

Decision of the European Ombudsman on complaint 1762/2003/OV against the Council of the European Union

Decision

Case 1762/2003/OV - Opened on 29/09/2003 - Decision on 06/04/2004

Strasbourg, 6 April 2004

Dear Mr P.,

On 11 September 2003, you made a complaint to the European Ombudsman concerning an alleged failure to reply by the Greek presidency of the Council of the EU. This complaint was the follow-up of complaint 1093/2003/OV which you had made on 11 June 2003, but which was considered inadmissible.

On 29 September 2003, I forwarded the complaint to the Secretary-General/High Representative of the Council. The Council sent its opinion on 22 December 2003. I forwarded it to you with an invitation to make observations, which you sent on 28 February 2004.

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

THE COMPLAINT

Background

On 11 June 2003, the complainant made a complaint (ref. 1093/2003/OV) to the Ombudsman on behalf of the ISFE (Interactive Software Federation of Europe, hereafter "the Federation"). The complaint was against the Council of the European Union and the relevant facts were as follows:

The Federation had complained on 12 September 2002 to the Greek authorities (namely the Prime Minister, the President of the Parliament, the Minister of the Economy, as well as other Ministers) about the Greek Law n° 3037/2002 on the prohibition of electrical, electromechanical and electronic games, alleging that this law was infringing EU law. No reply was received.

On 13 February 2003, the Federation wrote again to the Greek Vice-Minister of the Economy, with copies to three other Greek ministers (those of Public Order, Justice and Culture) and to the Permanent Representative of Greece to the EU, complaining about the same matter and asking for measures to be taken against Greece. On this occasion the complainant addressed



these persons not in their national capacity, but in their capacity as the Greek Presidency of the Union. Since the complainant again received no answer, a complaint was made to the European Ombudsman against "the Greek Presidency of the Council". The complainant claimed that the Presidency should reply to its letter, recognise that the Greek Law n° 3037/2002 is contrary to Article 202 of the EC Treaty and insist that Greece comply with EC law.

By letter of 10 July 2003, the Ombudsman informed the complainant that he was not entitled to deal with the complaint, because *"although you complain against the Council and more particularly its Greek Presidency, the complaint is in substance directed against the Greek authorities"*. As the matter fell within the responsibility of the Commission as "Guardian of the Treaty", the Ombudsman suggested that the complainant could make a complaint to the Commission or a petition to the European Parliament. As regards the alleged failure to reply by the Greek authorities, the Ombudsman suggested to contact the Greek Ombudsman.

The present complaint

On 16 September 2003, the complainant made a new complaint to the Ombudsman confirming that his complaint is directed against the Council of the European Union and specifically its Greek Presidency. The complainant alleged that the Greek Presidency of the Council has failed to reply to the letters of the Federation of 13 February 2003, addressed to the Greek Vice-Minister of the Economy and to the Permanent Representative of Greece to the EU.

THE INQUIRY

The Council's opinion

The Council made in summary the following points:

The alleged maladministration in the activities of the Council concerns the failure to reply to letters of 13 February 2003 addressed to Mr Apostolos FOTIADES, State Secretary for Economic Affairs and Finance, and to Mr RALLIS, Deputy Permanent Representative of Greece to the European Union. The letter to Mr FOTIADES bears no address whilst that sent to Mr RALLIS indicates that it was addressed to the Greek Permanent Representation to the EU, but fails to specify the exact address to which it was sent.

In accordance with Article 28 of the Council's Rules of Procedure (1), all correspondence to the Council should be sent to the President at the Council of the European Union, Rue de la Loi 175, B - 1048 Brussels. Neither of the above letters was addressed to the Council's address. Moreover, the Secretariat-General of the Council has no record of having received the two letters either directly, or by way of re-transmission by the Greek authorities.

In these circumstances, the Council has never been in a position to reply to the said letters. Accordingly, the Council considers that there has been no maladministration on its behalf with respect to the alleged failure to reply. In particular, there has been no breach of Article 9 of the Code of administrative behaviour for the General Secretariat of the Council, according to which staff shall reply without delay and normally within 15 working days following receipt, to all requests for information addressed to the General Secretariat.



Furthermore, even if the Council had been in possession of the said letters, the Council is of the opinion that the allegations of failure to consider the compatibility of Greek law n° 3037/2002 with Community law and failure to take necessary action against the national authorities, are not matters which fall within its competence. According to Article 226 of the EC Treaty, it is for the Commission in its role as Guardian of the Treaty to consider whether a Member State has failed to fulfil a Treaty obligation.

It follows from the above that the allegation of maladministration by the Council is totally unfounded.

