

Decision of the European Ombudsman on complaint 3114/2004/IP against the European Commission

Decision

Case 3114/2004/IP - Opened on 02/02/2005 - Decision on 10/07/2008

Strasbourg, 10 July 2008

Dear Mr A.,

On 11 October 2004, acting on behalf of your company, Gazzina Trading Srl, you submitted a complaint to the European Ombudsman against the European Commission. The complaint concerned the participation of your company in calls for tender EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN.

On 30 December 2004, you submitted further documents. On 2 February 2005, I forwarded the complaint to the President of the Commission requesting the institution's opinion on the complaint by the end of April 2005. On 3 May 2005, the Commission sent a letter informing my secretariat that its opinion on your case would be slightly delayed.

On 7 June 2005, the Commission sent the translation of its opinion into Italian. On 16 June 2005, I forwarded it to you with an invitation to make observations which I received on 22 July 2005. After carefully examining the Commission's opinion and your observations, I considered that it was necessary to conduct further inquiries. On 17 July 2006, I therefore wrote to the President of the Commission asking him to provide further information by the end of September 2006. On the same date, I informed you accordingly. By letter of 15 September 2006, the Commission informed my secretariat that the internal consultations within its services and the inquiries that needed to be carried out with its Delegation in Tunisia were more difficult than had initially been expected. The Commission asked for an extension of the original deadline of 30 September 2006 for submitting its opinion. On 2 October 2006, I informed the Commission that I had decided to agree to its request and that the new deadline for its reply was 31 October 2006. On the same date, I informed you accordingly.

On 21 December 2006, I received the translation into Italian of the Commission's reply. I forwarded it to you on 15 January 2007 with an invitation to make observations, which you sent to me on 27 February 2007.

On 16 October 2007, my legal services contacted the Commission since it appeared to be necessary to clarify certain aspects of the case. On the same date, you were informed



accordingly by telephone. On 17 December 2007, I received the Commission's reply to my request of 16 October 2007.

On 16 May 2008, I received your letter asking for my final decision on your case as soon as possible.

I am writing now to let you know the results of the inquiries that have been made. I apologise for the length of time it has taken to conclude the present inquiry.

THE COMPLAINT

The relevant facts at the origin of the complaint can be summarised as follows.

The Italian company Gazzina Trading Srl ("Gazzina") participated in call for tender EuropeAid/116502/D/S/TN published by the Tunisian Ministry of Agriculture, which was the Contracting Authority (*Pouvoir adjudicataire*) (1) . The objective of these calls for tender was the supply of water pumps and irrigation equipment for dams and lakes in the above-mentioned projects.

On 19 November 2003, the complainant sent a fax to the Ministry of Agriculture of Tunisia asking to be informed about the results of the tender procedure. Since he received no reply from the Ministry of Agriculture, the complainant wrote to the Commission's EuropeAid Co-operation Office on 1 December 2004 and asked for its intervention in order to obtain the requested information.

On 23 December 2003, the Commission informed the complainant that the responsible authority for the call for tender EuropeAid/116502/D/S/TN was the Ministry of Agriculture of Tunisia and that all issues related to the relevant procedure should be dealt with by it. The Commission also informed the complainant that it had nevertheless forwarded his letter to its Delegation in Tunisia ("the Delegation").

On 26 January 2004, the Delegation sent a letter to the complainant informing him that the offers related to the relevant call for tender had been opened on 18 August 2003 at the Ministry of Agriculture of Tunisia, in the presence of two observers from the Delegation. On 21 August 2003, the Ministry of Agriculture asked the complainant to indicate the total of its financial offer within 48 hours (2) . Since no reply appeared to have been received from the complainant within the deadline, the offer submitted by Gazzina was therefore declared ineligible. According to the Delegation, the complainant had only replied on 29 August 2003 and had sent its response to a wrong address.

On 28 January 2004, the complainant wrote to the Delegation, pointing out that, contrary to what had been affirmed by the Delegation in its letter of 26 January 2004, he had replied to the request for information of 21 August 2003 within the deadline. He stated that his reply had been sent to the only fax number available on the " *cahier des charges* " (3) . In its reply of 24



February 2004, the Delegation recognised that an administrative error had indeed taken place and that the Contracting Authority had failed to verify the fax number indicated in the *cahier des charges*. Since it appeared that the complainant was not responsible for the fact that his reply of 23 August 2003 had not reached the recipient in due time, the Delegation had therefore asked that the offer submitted by Gazzina be made the object of a new administrative as well as of a technical evaluation. It emerged from this evaluation that the offer complied with the administrative requirements. However, the offer was not in conformity with the relevant technical requirements, since 14 groups of motor pumps out of the 21 groups, which constituted Lot N° 1 of the offer in question, were not technically compliant with the requirements of the call for tender.

On 25 February 2004, the complainant wrote to the Delegation. In his letter, he took the view that the technical evaluation of Gazzina's offer had not been accurate since, according to him, its offer complied with the technical requirements as indicated in Annex II to the *cahier des charges*. In a further letter of 29 March 2004, the complainant submitted a request for access to documents under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ("Regulation 1049/2001") (4). The complainant asked to receive the following:

- (i) copies of the minutes of the opening procedure related to calls for tender EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN and of the evaluation reports;
- (ii) a copy of the report made by the Delegation's services concerning the re-examination of Gazzina's offer submitted in the framework of tender procedure EuropeAid/116502/D/S/TN, including the CVs of the members (non-Commission officials) of the Evaluation Committee;
- (iii) a copy of the technical offers submitted by the company Sogepro which had been awarded tenders EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN in which Gazzina had also participated; and
- (iv) any further documentation related to the relevant procedure including the existing exchange of correspondence between the Commission and the Tunisian authorities.

In its reply of 13 May 2004, the Commission stated that, as already explained in its letter of 23 December 2003, the responsible authority for the calls for tender was the Ministry of Agriculture of Tunisia, acted as the Contracting Authority. Accordingly, all complaints should be addressed to it.

