitation to make observations, which you sent on 18 March 2002.

On 15 May 2002, I wrote to the Commission proposing a friendly solution to your complaint and on the same day informed you by letter of this action. On 2 July 2002, the Commission sent its reply to the proposal for a friendly solution.

On 18 July 2002, the Ombudsman's services contacted you by telephone.

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

THE COMPLAINT

In October 2001, the Finance Director of Shelbourne Reynolds Engineering Ltd (SRE) complained to the Ombudsman against the Commission on behalf of SRE. The complaint concerns a European Community Investment Partners (ECIP) loan made to SRE in 1998. According to the complainant, the facts are as follows:

The ECIP loan was funded by the Commission and made available to the complainant through a financial intermediary, Banque Paribas Luxembourg (Paribas). The purpose of the loan was to finance a feasibility study and a pilot project for the setting up of a joint venture with China.

In February 2000, the complainant applied for the loan to be converted into a grant in



accordance with the terms of the finance agreement and the regulations governing the ECIP programme. The application was based on the central finding of the Final Report that a joint venture was not feasible.

On 27 July 2000, the Commission's technical assistance unit informed the complainant that it had recommended approval of the conversion, but no decision had been taken because of a reserve entered by the Financial Secretariat. The technical assistance unit recommended the complainant to contact the Financial Secretariat for further information. The complainant did so, but the responsible person refused to discuss the matter, referring the complainant to Paribas. Paribas could provide the complainant with no information other than that the Commission was in the process of re-organising the ECIP programme.

The complainant sent letters to the ECIP unit in DG 1 (External Relations) of the Commission on 10 January 2001 and 26 February 2001, but the letters were not answered. On 10 August 2001, Paribas informed the complainant that the Commission refused to convert the loan to a grant and that the complainant must therefore repay the amount of almost EUR 200 000. The reason given was that "the terms of reference have been respected in the final report, however, the reasons for non-investment are not acceptable".

In the complaint to the Ombudsman, the complainant alleges that the Commission acted arbitrarily and without giving adequate reasons in refusing to follow the recommendation of its technical assistance unit in favour of conversion of the ECIP loan to a grant.

The complainant also alleges unnecessary delay and lack of information in the procedure.

The complainant claims that the loan should be converted to a grant.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first explained the development of the ECIP programme. The legal basis for the Commission's management of the ECIP financial instrument expired on 31 December 1999 (1). On 22 December 1999, the Commission decided not to propose its extension, which was tantamount to a decision not to continue the ECIP programme. In the absence of a legal basis, and pending adoption of a new ECIP regulation, the Budget Authority entered the 2000 appropriations in a reserve, thus ruling out any new commitments until the new legal basis was adopted. On 31 January 2000, the Commission proposed a new Regulation concerning the funding of management costs associated with the closure and liquidation of current ECIP projects. In accordance with a specific requirement imposed by the European Parliament's Budgets Committee, the 2000 budget did not allow the funding of new ECIP operations. Consequently, no new operations could be evaluated, approved or made the subject of a contract after 31 December 1999.

As regards the complainant's case, the Commission's opinion was in summary as follows:



On 20 June 1997, SRE submitted an ECIP application via the financial intermediary Paribas. The agreement was signed by Paribas and the Commission on 29 April 1998, covering total co-financing of EUR 234 474. The Commission transferred the envisaged sum to Paribas at the end of 1998. Paribas then made an initial payment of EUR 117 237 to the complainant.

In February 2000, SRE submitted its final report on the feasibility study to Paribas. This report concluded that it had not been possible to identify a sufficiently reliable partner to set up a joint venture. As the feasibility study had not brought the results hoped for, the investment project was abandoned.

On 26 April 2000, Paribas forwarded the final report to the Commission and informed it of SRE's request for the sum advanced to be converted into a grant. The ECIP Steering Committee examined this request on 11 July 2000, when the technical assistance unit recommended that conversion into a grant be approved. However, the Commission's financial departments expressed a general reservation about the amounts for conversion.

On 19 July 2001, in a note to the Commission's financial departments, the technical departments rejected conversion, on the grounds that the reasons put forward by the beneficiary for the failure to invest were not acceptable. Around the same time, following a financial analysis of SRE's final report, Paribas arrived at the conclusion that the eligible expenditure incurred by SRE came to EUR 199 345. On the basis of this assessment, it transferred the balance of EUR 82 108 to SRE.

Following rejection of the conversion request, the Commission departments concluded that repayment of the sum advanced (EUR 199 345) would have to be requested and announced the technical winding-up of the operation.

As regards the complainant's allegations and claim, the Commission argued that the recommendation made by the technical assistance unit does not prejudice the Commission's formal approval of the proposed conversion and does not constitute any commitment until a decision is adopted and validated by the signing of an amendment to the agreement between the Commission and Paribas.

The Commission also stated that it has re-examined the complainant's case and contacted Paribas. The latter provided the Commission with a detailed explanation as to why the final beneficiary had decided not to proceed with the investment. On 11 December 2001, the technical departments reconsidered their position and expressed a positive opinion on the conversion into a grant. The Commission informed Paribas of this by letter dated 19 December 2001.

