

Decision of the European Ombudsman on complaint 556/2002/ADB against the European Commission

Decision

Case 556/2002/ADB - Opened on 29/04/2002 - Decision on 13/01/2003

Strasbourg, 13 January 2003

Dear Mrs G.,

On 26 March 2002, you made a complaint to the European Ombudsman on behalf of a Group of NGOs working in the field of Development and Environment. The complaint concerns the *Protocol setting out the fishing opportunities and the financial contribution provided for in the Agreement on co-operation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania for the period 1 August 2001 to 31 July 2006* .

On 29 April 2002, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 1 August 2002. I forwarded it to you with an invitation to make observations, which you sent on 30 September 2002.

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

THE COMPLAINT

The complaint relates to the *Protocol setting out the fishing opportunities and the financial contribution provided for in the Agreement on co-operation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania for the period 1 August 2001 to 31 July 2006* (hereafter, the Protocol) (1) .

According to the complainant, during the negotiations leading up to the Protocol, the Commission failed to take into consideration scientific evidence on the resources of Cephalopods (2) in the area as well as the economic condition of the local fishing sector. The Commission asked for fishing possibilities which are incompatible with the Mauritanian policy for a sustained development of the fishing sector. This infringes the Law of the Sea (3) which implies that the EU should only be entitled to the surplus that cannot be fished locally. According to Mauritanian sources (FNP : *Fédération Nationale des Pêcheurs mauritaniens*), local fishing boats have stopped fishing while European boats have increased their catch.



Furthermore, the complainant considers that as regards little pelagic fish (4) , the agreement on the Protocol was reached without assessment of the available resources. This in particular made possible the inclusion of the "Atlantic Dawn" (the largest freezing trawler in the world) in the European fleet, on condition that it fishes in West-African waters. The Commission considered that the fishing capacities could be increased whilst reports and working groups came to a different conclusion.

The complainant alleges that during the negotiation of the Protocol, the Commission disregarded the European Union's commitments towards the protection of natural resources and local development.

The complainant claims the adjustment of the fishing capacities of cephalopods on the basis of the most recent data as well as on the Council resolution on "fisheries and poverty reduction". The complainant also claims the adjustment of the fishing capacities regarding little pelagic fish after a prior evaluation of the resources and by taking account of the needs of the West-African fishing craft industries.

THE INQUIRY

The European Commission's opinion

The opinion of the Commission on the complaint was in summary the following:

The Commission underlined that the Council gave a mandate to the Commission to negotiate the Protocol of agreement between the European Union and Mauritania. In view of the results, the Council considered that the mandate had been respected and ratified the agreement.

The Commission does not accept the complainant's allegations.

Cephalopods - scientific basis

The Commission took into consideration the work of the 1998 CNROP (5) scientific working group and the departure of a large number of the so-called "Chinese cephalopod boats". Between 1996 and 2000, the fleet of cephalopod boats in Mauritania was significantly reduced (154 to 95). The complainant seems to be unaware of this essential element of the Union's strategy. The complainant's assertion that the Commission exclusively based its requests for access to the cephalopod resource on the requests of 82 shipowners is unfounded. The agreement only foresees 52 licences.

The surplus stock is determined by the sovereign Mauritanian authorities on the basis of information provided by local technical services (CNROP, DSPCM, and Ministry for fisheries and maritime economy). The Commission therefore rejects the complainant's allegation regarding the infringement of the Law of the Sea. Regarding the information allegedly obtained from the FNP; its president represented the latter during the four rounds of negotiations.

In criticising the Commission's action, the complainant deliberately sets aside the following important elements set up by the new Protocol:

- The resources will be monitored and a scientific working group set up. This will allow an



adaptation of the fishing capacities.

- The Mauritanian fishing craft industries receive substantial subsidies and the European fleet's fishing sector was moved away from the coast thereby increasing the non-industrial fishing sector.
- Finally the number of Mauritanian workers and observers on European boats was increased and, to favour local development, an increasing amount of the fished products will be unloaded in Mauritania.

Little pelagic fish - particular issue regarding the "Atlantic Dawn"

The licence delivered for the "Atlantic Dawn" did not depend on the fishing sector of the trawler. According to Community law, all the European fishing boats have to be registered as such. The "Atlantic Dawn" was fishing under a merchant navy licence instead of a fishing licence. This was an infringement of Community law and the Commission therefore started a procedure against Ireland. The Commission cannot stop the construction of a boat financed by private funds, it can however check that the fishing licences delivered to these boats comply with the requirements of the multiannual guidance plan (MGP) objectives. When the "Atlantic Dawn" was included in the fleet, Ireland used other boats' quotas for it.

When it considers it appropriate a Member State can ask for an increase of the quotas. This was the case for Ireland and the Netherlands. Because of Council Decision 97/413/CE the Commission was bound to take into consideration additional fishing possibilities identified by the Member States. On the basis of the available scientific elements the Commission very cautiously accepted a much more moderate increase than requested. In any event, the increase was not decided because of the arrival of the "Atlantic Dawn", although it undoubtedly motivated Ireland's request.