As regards the complainant's request for access to documents, the Commission rejected it on the following grounds. Concerning the evaluation report, the Commission recalled that, in accordance with Article 19.2 of the Instructions to Tenderers, the evaluation reports were confidential and therefore it was not possible to disclose them to the public. Concerning the CVs of the external personnel working for the Commission, this information could not be disclosed either without exposing them to the risk of external influence.



On 31 May 2004, the complainant, who was not satisfied with the Commission's reply, asked the institution to provide him with a proper reply to his letter of 25 February 2004, also in so far as his request for access to documents was concerned.

On 11 October 2004, the complainant submitted a complaint to the Ombudsman. The Ombudsman understood the complainant's allegations and the claims as follows.

The complainant alleged that (i) the decision not to award the contracts to his company was unfair, since the reasons of inadmissibility put forward by the Delegation were incorrect and (ii) the evaluation grids used by the Delegation were different from the ones published in the calls for tender.

The complainant made the following claims:

(i) the Commission should pay EUR 66 839.40, corresponding to loss of earnings of Gazzina for not having been awarded the contract; EUR 47 000, corresponding to the costs incurred in preparing the present complaint; and EUR 1 million in moral damages (5) ;

(ii) the Commission should publish his file on the website of the EuropeAid Co-operation Office;

(iii) the EuropeAid Co-operation Office should act in conformity with the Rules and Procedures for services, supplies and works contracts financed from the general budget of the EC in the context of co-operation with third countries adopted in March 2003 ("the Rules and Procedures"). These rules foresee a minimum period of 15 days before contract signature to allow non-selected bidders to appeal against the relevant decision;

(iv) the Commission should give him access to the documents requested on the basis of Regulation 1049/2001.

THE INQUIRY

The institution's opinion

In its opinion, the Commission made in summary the following points.

The Tunisian Ministry of Agriculture launched calls for tender EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN in accordance with the 4th Financial Protocol between the European Community on the one hand and the Tunisian Republic and the Programme MEDA on the other. It was therefore the Ministry of Agriculture, acting as the Contracting Authority, which was responsible for the preparation of the tender dossiers, for the specification, and for the award of the contracts. In accordance with point 2.2, 2.6 and 2.7 of the Practical Guide applicable to contracts financed by the Commission budget in the framework of external actions ("the Practical Guide"), the Commission's role was to ensure that the applicable legal conditions for the Community financing of contracts in the context of external actions were met. Furthermore, in its correspondence with the complainant, the Commission informed him that any complaint concerning the management of the tender should have been addressed to the Tunisian



authorities. Nevertheless, at Gazzina's request, the Commission carried out an additional verification of the evaluation already made by the Evaluation Committee and accepted by the Contracting Authority. This did not mean, however, that the Commission substituted itself for the Contracting Authority which maintained the overall responsibility for the whole procedure. The Delegation's intention was only to check the reasons given by the Contracting Authority for the ineligibility of the offers submitted by Gazzina.

Concerning the complainant's allegations and claims, the Commission made the following comments.

Exclusion from tenders EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN

Regarding the exclusion from tender EuropeAid/116502/D/S/TN, in addition to the information already provided in its correspondence with the complainant, the Commission stated that the initial mistake that caused the exclusion of Gazzina's offer on procedural grounds was, ultimately, irrelevant because the offer did not fulfil the technical requirements. Any formal re-opening of the evaluation process would have therefore been pointless since it would have had no impact on the final outcome.

Regarding the exclusion from tender EuropeAid/116670/D/S/TN, the Commission explained that the opening session of the offers received took place on 8 October 2003. Gazzina's offer for "Lot N° 1" was excluded since it did not comply with the relevant technical requirements. At the request of Gazzina, a further technical evaluation was carried out. By letter of 24 February 2004, the Delegation confirmed to the complainant that the evaluation already made by the Evaluation Committee was correct. For the purposes of transparency, the Delegation included some examples of criteria to which the offer submitted by Gazzina did not comply.

Use of a different evaluation grid from the one published in the call for tender

Regarding the alleged use of a different evaluation grid from the one published in call for tender EuropeAid/116670/D/S/TN, the Commission explained that its Delegation did not carry out a formal evaluation on the basis of an evaluation grid but that it limited itself to carrying out an internal verification in order to check whether or not Gazzina would have been technically compliant with the relevant criteria. This verification showed that Gazzina's offer was ineligible for both tenders.

The complainant's claims for financial compensation and his request for posting the relevant file on the EuropeAid Co-operation Office website

Concerning the complainant's request for financial compensation, the Commission stated that, in light of its position on his allegations, his request for compensation to the amount of EUR 1 113 839 could not be granted. It further considered that it was not appropriate to publish the file on the EuropeAid Co-operation Office website.

Application by the EuropeAid Co-operation Office of the rule granting non-selected bidders the right to within a minimum of 15 days before the signature of the relevant contract

The Commission recalled that the relevant rules informing candidates and tenderers were laid down in (a) Article 100(2) of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (6) ("the Financial Regulation"); (b) Article 149 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation



applicable to the general budget of the European Communities (7) ("the Implementing Regulation"); and were complemented by the Rules and Procedures. According to the Commission, the complainant incorrectly stated that these rules foresaw a minimum period of 15 days before the signature of the contract to afford non-selected bidders the opportunity to appeal against the relevant decision. Furthermore, the rules invoked by the complainant, that is, those contained in the Commission's Communication adopted on 16 July 2003, only applied to public procurement contracts awarded by the Commission under Article 105 of the Financial Regulation (contracts awarded by the Community institutions on their own account) and not to external actions.

