

Decision of the European Ombudsman on complaint 520/2004/TN against the European Commission

Decision

Case 520/2004/TN - Opened on 15/03/2004 - Decision on 20/10/2004

Strasbourg, 20 October 2004

Dear Mr B.,

On 8 February 2004, you made a complaint to the European Ombudsman on behalf of "Umeå Delta och skärgårdsförening" concerning a request for access to certain documents relating to the European Commission's opinion to Sweden of 24 April 2003 on the "Botniabanan" (Botnia Link) railway development plan.

Your complaint was brought forward in your observations on the Commission's opinion in complaint 2183/2003/(TN)(IJH)TN. Complaint 2183/2003/(TN)(IJH)TN was closed on 15 March 2004, with the Ombudsman's conclusion that no further inquiries into the matter were justified.

On 15 March 2004, I forwarded your new complaint to the President of the Commission. The Commission sent its opinion on 15 June 2004. I forwarded it to you with an invitation to make observations, which you sent on 21 July 2004.

In a telephone conversation on 8 September 2004, you informed my services that you had received the documents that you had asked for and that you considered the matter to have been settled.

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

THE COMPLAINT

In February 2004, a complaint was made to the Ombudsman on behalf of "Umeå Delta och skärgårdsförening" (an association acting to influence the extension of the "Botniabanan" (Botnia Link) through the Swedish City of Umeå). The complaint concerned a request for access to certain documents relating to the European Commission's opinion to Sweden of 24 April 2003 on the "Botniabanan" (Botnia Link) railway development plan.

The background to the complaint was the building of a railway, the "Botniabanan" (Botnia Link),



and its alleged encroachment on a Natura 2000 area. According to the complainant, the Swedish Government chose a location for the railway that brings about the greatest damage to the environment. The Swedish Government had asked the Commission (DG Environment) for advice in the framework of the Habitats Directive and the Commission had approved the project in its opinion.

The complainant turned to the Commission, requesting access to background documents showing how the Commission had evaluated the matter. He subsequently complained to the Ombudsman (complaint 2183/2003/(TN)(IJH)TN) alleging that the Commission had failed to reply. In his decision on complaint 2183/2003/(TN)(IJH)TN, the Ombudsman concluded that the Commission had acknowledged the delay and apologised for it. Furthermore, after receiving a copy of the complaint to the Ombudsman, the Commission appeared to have taken swift action to send the complainant the documents that it thought he had asked for. The Ombudsman considered the Commission to have taken appropriate corrective action to deal with the delay and no further inquiries into the case were therefore justified. The case was closed on 15 March 2004.

However, in his observations on the Commission's opinion in complaint 2183/2003/(TN)(IJH)TN, the complainant explained that he was dissatisfied with the documents sent to him by the Commission. According to the complainant, the documents that he had received did not contain the Commission's critical evaluation of the project, which he had requested. Furthermore, he had received no reply from the Commission to an e-mail sent to it on 18 December 2003, in which he explained his dissatisfaction with the documents that he had received. He therefore wanted to submit a new complaint. In his decision on complaint 2183/2003/(TN)(IJH)TN, the Ombudsman noted that the complainant's new allegations raised different issues from the original complaint and that they therefore would be subject of a separate inquiry.

Accordingly, at the same date as complaint 2183/2003/(TN)(IJH)TN was closed, the Ombudsman opened a new inquiry on the basis of the allegations and claim below.

In his new complaint, the complainant alleged that the Commission had:

- i) failed to provide him with documents showing its critical evaluation of the Botnia Link railway development plan; and
- ii) failed to reply to his e-mail of 18 December 2003, in which he informed the Commission of his view, as expressed in i) above.

The complainant claimed that the Commission should give him access to the documents containing the Commission's critical evaluation of the Botnia Link railway development plan.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission explained how it has handled the official request from the



Swedish Government for a Commission opinion in application of Article 6(4) of Directive 92/43/EEC. This article recognises that, in the absence of alternative solutions, a plan or a project may be carried out despite a negative assessment of the implications for a Natura 2000 site if it is justified for essential reasons of overriding public interest, including those of a social and economic nature.

As regards the complainant's e-mail of 18 December 2003, the Commission stated that it initially felt that it should be dealt with under the Ombudsman's further investigations and consequently no direct reply was sent to the complainant. However, having reconsidered the case, the Commission had decided to send the complainant a further reply, enclosing relevant documents.

The complainant's observations

In his observations, the complainant stated that he was satisfied with the documents sent to him by the Commission. He pointed out, however, that one page in one of the documents appeared to be missing.

After being notified of this omission by the Ombudsman's services, the Commission provided the Ombudsman with the accidentally missing page, which was forwarded to the complainant.

In a telephone conversation on 8 September 2004, the complainant acknowledged receipt of the missing page and informed the Ombudsman's services that he considered the matter to be settled.

THE DECISION

1 The alleged failure by the Commission to provide the complainant with requested documents and the claim that it should do so

1.1 The complaint concerns a request for access to certain documents relating to the European Commission's opinion to Sweden of 24 April 2003 on the "Botniabanan" (Botnia Link) railway development plan. Following a request for access to documents made by the complainant, the matter became the subject of a complaint to the Ombudsman (complaint 2183/2003/(TN)(IJH)TN) and the Commission subsequently sent the complainant the documents which it thought he had asked for. However, the complainant was not satisfied with the documents sent to him and he therefore submitted a new complaint. According to the complainant, the documents that he had received did not contain the Commission's critical evaluation of the project, which he had requested. The complainant alleged that the Commission had i) failed to provide him with documents showing its critical evaluation of the Botnia Link railway development plan; and ii) failed to reply to his e-mail of 18 December 2003, in which he informed the Commission of his view, as expressed in i). The complainant claimed that the Commission should give him access to the documents containing the Commission's critical evaluation of the Botnia Link railway development plan.

1.2 The Commission argued that it initially felt that the complainant's e-mail of 18 December 2003 should be dealt with under the Ombudsman's further investigations in complaint 2183/2003/(TN)(IJH)TN and that, as a consequence, no direct reply was sent to the



complainant. However, having reconsidered the case, the Commission had decided to send the complainant a further reply, enclosing relevant documents.

1.3 Having received a page that was accidentally missing among the documents provided by the Commission, the complainant informed the Ombudsman's services that he considered the matter to be settled.

1.4 In view of the above, the Ombudsman considers that the Commission appears to have taken adequate steps to settle the complaint and has thereby satisfied the complainant.

2 Conclusion

It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS