

## Decision of the European Ombudsman on complaint 497/2003/IP against the European Commission

Decision

**Case 497/2003/IP - Opened on 27/03/2003 - Decision on 08/10/2003**

Strasbourg, 8 October 2003

Dear Sir,

On 2 March 2003, you made a complaint to the European Ombudsman against the European Commission, on behalf of the "*Cooperativa sociale centro giovanile di riferimento*". The complaint concerned the Commission's decision of 21 July 2001 to suspend the financing granted by the European Social Fund (ESF).

On 27 March 2003, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 25 June 2003 and I forwarded it to you with an invitation to make observations, which you sent on 30 July 2003.

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

### THE COMPLAINT

The "*Cooperativa sociale centro giovanile di riferimento*" (hereinafter "the cooperative"), represented by the complainant, received financing in the framework of the ESF for the organisation of a professional training course (P.O. 906024I1).

On the basis of the information given by the complainant, it appears that by decision of 21 July 2001, the Commission suspended the financing originally granted. The Commission apparently based its decision on a communication received from the Italian Ministry of Labour and Social Security according to which some irregularities had taken place in the carrying out of the project by the cooperative.

The activity of the cooperative had been the object of proceedings in Italy, before the court (Procura) of Naples and before the court of auditors of the region Campania. Both proceedings had been dismissed because no irregularities had been found as regards the carrying out of the project by the beneficiary.



Between 1999 and 2000, the cooperative started further legal proceedings before the Regional Administrative Court of Lazio (T.A.R. Lazio) against the Ministry of Labour and Social Security (which in the meantime had become the Ministry of Welfare). Some of these proceedings are still pending.

By letter of 21 September 2001, the complainant, the legal representative of the cooperative, informed the Commission of the outcome of the proceedings before the Court of Naples and the Court of Auditors and asked the institution to reconsider its position. According to the complainant, the institution did not reply.

In his complaint to the Ombudsman, the complainant claimed that the Commission should reconsider its decision on the basis of the information he had provided in his letter of 21 September 2001 and grant the financing as originally foreseen.

## THE INQUIRY

### **The European Commission's opinion**

In its opinion on the complaint, the Commission pointed out that what the complainant referred to as a "decision" to suspend the financing was only the first stage of the proceedings foreseen in Article 24 of Regulation 2082/93/EEC (1). Article 24 of the Regulation allows the Commission to reduce, suspend or cancel assistance originally allocated within Community funds, in case of irregularities or significant changes affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

On 28 June 2000, the Italian Ministry had sent a letter to the Commission in which it informed the institution that the activity of the cooperative in relation to the project concerned was the object of legal proceedings before the Italian magistrature. Furthermore, the Italian Ministry had taken the view that most of the expenses presented by the cooperative could not have been financed by the ESF. In this context, by letter of 23 July 2001 addressed to the permanent representation of Italy and to the Ministry of Labour and Social Security, the Commission had notified its intention to start the procedure of suspension of the grant, according to Article 24 of Regulation 2082/93/EEC. The Commission, which has the obligation to ensure effective monitoring of implementation of assistance from Community funds, considered that the starting of the procedure of suspension of the financing was justified on the basis of the information it had received from the Italian authorities. In its letter, the Commission had given the reasons for its decision and invited the Italian authorities to inform the beneficiary accordingly. Both the Italian authorities and the beneficiary had been given the possibility to comment on the Commission's letter within two months from the date of its dispatch. The complainant had replied on 21 September 2001. He had informed the Commission of the outcome of the proceedings before the Court of Naples and the Court of Auditors and asked the institution to reconsider its position. On the basis of the information in its possession and of the legal proceedings still pending before the Italian courts, the Commission had maintained its position.

However, having carried out an audit of the balance sheet, it had emerged that the amount of the expenditure presented by the auditors of the cooperative was lower than the advances



already paid by the Commission's services. The Commission had considered that a suspension of payment was therefore no longer necessary. By letter of 5 July 2002, it had notified the Italian permanent representation and the Ministry of Labour and Social Security that the procedure of suspension had been interrupted. There had been no obligation for the institution to notify this decision to third parties, since its interlocutor were the Italian national authorities.