The complainant's request for access to documents

The complainant made an application for access to documents on 29 March 2004. In his application, the complainant took the view that none of the exceptions foreseen by Regulation 1049/2001 could apply since he did not intend to use those documents against the selected bidder. In this regard, the Commission stressed that the interest of the applicant in, or the use that the latter intended to make of, the documents was not *per se* relevant for the institution in deciding on the request. In its replies of 13 May 2004 and of 13 July 2004 to the complainant's request, the Commission refused to grant him access to the requested documents on the grounds of the specific rules on tender procedures. The Commission recognised that its position should also have been based on Regulation 1049/2001 and it had therefore reviewed its decision on this basis.

Five categories of documents were identified:

- documents emanating from the Tunisian administration, which were received and held by the Commission in the framework of bilateral co-operation of the European Union and the Republic of Tunisia, as formalised in the Financial Framework Convention signed on 20 September 1997;
- documents emanating from the Commission and addressed to the Tunisian administration in the framework of the above-mentioned Convention;
- internal Commission documents;
- the technical offer of the successful bidder, that is, the company Sogepro;
- the CVs of the persons who reviewed the evaluation procedure.

Concerning documents under categories (1) and (2), the Commission stressed that the Financial Framework Convention applicable in the present case did not authorise the Commission or any other Community institution to grant public access to documents emanating from the Tunisian administration within the implementation of programmes and projects financed by the EU. In light of the above, the exception laid down in Article 4(1), third indent, of Regulation 1049/2009 appeared to be applicable, since disclosure of those documents would have affected the relations between the Commission and the Tunisian authorities.

Documents under category (3) contained opinions given either individually or collectively by the Delegation's staff with respect to the verification of the offer submitted by Gazzina. Considering these documents, confidentiality was justified in order to guarantee the objectivity of the opinions of the persons concerned, to ensure their freedom of expression, and to preclude the risk that they might be exposed to external pressure. The Commission therefore considered that the refusal to disclose this category of documents was justified on the basis of the exception laid



down in Article 4(3), second indent, of Regulation 1049/2001.

Concerning the document under category (4), the Commission considered that its disclosure would have harmed the commercial interests of the relevant company and should be therefore refused on the basis of the exception laid down in Article 4(2), first indent, of Regulation 1049/2001.

Concerning the documents classified under category (5), the Commission took the view that disclosure of the CVs of non-statutory Delegation staff members would undermine the protection of their privacy and integrity. In this regard, the Commission explained that those documents contained personal data which were communicated to the institutions for the specific purpose of selecting and recruiting staff.

The complainants' observations

The complainant's observations on the Commission's opinion can be summarised as follows.

The complainant noted that some of the documents attached by the Commission to its opinion to the Ombudsman were in English whilst, according to the information available on the EuropeAid Co-operation Office website, the official version of the documents concerning the relevant procedure was the French. The complainant took the view that the two linguistic versions were not consistent in so far as the role of the Commission was concerned. The complainant also argued that the Commission inappropriately referred to Chapter 6 of the Practical Guide, given that the relevant procedure was regulated in Chapter 4 of the Guide.

The complainant also made the following points:

- (i) the Commission did not clarify where it was indicated that any complaint concerning the management of the tender should be addressed to the Tunisian authorities;
- (ii) the Commission unfairly declined any responsibility concerning the tender procedure;
- (iii) the Commission refused to admit that the Tunisian authorities were responsible for serious irregularities;
- (iv) the Commission's statement that Gazzina never complained to the Tunisian authorities was incorrect (8) ;
- (v) contrary to what was stated by the Commission, the offer submitted by Gazzina complied with the technical relevant criteria;
- (vi) the Commission had unilaterally decided not to follow the rules concerning the right of appeal by non-selected tenderers;
- (vii) he maintained his claim that the Commission should post, on the EuropeAid Co-operation Office website, the file concerning the present case.

Further inquiries



After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman considered that further inquiries were necessary.

Request for further information

In his letter of 17 July 2006 to the President of the Commission, the Ombudsman asked the institution to describe the internal verification carried out by its services and to specify on which elements it had been based. The Ombudsman also asked the Commission to address the complainant's argument, made in his observations, that it had not clearly indicated where it had been specified that, in case of disagreements arising during the phase of adjudication of contracts, tenderers should address the Tunisian judicial authorities. The Commission was also asked to explain whether and, if so, how the technical expertise submitted by the complainant had been taken into consideration.

Regarding the complainant's request for access to documents, the Ombudsman asked the Commission to specify the nature of the "international relations" (9) that it considered would be affected in case of disclosure of documents identified under categories (1) and (2). Concerning documents identified under category (3), the Commission was asked to specify how their disclosure " *would [as argued by the Commission] seriously undermine the institution's decision-making process* ". The Ombudsman further asked the Commission to explain whether the possibility of granting partial access had been considered.

Request for a supplementary opinion

The Ombudsman asked the Commission to give an opinion on the following new allegations submitted by the complainant in his observations.

According to the complainant, the Commission had failed to act in accordance with point I.8 of the Rules and Procedures, which provided that " *[s]hould a contracting authority fail to adhere to the contract award procedure provided for in these rules and procedures, the Commission reserves the right to suspend, withhold or recover funding for the contracts under suspicion* ". The complainant therefore alleged that the Commission, instead of suspending the procedures following the serious irregularities committed by the Tunisian authorities, had helped these authorities to create different evaluation criteria and modify the grids published in the calls for tender.

The Commission had failed to comment on the fact that five contracts had been awarded to the same company, Sogepro, even though, at least in the two calls for tender in which Gazzina had participated, the price of Sogepro's offer was not the best one.

The Commission's reply

In its reply, the Commission made the following points.