It must be noted that the "Atlantic Dawn" is currently fishing on the basis of a private agreement with the Mauritanian authorities and that it is excluded from the Protocol because of its excessive tonnage. According to the Protocol, the increase of the tonnage allowed for boats of the European fleet in this area would need a joint decision with the Mauritanian authorities and a thorough evaluation of the resources.

Finally it is worth noting that the number of licences for boats fishing pelagic fish was reduced from 22 to 15.

The complainant's observations

The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her reply, the complainant stated that the Commission had not adequately responded to the allegation of maladministration.

Cephalopods - scientific basis

The CNROP Working Group mentioned by the Commission recommended a reduction of the fishing effort. The new Protocol in turn foresees an increase (42 to 52 boats). The departure of the so-called "Chinese boats" only reduced the already existing overcapacity. Although it is true that the industrial fleet was reduced, the number of craft fishing boats has dramatically increased during the 1990's (350 to 1000).

The complainant acknowledges Mauritania's sovereignty in managing its natural resources.



However, according to the Law of the Sea, the EU, as "flag state", has to ensure that its boats fish in a responsible way. Therefore, if the EU has information showing that its fleet's fishing in waters of a third country is not compatible with sustainable development, the EU becomes co-responsible of the mismanagement of the natural resources.

Regarding the elements that the Commission considers as particularly valuable in the Protocol, the complainant considers them as partly ineffective :

If the fishing possibilities were to be reduced because of the scientific evidence available, Mauritania might face a reduction of the financial compensation. Given that Mauritania is among the poorest countries in the world, this clause might hinder the adoption of the necessary protective measures.

The complainant considers that there is no need to grant additional financial support to the fishing craft industry if the resources are exhausted.

Little pelagic fish - particular issue regarding the "Atlantic Dawn"

The complainant disagrees with the Commission and considers that several elements show that the increase of the MGP objectives is in direct relation with the fishing possibilities of the "Atlantic Dawn". Furthermore, the fact that the "Atlantic Dawn" was granted a licence while it could not be included in the Protocol agreed with Mauritania necessarily implied that it would fish in the Mauritanian waters on the basis of a private agreement and thereby be in competition with the European boats foreseen by the Protocol. This further develops the overcapacity of boats in this area. The complainant finally rejects the argument based on the reduction of the number of boats given that diverging fishing techniques make it impossible to draw a mathematical link between the number of boats and potential catches.

THE DECISION

1 Failure to abide by commitments during the negotiation of the Protocol

1.1 The complainant alleges that during the negotiation of the Protocol, the Commission disregarded the European Union's commitments towards the protection of natural resources and local development. The complainant claims the adjustment of the fishing capacities of cephalopods on the basis of the most recent data as well as on the Council resolution on "fisheries and poverty reduction". The complainant also claims the adjustment of the fishing capacities regarding little pelagic fish after a prior evaluation of the resources and by taking account of the needs of the West-African fishing craft industries.

1.2 The Commission stated that the Council gave a mandate to the Commission to negotiate the Protocol between the European Union and Mauritania. In view of the results, the Council considered that the mandate had been respected and ratified the agreement. The Commission argues that for the negotiation it has taken into consideration various elements including scientific evidence to determine the fishing capacities to be agreed upon. Furthermore, several provisions of the Protocol are clearly in favour of Mauritania's development and protection of its natural resources. Regarding the trawler "Atlantic Dawn", the Commission made sure that the fishing licence was granted in compliance with the applicable legal provisions. The increase of



the MGP objectives was based on objective grounds, unbiased by Ireland's will to grant a fishing licence to the "Atlantic Dawn".

1.3 The Ombudsman notes that in carrying out the preparatory negotiations leading up to the Protocol, the Commission acted in accordance with Article 300 EC and that the Protocol is the subject of a Council Regulation (6) , adopted after consultation of the European Parliament (7) .

1.4 The Ombudsman considers that the preparatory negotiations conducted by the Commission involved both political questions and complex scientific and economic evaluations. As regards the latter, in accordance with the case law of the Court, the Commission must have a power of appraisal in order to be able to fulfil its tasks (8) .

1.5 The Ombudsman takes the view that the Commission has provided reasonable explanations of its position on the scientific and economic questions raised by the complainant. The Ombudsman's inquiry has revealed no evidence to show that the Commission has exceeded its legal authority. The Ombudsman therefore finds no maladministration by the Commission. In these circumstances, it is unnecessary for the Ombudsman to examine the complainant's claim.

2 Conclusion

On the basis of the 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

(1) Official Journal L 341 , 22/12/2001 P. 0128 - 0159

(2) Large class of active predatory molluscs comprising octopuses, squids, and cuttlefish

(3) United Nations Convention on the Law of the Sea of 10 December 1982

(4) Inhabiting the upper layers of the open sea

(5) Centre National de Recherches Océanographiques et des Pêches (Mauritania)

(6) Council Regulation (EC) No 2528/2001, 2001 OJ L 341/1

(7) European Parliament legislative resolution on the proposal for a Council regulation on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Agreement on co-operation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania for the period 1 August 2001 to 31 July 2006



(COM(2001) 590 - C5-0555/2001 - 2001/0246(CNS)), adopted 13 December 2001

(8) Case C-269/90 *Hauptzollamt München-Mitte v Technische Universität München* [1991] ECR I-5469