The Commission finally stated that it had acted in accordance with the relevant legislation and that the complainant's claim that its decision of 21 July 2001 to suspend the financing granted by the European Social Fund (ESF) should be annulled could not be accepted since there had been no "decision" on this matter.

### **The complainant's observations**

In his observations on the Commission's opinion, the complainant underlined that the cooperative had been basically excluded from all the procedure, which had been carried out between the Commission and the Italian authorities. He also stated that the cooperative had not been informed of the Commission's conclusions, communicated to the Italian authorities on 5 July 2002.

Furthermore, the complainant remarked that the proceedings which were still pending before the Italian courts did not concern the activity of the cooperative but alleged irregularities on the part of the Ministry of Labour and Social Security in relation to the financing.

## **THE DECISION**

### **1 Preliminary remarks**

1.1 To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

1.2 On the basis of the above provisions, the Ombudsman's inquiries into the complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission. The behaviour of the Italian national authorities is beyond the Ombudsman's mandate.

### **2 The complainant's allegation and claim**

2.1 In his complaint, the complainant claimed that the Commission should reconsider its decision of 21 July 2001 to suspend the financing granted by the European Social Fund (ESF) to the Italian "*Cooperativa sociale centro giovanile di riferimento*".

2.2 In its opinion, the Commission stated that the complainant's claim that its decision of 21 July 2001 to suspend the financing granted by the European Social Fund (ESF) should be annulled could not be accepted since there had been no such decision. What the complainant referred to as a "decision" to suspend the financing was indeed only the first stage of the proceedings foreseen in Article 24 of Regulation 2082/93/EEC (2), which allows the Commission to reduce, suspend or cancel assistance originally allocated within Community funds, in case of



irregularities or significant changes affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

The Commission also explained that it had started this procedure on the basis of the information received by the Italian Ministry in a letter sent on 28 June 2000. In this letter, the Italian authorities had put forward that the activity of the cooperative in relation to the project concerned was the object of legal proceedings before the Italian magistrature and that most of the expenses presented by the cooperative could not have been financed by the ESF. However, having carried out an audit of the balance sheet, it had emerged that the amount of the expenditure presented by the auditors of the cooperative was lower than the advances already paid by the Commission's services. The Commission had considered that a suspension of payment was therefore no longer necessary. By letter of 5 July 2002 it notified the Italian permanent representation and the Ministry of Labour and Social Security that the procedure of suspension had been interrupted. It had, however, been under no obligation to notify the decision concerned to third parties, since its interlocutors were the Italian national authorities.

2.3 In the light of the information in his possession, the Ombudsman takes the view that it has not been established that the Commission had exceeded its legal authority when deciding to start the proceedings foreseen in Article 24 of Regulation 2082/93/EEC (3) . The Ombudsman notes that this procedure has since been interrupted and that this decision duly communicated by the institution to the Italian authorities, which were its interlocutors at national level, on 5 July 2002.

On this basis, there appears to have been no maladministration by the Commission.

### **3 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 Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Council Regulation (EEC) 2082/93 of 29 July 1993 amending Regulation (EEC) 4253/88 laying down provisions for implementing Regulation (EEC) 2052/88 as regards coordination of activities of the different Structural Funds between themselves and with the operation of the European Investment Bank and the other existing financial instruments, OJ L 193 of 31/7/1993 pp. 20 -33.

(2) Council Regulation (EEC) 2082/93 of 29 July 1993 amending Regulation (EEC) 4253/88 laying down provisions for implementing Regulation (EEC) 2052/88 as regards coordination of activities of the different Structural Funds between themselves and with the operation of the European Investment Bank and the other existing financial instruments.



(3) See *supra*, Council Regulation (EEC) No 2082/93, Article 21 (5).