(1) Concerning the Ombudsman's request to describe the technical verification carried out by the Delegation and elements on which it had been based, it stated the following. As regards tender EuropeAid/116502/D/S/TN, the Delegation carried out a technical verification similar to the one that had already been carried out by the Evaluation Committee, in order to double-check it and to verify whether the award of the contract had been lawfully done. This verification was an " *a posteriori* " verification and was not part of the formal evaluation carried out by the Evaluation Committee of the Appointing Authority. The above verification was not a



new formal evaluation carried out on the basis of an evaluation grid, but was exclusively focused on the two technical criteria with which, according to the Evaluation Committee's initial determination regarding 14 out of the 21 groups of motor pumps constituting Lot N° 1, Gazzina was not in compliance. Concretely, the two criteria were (i) the "motor power/pump power" and (ii) "the output of the motor pumps groups for a TMH variation (Total Manometric Height) of 10 meters". These criteria were part of the technical evaluation grid published in the tender dossier and applied by the Evaluation Committee. The Delegation confirmed the results of the evaluation made by the Evaluation committee and, by letter of 24 February 2004, it forwarded to Gazzina the results of its internal verification as well as an extract of the summary table used by the Evaluation Committee of the Contracting Authority.

As regards call for tender EuropeAid/116670/D/S/TN, the technical verification was carried out by the Delegation experts who specialised in rural development as well as by the task manager of the project. This verification focused only on the technical criterion published in the tender dossier with which, according to the Evaluation Committee, Gazzina's offer was not in compliance. Concretely, this criterion was the " *output of the moto[r]pumps groups for a TMH variation (Total Manometric Height) of 10 meters* ". The internal verification confirmed the assessment of the Evaluation Committee and the complainant was informed accordingly by letter of 23 February 2004.

(2) Concerning the request clearly to indicate where it had been specified that, in case of disagreements arising during the phase of adjudication of contracts, tenderers should address the Tunisian judicial authorities, the Commission stated the following. The tender dossier specified that " *[f]or full details of the tendering procedures, please refer to the Practical Guide to EC external aid contract procedures, which may be downloaded from the following Website: http://eurom.eu.int/comni/scr/tender/index_en.htm [Link].* "

According to point 2.2. of the Practical Guide:

" *The interventions of the Commission's representatives within the decentralised procedures for the conclusion or implementation of the contracts financed in the context of external actions are only to see whether or not the conditions for the Community financing are met. They will not, in any case, have as an objective nor as a possible effect, the attempt against [sic] the principle by which the decentralised contracts become national contracts that are only prepared, elaborated and concluded by the decentralised Contracting Authority.* " (Commission's emphasis).

Furthermore, according to point 2.4.12 of the Practical Guide,

" *[T]enderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint. Where informed of such a complaint, the European Commission must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority. If the above procedure fails, the tenderer may have recourse to procedures established under the beneficiary country's national legislation* ".



The Commission further emphasised that clarifications about the applicable law were provided to the complainant by the Director of the EuropeAid Co-operation Office's Mediterranean policy, Mr W., in his letter of 27 August 2004.

(3) Concerning the request made to the Commission to explain whether and, if so, how the technical expertise submitted by the complainant had been taken into consideration, the Commission stated the following. The technical documentation submitted by the complainant was analysed by the Delegation experts who were specialised in rural development as well as by the task manager of the project. As a result of this examination, the experts confirmed the outcome of the assessment made by the Evaluation Committee of the Contracting Authority which was communicated to the complainant in February 2004.

(4) Regarding the request to the Commission to specify the correct contents of the "international relations" that it considered would be affected in case of disclosure of the information contained in documents classified under categories (1) and (2), the Commission stressed that, according to the Practical Guide ("Conclusions of the Evaluation Committee"):

" The entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy. The Evaluation Report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the Contracting Authority, the European Commission and the supervisory authorities (eg. "the Court of Auditors"). "

The Commission classified under category (1) all documents emanating from the Tunisian authorities, such as the tender opening report and its annexes, the Evaluation Report as well as any request for clarification addressed by the Contracting Authority to the Delegation in the procurement procedure for the relevant tenders. Since these documents emanating from the Tunisian administration were third party documents, within the meaning of Article 4(4) of Regulation 1049/2001, the Commission considered that disclosure of these documents would negatively affect its relations with the Tunisian authorities.

Documents classified under category (2) consisted of all those documents emanating from the Commission and addressed to the Tunisian administration in relation to the Financial Framework Convention. Examples of such documents included the tender dossier approval; the endorsement of the evaluation; as well as any request for clarification addressed by the Delegation to the Contracting Authority in the procurement procedure for the relevant tenders. The Commission acknowledged that it was the author of these documents. However, it explained that, since these documents were part of the exchanges between itself and the Tunisian authorities regarding the implementation of the Financial Framework Convention, it considered it appropriate to consult the Tunisian authorities with respect to their potential disclosure. The Commission took the view that disclosure of any document exchanged in the application of the Financial Framework Convention, without the consent of the Tunisian



authorities, would be prejudicial to the confidentiality of communications and to the good political relations between itself and those authorities. In this regard, the Commission explained that, therefore, such disclosure would undermine the protection of international relations. The Commission maintained its position that, in any event, full disclosure of the requested documents would not be possible since it would undermine the commercial interests of the other tenderers as well as the privacy and integrity of the evaluators.

(5) Regarding the Ombudsman's request to specify how disclosure of the information contained in documents identified under category (3) "*would seriously undermine the institution decision-making process*", the Commission stated the following. It stressed that those documents contained the opinion of Delegation staff and the preliminary deliberation in the preparation of the Commission's verification exercise. Disclosure of those documents would seriously affect the independent expression of opinions in future similar cases since it would lead to a situation whereby staff would be cautious when drawing-up such documents. The confidentiality of those documents was therefore essential in order to guarantee the independence and impartiality of Commission staff's opinions from potential interference by third parties.

The Commission finally stressed that, despite the above, following the Ombudsman's request for further information, and considering that some of the documents could, potentially, be partially disclosed in accordance with Article 4(6) of Regulation 1049/2001, on 13 September 2006, the Commission consulted the Tunisian authorities on this regard.

(6) Regarding the Ombudsman's request for a supplementary opinion, the Commission made the following points.

The Commission emphasised that the verifications carried out by the Delegation were exclusively based on the technical criteria contained in the tender dossier.