Following a check on the eligible expenditure by the Commission's financial departments, the total grant amount has been assessed at EUR 199 345, thus confirming Paribas' assessment. The financial departments have prepared a proposal for an amendment to the specific agreement to convert the sum advanced into a grant and wind up the operation. The letter will be sent to Paribas very soon.



Finally, the Commission expressed regret for the delay between the request for conversion and the reply from its departments. The delay is partly explained by the complex procedures associated with winding up the ECIP programme, which led to a bottleneck of operations to be processed and made it impossible to deal with things as quickly as the Commission would have liked. Furthermore, in this specific case the matter was re-examined, as a result of which the complainant was able to gain partial satisfaction.

The complainant's observations

In observations on the Commission's opinion the complainant referred to a recent discussion with Paribas in which the latter expressed the view that the complainant may only have an 80% chance of obtaining conversion of the loan to a grant. Paribas also believe that there could be a long delay before they receive the necessary letter from the Commission. The complainant stated that she had gained the impression from Paribas that the Commission was having difficulty in writing the letter due to circumstances that are nothing to do with the merits of the complainant's case.

The complainant stated, until the matter is finalised, vital capital investment needed to secure the future of its business cannot be made. The complainant requested the Ombudsman to leave the file on the case open until receipt of the written confirmation from the Commission necessary for the matter to be resolved.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

On 28 March 2002 and 7 May 2002, the Ombudsman's services contacted the Secretariat General of the Commission by telephone to inquire into progress towards the final settlement of the case. The Commission services were unable to specify a date for the final settlement of the case.

The Ombudsman therefore wrote to the President of the Commission in accordance with Article 3 (5) of the Statute (2) , to propose a friendly solution on the basis of the following analysis.

The Ombudsman's inquiry into the complainant's allegations and claim led the Commission to explain and express regret for the delay between the application for conversion of the ECIP loan to a grant and the reply from its departments.

The Ombudsman notes that, in its opinion dated 22 February 2002, the Commission stated that its financial departments have prepared a proposal for an amendment to the specific agreement to convert the sum advanced into a grant and wind up the operation. According to the Commission's opinion, "(t)he letter will be sent to the financial institution very soon."

On 14 May 2002, nearly three months later, the Commission services were still unable to specify a date for the final settlement of the case. This delay appears inconsistent with the Commission's statement in its opinion that "(t)he letter will be sent to the financial institution very



soon." Having undertaken to act promptly to settle the complainant's case, the Commission should have done so. Its failure to do so is an instance of maladministration. The Ombudsman considers that the maladministration could be ended by a friendly solution, which would consist of the Commission completing the procedure for conversion of the ECIP loan into a grant.

In view of the harmful effects of the current uncertainty on the complainant company's plans for future capital investment, the Ombudsman kindly requests the Commission to give this matter a high priority.

On 2 July 2002, the Commission replied attaching a copy of a letter to Paribas, dated 21 June 2002, confirming the conversion of the ECIP loan to a grant. The Commission also apologised to the Ombudsman and to the complainant for the delay in the handling of the file.

On 18 July 2002, the Ombudsman's services contacted the complainant by telephone. The complainant informed the Ombudsman that, following its receipt of the Commission's letter of 21 June 2002, Paribas wrote to the complainant to complete the procedure for conversion of the ECIP loan to a grant. The complainant considers the case to have been satisfactorily resolved and has placed the capital investment order which was pending. The complainant thanked the Ombudsman for his efforts.

THE DECISION

1 Conversion of a European Community Investment Partners loan to a grant

1.1 The complainant alleged that the Commission acted arbitrarily and without giving adequate reasons in refusing to follow the recommendation of its technical assistance unit in favour of conversion of a European Community Investment Partners (ECIP) loan to a grant. The complainant also alleged unnecessary delay and lack of information in the procedure. The complainant claimed that the ECIP loan should be converted to a grant.

1.2 The Commission stated that its technical departments had reconsidered the position and expressed a positive opinion on the conversion into a grant. Following a check on the eligible expenditure, the total grant amount was assessed at EUR 199 345. The financial departments had prepared a proposal to convert the loan into a grant and a letter would be sent to the financial intermediary Paribas very soon. The Commission also explained and expressed regret for the delay between the complainant's application for conversion of the ECIP loan to a grant and the reply from its departments.

1.3 In the apparent absence of further progress on the file, the Ombudsman made a proposal on 15 May 2002 for a friendly solution, which would consist of the Commission completing the procedure for conversion of the ECIP loan into a grant. The Ombudsman kindly requested the Commission to give the matter a high priority. On 2 July 2002, the Commission forwarded a copy of its letter to Paribas, dated 21 June 2002, confirming the conversion of the ECIP loan to a grant. The Commission also apologised to the Ombudsman and to the complainant for the delay in the handling of the file.



The complainant informed the Ombudsman's services that the case is now satisfactorily resolved.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been achieved. The Ombudsman therefore closes the case.

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

Yours sincerely

Jacob SÖDERMAN

(1) Regulation 213/96, 1996 OJ L 28/2

(2) *"As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint."*