The complainant's observations

The complainant observes that in essence the Secretariat-General of the Council argues that there has been no breach of Article 9 of the Code of administrative behaviour, because the complaint was not sent to its address. The reference to this article is not relevant, because the complaint was not addressed to the Secretariat-General of the Council, which assists the Council (Article 23 of the Council's Rules of Procedure) but to the Council itself, represented by its President. This distinction is clear throughout the entire Rules of Procedure.

As regards the question whether the complaint should have been sent to Rue de la Loi 175, B - 1048 Brussels, instead of directly to the acting President of the Council and to the Committee of Permanent Representatives (Coreper), the complainant observes that Article 28 of the Council's Rules of Procedure refers to correspondence pertaining obviously to procedural questions (such as access to documents, agendas) and not to substantive requests such as the one made by the complainant. In the latter case, the actual address of the President of the Council should prevail, or at least be equally used as the address of the seat of the Council in Brussels.

Article 28, which is of a purely procedural nature, should not be applied as an absolute requirement, since this could lead to the disappearance of fundamental human rights on exclusively procedural grounds. Also, the Presidency should have transmitted the letter to the correct address, as article 20 of the Rules of Procedure provides that the Presidency shall be responsible for the application of those rules. As the complainant's letter was also addressed to the acting President of Coreper - which is responsible for preparing the work of the Council - the latter should also have transmitted it to the Secretariat-General's address. There has been lack of co-ordination within the Council.

Finally, the complainant observes that his complaint is not looking for any measure by the Council against the Greek authorities. The Federation thinks that it is the responsibility of the Council to consider a case of major economic importance which unbalances the co-ordination of the general economic policies of the Member States, to try to restore the co-ordination and either take a decision (Article 202 of the EC Treaty), or ask the Commission to undertake a study (Article 208 of the EC Treaty).

THE DECISION

1 The alleged failure to reply by the Greek Presidency of the Council

1.1 The complainant alleged that the Greek Presidency of the Council has failed to reply to the



letters of the Interactive Software Federation of Europe, hereafter "the Federation") of 13 February 2003, addressed to the Greek Vice-Minister of Economy and the Permanent Representative of Greece to the EU.

1.2 The Council observed that neither of the above letters was addressed to its official address specified in Article 28 of its Rules of Procedure. Moreover, the Secretariat-General of the Council has no record of having received the two letters either directly, or by way of re-transmission by the Greek authorities. The Council has thus never been in a position to reply to the said letters and there has been no breach of Article 9 of the Code of administrative behaviour for the General Secretariat of the Council, according to which staff shall reply without delay and normally within 15 working days following receipt, to all requests for information addressed to the General Secretariat.

1.3 In his observations, the complainant argued that the reference to Article 9 of the Council's Code of administrative behaviour was not relevant, as the letters were not addressed to the Secretariat-General, but to the Council itself, represented by its President. Furthermore, according to the complainant, Article 28 of the Council's Rules of Procedure refers to "correspondence" which obviously pertains to procedural questions and not to substantive requests. It should therefore not be applied as an absolute requirement. Both the President of the Council and the acting President of Coreper should have transmitted the letters to the correct address.

1.4 The Ombudsman first recalls that his mandate concerns maladministration in the activities of Community Institutions and bodies. It seems useful to note that the Presidency of the Council of the European Union is part of the Council, which is a Community Institution.

1.5 Next, the Ombudsman points out that the Community institutions and bodies have a duty to reply to correspondence sent to them (2) .

1.6 As regards the facts of the present case, the Ombudsman notes that the file transmitted by the complainant contains copies of two letters dated 13 February 2003, from the Federation. The letters, written in French and concerning the compatibility of Greek Law n° 3037/2002 with Community law are to Mr Apostolos Fotiades, "*Vice-Ministre de L'Economie*" and to Mr Rallis, "*Ambassadeur, Représentation permanente de la Grèce auprès de l'Union européenne*". The Ombudsman also notes that that neither letter indicates the address to which it was sent. Moreover, the complainant has not submitted proof of posting or of delivery of the letters to the Council.

1.7 In these circumstances, the Ombudsman considers that the complainant has not succeeded in demonstrating maladministration by the Council.

1.8 As regards the new point raised by the complainant in his observations, namely that the Council has the responsibility to consider a case of major economic importance which unbalances the co-ordination of the general economic policies of the Member States, to try to restore the co-ordination and either to take a decision or to ask the Commission to make a



study, the complainant has the possibility to bring this directly to the Council's attention.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Council. The Ombudsman therefore closes the case.

The Secretary-General/High Representative of the Council will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OL 2002 L 230/7.

(2) See Article 14 of the European Code of Good Administrative Behaviour, proposed by the European Ombudsman and adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website:

<http://www.ombudsman.europa.eu> [Link]).