Concerning the allegation that the Commission failed to comment on the fact that five contracts were awarded to the same company even though, at least in the two calls for tender in which Gazzina had participated, the prices quoted in that company's offers were not the best ones, the Commission stated the following. It emphasised that, according to the Instructions to Tenderers, the successful tenderer was the one that had submitted the least expensive offer provided that the offer had been evaluated by the Evaluation Committee and found to be compliant with the requirements of the tender dossier from both the administrative and the technical points of view. Consequently, any offer which was considered not to be administratively or technically compliant was automatically disqualified for the financial evaluation even though its price was lower than the one quoted in one of the offers submitted by the other tenderers concerned.

Concerning tender EuropeAid/116502/D/S/TN, four companies, including Gazzina, submitted an offer for the same lot, namely, Lot N° 1. Only one tenderer, that is, Sogepro, was considered by the Evaluation Committee to be administratively and technically compliant with the requirements of the tender dossier. The internal verification carried out by the Delegation experts confirmed the results of the evaluation made by the Evaluation Committee.



Concerning tender EuropeAid/116670/D/S/TN, three companies, including Gazzina, submitted offers that were declared to be compliant at the administrative stage. However, only the offer submitted by Sogepro was declared to be compliant with the technical evaluation criteria published in the tender dossier. The contract was therefore awarded to Sogepro even though the price of its offer was not the lowest one.

The complainants' observations

In his observations, the complainant stressed that he had no further comments to submit in addition to what he had already submitted and that he maintained his complaint. However, he emphasised that, in his view, the Commission failed properly to exercise an *ex ante* control of the relevant procedure and that its services still failed to answer his complaint satisfactorily.

The Ombudsman's further action

The Ombudsman noted that, in its reply to his request for further information, the Commission stated that, on 13 September 2006, it had consulted the Tunisian authorities since it considered that some of the documents requested by the complainant could potentially be partially disclosed in accordance with Article 4(6) of Regulation 1049/2001. Given that it appeared that the Ombudsman had not subsequently been informed of any further developments with respect to this issue, he considered it necessary to contact the Commission. On 16 October 2007, the Ombudsman's services contacted the Commission regarding the above. The Ombudsman's services were informed that, up to then, the Commission had received no reply from the Tunisian authorities and that its competent services were going to contact them again and would inform the Ombudsman of any further developments.

On 17 December 2007, the Commission informed the Ombudsman that, on the basis of the consultations carried out with the Tunisian authorities, it decided to grant partial access to the documents requested by the complainant. The Commission forwarded to the Ombudsman a copy of the letter sent on 7 December 2007 to the complainant. In its letter, the Commission, offered its apologies to the complainant for the delay in dealing with his request and explained that partial access was granted in conformity with Regulation 1049/2001. Certain information had therefore been blanked out in order to protect the commercial interests of the other tenderers, the Evaluation Committee members' privacy and integrity, as well as information that would endanger the protection of the public interest, in particular of international relation.

The complainant's further letter of 15 May 2008

On 16 May 2008, the Ombudsman received a complainant's letter asking for the Ombudsman's final decision on his case as soon as possible. In his letter, the complainant also stated that on 7 December 2007, the Commission finally forwarded him the documents that he had requested before lodging his complaint with the Ombudsman. He further reaffirmed the substance of his complaint.

THE DECISION

1 Factual background

1.1 The Italian company Gazzina Trading Srl ("Gazzina") submitted an offer following the publication of calls for tender EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN published by the Tunisian Ministry of Agriculture, which was the Contracting Authority (*Pouvoir*



adjudicataire). The objective of these calls for tender was the supply of water pumps and irrigation equipment for dams and lakes.

In both cases the offers submitted by Gazzina were rejected on the grounds that the evaluation carried out by the Evaluation Committee showed that they were not compliant with the relevant technical requirements.

In his complaint to the European Ombudsman, the complainant alleged that the decision not to award the contracts to his company was unfair since the reasons for inadmissibility put forward by the Commission's Delegation in Tunisia ("the Delegation") were incorrect.

1.2 The Commission stressed that the exclusion of Gazzina's offers was due to the fact that they did not comply with the relevant technical requirements.

It further stated that, at the request of the Gazzina, the Delegation carried out, in both cases, a technical verification similar to the ones already carried out by the Evaluation Committee. The purpose of the Delegation's verification was to double-check the technical verification carried out by the Evaluation Committee and thus to verify whether the decision of the Evaluation Committee was lawful.

The technical verification by the Commission's Delegation confirmed the assessment of the Evaluation Committee.

2 The complainant's allegation that the Commission's Delegation used different evaluation grids from those used by the Evaluation Committee

2.1 In his complaint, the complainant alleged that the evaluation grids used by the Delegation when carrying out the technical verification of the offers submitted by Gazzina were different from the ones published in the call for tenders.

2.2 In this regard, the Ombudsman notes that, in its opinion and in its reply to his request for further information, the Commission emphasised that the Delegation did not carry out a full formal evaluation of the proposals submitted by Gazzina, on the basis of an evaluation grid. As regards tender EuropeAid/116502/ D/S/TN, the Commission explained that the evaluation carried out by the Delegation was exclusively focused on the two technical criteria which the Evaluation Committee had considered were not met by Gazzina. Those two criteria concerned (i) the "motor power/pump power" and (ii) " *the output of the motor pumps groups for a TMH variation (Total Manometric Height) of 10 meters* ". These criteria were part of the technical evaluation grid published in the tender dossier and applied by the Evaluation Committee.

The evaluation concerning tender EuropeAid/116670/D/S/TN also focused only on the technical criterion published in the tender dossier which, according to the Evaluation Committee, was not complied with by Gazzina. Concretely, this criterion was the " *output of the motor pumps groups for a TMH variation (Total Manometric Height) of 10 meters* ". This criterion was part of the technical evaluation grid published in the tender dossier and applied by the Evaluation Committee.



The Delegation's verification confirmed the assessment of the Evaluation Committee.

