

## **Decision of the European Ombudsman on complaint 1117/2003/GG against the European Court of Auditors**

Decision

**Case 1117/2003/GG - Opened on 26/06/2003 - Decision on 05/09/2003**

Strasbourg, 5 September 2003

Dear Mr M.,

On 19 June 2003, you submitted to me a complaint against the European Court of Auditors concerning the Court's refusal to grant you access to documents relating to an audit carried out in Niger in June 2001.

On 26 June 2003, I forwarded the complaint to the President of the European Court of Auditors. The Court sent its opinion on 17 July 2003. I forwarded it to you on 22 July 2003 with an invitation to make observations by 31 August 2003 at the latest.

No observations appear to have been received from you.

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

### **THE COMPLAINT**

On 6 June 2003, the complainant, a UK citizen, wrote to Mr R., a member of the Court of Auditors, in order to ask for access to documents in relation to an audit carried out in 2001 in Niger. The complainant noted that his request was made on the basis of the "EU access to information regulation".

Access to documents held by the Court is governed by Decision No 18/97 laying down internal rules for the treatment of applications for access to documents held by the Court (OJ 1998 no. C 295 page 1). According to Article 2 of the Decision, all applications are forwarded to the Director of the External Relations Department and Legal Service who decides on their admissibility. Where appropriate, the applicant shall be asked to formulate the application in greater detail. The Court may refuse access on the basis of the criteria set out in Article 4 (3) of the Decision. Applicants shall be informed within one month of receipt of the application of the Court's response to it.



According to Article 3 (1) of Decision No 18/97, all appeals shall be submitted to the President of the European Court of Auditors, and the applicant must be notified of the decision on the appeal within two months. The decision must state the reasons for the rejection and inform the complainant of the channels of appeal open to him.

By e-mail of 17 June 2003 sent by Mrs L. on behalf of Mr R., the complainant was informed that an audit had indeed taken place in Niger in June 2001. However, the sender pointed out that the Court's rules prevented the latter from disclosing internal documents concerning audits. In this context, reference was made to point 6 of the Communications Policies and Standards that the Court had adopted at its meeting on 25/26 September 2001 and that is worded as follows: "In order to protect the professional relationship between auditor and auditee, the Court cannot provide a greater level of specific information to the outside world than is provided in its adopted reports." Mr R. added that to the extent that the relevant audit formed the basis of Special Report No 2/2002 on the implementation of the food security policy in developing countries financed by the general budget of the European Union, information that could be of interest to the complainant was to be found on the Court's website.

In his complaint to the Ombudsman, the complainant made the following allegations:

- (1) The Court's refusal to grant access to the relevant documents was in breach of the relevant rules, namely Regulation No 1049/2001 and Article 23 of the Code of Good Administrative Behaviour.
- (2) There was a breach of Article 19 of the Code of Good Administrative Behaviour, since no information on how to appeal was provided.

## THE INQUIRY

### **The European Court of Auditors' opinion**

In its opinion, the Court noted that it was clear that the complainant's request had not been treated in accordance with the procedures laid down in Decision No 18/97. The President of the Court had therefore decided to contact the complainant again in order to invite him to provide the Court with a detailed indication of any additional information he may need, in order to enable the services of the Court to examine the request in accordance with the Court's internal rules.

The Court submitted a copy of its letter to the complainant dated 17 July 2003 in which it apologised for its first e-mail reply of 17 June 2003.

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

No observations were received from the complainant.

## THE DECISION

### **1 Failure to grant access to document and information on how to appeal**

1.1 On 6 June 2003, the complainant, a UK citizen, wrote to Mr R., a member of the European Court of Auditors, in order to ask for access to documents in relation to an audit carried out in



2001 in Niger. By e-mail of 17 June 2003 sent by Mrs L. on behalf of Mr R., the complainant was informed that an audit had indeed taken place in Niger in June 2001 but that the Court's rules prevented the latter from disclosing internal documents concerning audits. In his complaint to the Ombudsman, the complainant alleged that the European Court of Auditors had wrongly failed to grant him access to the document concerned and had failed to inform him how to appeal against the decision rejecting his application.

1.2 In its opinion, the European Court of Auditors noted that it was clear that the complainant's request had not been treated in accordance with the procedures set out in Decision No 18/97 laying down internal rules for the treatment of applications for access to documents held by the Court of Auditors (1) . The President of the Court had therefore decided to contact the complainant again in order to invite him to provide the Court with a detailed indication of any additional information he may need, in order to enable the services of the Court to examine the request in accordance with the Court's internal rules.

1.3 The Ombudsman considers that the Court of Auditors has thus taken adequate steps in response to the complaint.

## **2 Conclusion**

2.1 On the basis of the Ombudsman's inquiries into this complaint, and taking into account the steps taken by the institution after it was informed of the complaint, there appears to be no maladministration by the European Court of Auditors. The Ombudsman therefore closes the case. The complainant is of course free to lodge a new complaint if the Court should, after having re-examined his application, refuse to grant access to the relevant document.

2.2 The President of the Court of Auditors will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 1998 no. C 295 page 1.