2.3 The Ombudsman is of the view that it was not necessary for the Commission to repeat the entire technical evaluation of the proposals submitted by Gazzina. The Commission was entitled to limit its technical evaluation to checking whether those criteria which, according to the Evaluation Committee, had not been fulfilled by Gazzina, had been correctly evaluated by the Evaluation Committee. For this reason, the Ombudsman takes the view that it was not necessary for the Commission to use exactly the same evaluation grids which were used by the Evaluation Committee when carrying out the full technical evaluation of the relevant proposals.

In light of the above, the Ombudsman considers that the Commission's explanations, as regards the reasons why the Delegation did not carry out a full formal evaluation of the proposals submitted by Gazzina on the basis of an evaluation grid appear to be reasonable.

In these circumstances, the Ombudsman considers that there has been no maladministration by the Commission concerning this aspect of the case.

3 Alleged unfair decision to reject Gazzina's offers

3.1 The complainant alleged that the decision not to award the contracts to his company was unfair since the reasons for inadmissibility put forward by the Commission's Delegation were incorrect.

3.2 The Ombudsman notes that, at Gazzina's request, the Commission carried out an additional verification of the evaluation already made by the Evaluation Committee in both tenders. In its reply to his request for further information, the Commission provided a detailed explanation of the content of its technical verification for both tenders. The purpose of this technical verification was to double-check whether the award of the contract had been lawful.

3.3 The Ombudsman notes that, in its reply to the Ombudsman's request for a supplementary opinion, the Commission stated that the technical documentation submitted by the complainant was analysed by the Delegation experts who were specialised in rural development and by the task manager of the project. As a result of this examination, the experts confirmed the outcome of the technical assessment made by the Evaluation Committee of the Contracting Authority.

3.4 The Ombudsman points out that he does not consider that it is his task to substitute his own assessment of the compliance of the offers submitted by Gazzina for the technical assessment of the Evaluation Committee or the technical verification carried out by the Commission. The role of the Ombudsman is to verify if the Commission has provided a reasonable explanation of its actions and whether there is evidence of a manifest error of assessment by the Commission.

3.5 In light of the evidence available, in particular the precise technical explanations provided by the Commission and the fact that the persons carrying out the the Commission's assessment were specialised experts, the Ombudsman considers that the Commission has provided a reasonable explanation of its actions and that there is no evidence of a manifest error concerning the refusal of the tender bids submitted by Gazzina.



3.6 The Ombudsman therefore considers that it appears that there has been no maladministration by the Commission concerning this aspect of the case.

4 The allegation that the Commission failed to act in accordance with point I.8 with the applicable "Rules of Procedure"

4.1 In his observations on the Commission's opinion, the complainant raised a new allegation. According to the complainant, the Commission failed to act in accordance with point I.8 of the rules and procedures for services, supplies and works contracts financed from the general budget of the EC in the context of co-operation with third countries (the "rules of procedure").

The Ombudsman notes that point I.8 of the rules of procedure foresees that, "*[s]hould a contracting authority fail to adhere to the contract award procedure provided for in these rules and procedures, the Commission reserves the right to suspend, withhold or recover funding for the contracts under suspicion*".

In the complainant's view, the Commission, instead of suspending the procedures following the alleged serious irregularities committed by the Tunisian authorities, helped them by creating different evaluation criteria and by modifying the grids published in the call for tenders.

4.2 In his letter of 17 July 2006, in which he asked the Commission to provide further information in order to help him pursue his inquiries, the Ombudsman considered it appropriate to ask the Commission to provide an opinion on this allegation.

4.3 In its opinion, the Commission stated that point I.8 of the rules and procedure was not breached in the complainant's case. The Commission based its position on the grounds that the entire evaluation and the selection procedure of the two relevant tenderers had been carried out in accordance with the relevant rules. The Commission further emphasised that the verifications carried out internally by the Delegation were exclusively based on the technical criteria based in the tender dossier. Further, the evaluation grid was not modified.

4.4 The complainant did not make specific observations on the Commission's opinion concerning this aspect of the case.

4.5 The Ombudsman observes that, at Gazzina's request, the Commission's Delegation checked to see if there were errors as regards the exclusion of the tender bids made by Gazzina. As evidenced from the conclusions set out in Section 2 and 3 above, the Commission did not find any such errors. Therefore, the Commission could not conclude that the contracting authority failed to adhere to the contract award procedure. The Commission was therefore not required to apply point I.8 of the rules and procedure, namely, it was not required to suspend, withhold or recover funding.

As a result, the Ombudsman considers that there has been no maladministration by the Commission concerning this aspect of the case.

5 The Commission's alleged failure to comment on the awarding of several contracts to the same tenderer

5.1 The Ombudsman understood that the complainant alleged in his observations that the



Commission had failed to comment on the fact that five contracts had been awarded to the same company, namely, Sogepro, even though, at least in the two calls for tender in which Gazzina had participated, the price of Sogepro's offer was not the lowest price.

5.2 In his letter of 17 July 2006 to the President of the Commission, the Ombudsman therefore asked the Commission to provide an opinion regarding this allegation as well.

5.3 In its opinion, the Commission stated that four companies, including Gazzina, submitted an offer for the same lot (lot n°1) in response to tender EuropeAid/116502/D/S/TN. Only one tenderer, that is, Sogepro, was evaluated by the Evaluation Committee as compliant with the requirements of the tender dossier from an administrative and technical point of view.

Concerning tender EuropeAid/116670/D/S/TN, three companies, including Gazzina, submitted an offer which complied with the administrative requirements. However, only the offer submitted by Sogepro was found to be technically compliant in accordance with the technical evaluation criteria published in the tender dossier. The contract was therefore awarded to Sogepro even though the price of its offer was not the lowest price.

The Commission further stressed that the award of the five contracts to Sogepro was in conformity with the rules and principles for services, supply and work contracts that are financed from the general budget of the European Community in the context of co-operation with third countries.

5.4 The Ombudsman notes that, in accordance with point 20.5 of tenders EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN, the only criterion to award the contract was the price. In sum, the offer that complied with the relevant requirement and proposed the lowest price would be retained (10) . It therefore follows that the price of the offer became the sole relevant element to award the contract only if the relevant offer were to comply with the applicable requirements.

Since the offers submitted by Sogepro appear to be the only offers that were, after evaluation, considered to be technically compliant, the decision to award the contract to this company was in compliance with the applicable rules.

5.5 In light of the above, the Ombudsman considers that there is no maladministration as regards this aspect of the case.

6 The complainant's claim that the Commission should grant him access to the requested documents

6.1 On 29 March 2004, the complainant submitted to the Commission a request for access to documents to the Commission under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ("Regulation 1049/2001"). The complainant asked to receive the following:

- (i) copies of the minutes of the opening procedure related to calls for tender



EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN and of the evaluation reports;

(ii) a copy of the report made by the Delegation's services concerning the re-examination of Gazzina's offer submitted in the framework of tender procedure EuropeAid/116502/D/S/TN, including the CVs of the members (non-Commission officials) of the Evaluation Committee;

(iii) a copy of the technical offers submitted by Sogepro which had been awarded tenders EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN in which Gazzina had also participated; and

(iv) any further documentation related to the relevant procedure including the existing exchange of correspondence between the Commission and the Tunisian authorities.

6.2 In its opinion, the Commission stressed that, in its replies of 13 May 2004 and of 13 July 2004 to the complainant's request, it refused to grant him access to the requested documents on the grounds of the specific rules on tender procedures. The Commission recognised, however, that its position should also have been based on Regulation 1049/2001 and it had therefore reviewed its decision on this basis. The Commission identified five categories of documents (11) and for each of them considered whether access could be granted.

Concerning documents under categories (1) and (2), the Commission stressed that the Financial Framework Convention applicable in the present case did not authorise it or any other Community institution to grant public access to documents emanating from the Tunisian administration with respect to the implementation of programmes and projects financed by the EU. In light of the above, the exception laid down in Article 4(1), third indent, of Regulation 1049/2001 appeared to be applicable since disclosure of those documents would have affected the relations between the Commission and the Tunisian authorities.

Documents under category (3) contained opinions given either individually or collectively by the Delegation's staff in connection with the verification of the offer submitted by Gazzina. Considering these documents, confidentiality was justified in order to guarantee the objectivity of the opinions of the persons concerned, to ensure their freedom of expression, and to preclude the risk that they might be exposed to external pressure. The Commission therefore considered that the refusal to disclose this category of documents was justified on the basis of the exception laid down in Article 4(3), second indent, of Regulation 1049/2001.

Concerning the document under category (4), the Commission considered that its disclosure would have harmed the commercial interests of the relevant company and should be therefore refused on the basis of the exception laid down in Article 4(2), first indent, of Regulation 1049/2001.

Concerning the documents classified under category (5), the Commission took the view that disclosure of the CVs of non-statutory Delegation staff members would undermine the protection of their privacy and integrity. In this regard, the Commission explained that those documents contained personal data which were communicated to the institutions for the specific



purpose of selecting and recruiting staff.

6.3 In his letter of 17 December 2006 to the President of the Commission, the Ombudsman asked the institution to specify the nature of the international relations that it considered would be affected in case of disclosure of documents identified under categories (1) and (2). Concerning documents identified under category (3), the Ombudsman asked the Commission to specify how its disclosure "*would seriously undermine the institution's decision-making process*". The Ombudsman further asked the Commission to explain whether the possibility of granting partial access had been considered.

6.4 In its reply on the issue concerning the international relations that would be affected in case the information contained in documents classified under category (1) were disclosed, the Commission gave the following explanation. It classified under category (1) all documents emanating from the Tunisian authorities, such as the opening report and its annexes; the Evaluation Report; as well as any request for clarification addressed by the Contracting Authority to the Delegation in the procurement procedure for the relevant tenders. Since these documents emanating from the Tunisian administration were third party documents, within the meaning of Article 4(4) of Regulation 1049/2001, the Commission considered that disclosure of these documents would negatively affect its relations with the Tunisian authorities. Concerning documents classified under category (2), these consisted of all those documents emanating from the Commission and addressed to the Tunisian administration in relation to the Financial Framework Convention. Although these documents were drafted by it, the Commission took the view that, since they were part of the exchanges between the institution and the Tunisian authorities regarding the implementation of the Financial Framework Convention, it would be appropriate to consult the Tunisian authorities with respect to their potential disclosure. The Commission also took the view that disclosure of any document exchanged in the application of the Financial Framework Convention, without the consent of the Tunisian authorities, would be prejudicial to the confidentiality of communications and to the good political relations between itself and those authorities. In this regard, such disclosure would undermine the protection of international relations.

Regarding the Ombudsman's request that the Commission specify how disclosure of the information contained in the documents identified under category (3) "*would seriously undermine the institution decision-making process*", the institution stressed that those documents contained the opinion of Delegation staff and the preliminary deliberations in the preparation of the Commission's verification exercise. Disclosure of these documents would seriously affect the independent expression of opinions in future similar cases since it would lead to a situation whereby staff would be cautious when drawing up such documents. The confidentiality of those documents was therefore essential in order to guarantee the independence and impartiality of Commission staff's opinions from potential interference by third parties.

6.5 The Ombudsman noted that he had not been informed of any further developments with respect to the results of the consultation which, according to the Commission's reply of 21 December 2006, the institution launched with the Tunisian authorities on 13 September 2006.



On 16 October 2007, the Ombudsman's services therefore contacted the Commission regarding this point. The Ombudsman's services were informed that, up to then, the Commission had received no reply from the Tunisian authorities and that its competent services were going to contact them again and would inform the Ombudsman of any further developments.

On 17 December 2007, the Commission informed the Ombudsman that, on the basis of the consultations carried out with the Tunisian authorities, it decided to grant partial access to the documents requested by the complainant. The relevant documents were sent to the complainant on 7 December 2007.

The Commission, which regretted the delay in dealing with aspect of the case, explained that partial access was granted in conformity with Regulation 1049/2001. Certain information had therefore been blanked out in order to protect the commercial interests of the other tenderers, the Evaluation Committee members' privacy and integrity, as well as information that would endanger the protection of the public interest, in particular of international relations.

6.6 The Ombudsman notes that, in his letter of 8 May 2008, the complainant confirmed that, on 7 December 2007, the Commission finally granted him access to the documents requested in conformity with Regulation 1049/2001 (12) .

6.7 It appears that, after a long delay, the Commission has finally granted access or partial access to the requested file. The complainant has not made further comments concerning this issue. The Ombudsman therefore considers that the complainant's claim has been settled by the institution.

6.8 The Ombudsman would like, however, to state that he regrets the long time it had taken the Commission to grant access to the relevant documents. Furthermore, he is not entirely convinced by a number of justifications initially provided by the Commission when dealing with the complainant's request for access to documents.

However, given that the Commission has eventually granted access to the requested file and that the complainant appears to be satisfied with this access, the Ombudsman does not consider it necessary to conduct further inquiries into this aspect of the case.

7 The complainant's claim for compensation

7.1 In his complaint, the complainant claimed that the Commission should pay him EUR 66 839.40 corresponding to the loss incurred by Gazzina Trading for not having been awarded the contract; EUR 47 000 corresponding to the costs of preparing the present complaint; and EUR 1 million as moral damages, a sum that would be given to an NGO which helps rural populations in Tunisia.

7.2 In light of the conclusion reached in points 2.3, 3.6 and 4.5 above, the Ombudsman considers that the present claim cannot be sustained.

8 The complainant's claim for the publication of his dossier

8.1 In his complaint, the complainant claimed that the Commission should publish his file on the website of the EuropeAid Co-operation Office.



8.2 The Ombudsman notes that the Commission stated in its opinion that it did not consider appropriate to publish the relevant file of the EuropeAid Co-operation Office.

8.3 The Ombudsman considers that he is not aware of any rule which obliges the Commission to publish a file in its website. The Ombudsman therefore considers the approach taken by the Commission concerning the complainant's request to be reasonable.

In light of the above, the Ombudsman cannot sustain the complainant's claim.

9 Complainant's claim that the EuropeAid Co-operation Office should have applied the rule granting non-selected bidders the right to appeal within a minimum of 15 days before the signature of the relevant contract

9.1 In his complaint, the complainant claimed that the EuropeAid Co-operation Office should have acted in conformity with the Rules and Procedures for services, supplies and works contracts financed from the general budget of the EC in the context of co-operation with third countries adopted in March 2003 ("the Rules and Procedures"), which foresee a minimum period of 15 days before signing a contract, in order to allow non-selected bidders to appeal against the relevant decision.

9.2 The Ombudsman notes that, in this regard, the Commission recalled in its opinion that the relevant rules informing candidates and tenderers were laid down in:

Article 100(2) of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (13) ("the Financial Regulation");

Article 149 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (14) ("the Implementing Regulation").

Those relevant rules were also complemented by the Rules and Procedures.

The Commission considered that the complainant incorrectly stated that these rules foresaw a minimum period of 15 days before the signature of the contract to afford non-selected bidders the opportunity to appeal against the relevant decision. Furthermore, the rules invoked by the complainant, that is, those contained in the Commission's Communication adopted on 16 July 2003, only applied to public procurement contracts awarded by the Commission under Article 104 of the Financial Regulation, that is, contracts awarded by the Community institutions on their own account, and not to external actions.

9.3 The Ombudsman considers that the Commission's explanation appears to be detailed and in accordance with the rules referred to by it.

9.4 In light of the above, the Ombudsman considers that no further inquiries appear to be



justified concerning this aspect of the case.

10 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it appears that there has been no maladministration by the Commission concerning the complainant's allegations; that no further inquiries appear to be necessary concerning the complainant's fourth claim; that the complainant's first claim has been settled by the institution and that the complainant's second and third claims cannot be sustained. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Within the framework of bilateral co-operation between the Commission and the Tunisian Republic in the sector of rural development and management of natural resources, the Commission co-financed the project " *Conservations des Eaux et des Sols* " ("CES II") and the project " *Développements Intégré et Gestion des Ressources Naturelles* " ("DRI"). In this context, the Tunisian Ministry of Agriculture launched calls for tender EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN, in accordance with the 4th Financial Protocol between the European Community and, respectively, the Tunisian Republic and the Programme MEDA.

(2) The deadline was 23 October 2003, at 12.00 a.m.

(3) The complainant attached to his letter a copy of the information sheet of the Italian telecommunication company "Wind telecomunicazioni s.p.a." in which it appeared that a fax had indeed been sent to the relevant number on 23 August 2003 at 12.08 a.m., that is, 11.08 a.m. local time in Tunisia and therefore within the deadline.

(4) OJ 2001 L 145, p. 43.

(5) The complainant stated that this sum would be donated to an NGO that helped rural populations in Tunisia.

(6) OJ 2002 L 248, p. 1.

(7) OJ 2002 L 357, p. 1.

(8) The complainant referred to complaint 2330/2003 sent to the Ombudsman on 8 December 2003 and withdrawn on 13 April 2004, which was copied also to the Tunisian authorities.

(9) In his letter of 17 December 2006 to the President of the Commission, the Ombudsman erroneously referred to "internal relations" rather than to "international relations", The



Ombudsman notes, from the content of the Commission's response, that the Commission correctly understood that the Ombudsman intended to refer to the "international relations". The Ombudsman regrets this error.

(10) The original text, in French, reads that " *Le seul critère d'attribution sera le prix. L'offre reconnue conforme la moins disante sera retenue* ".

(11) (1) documents emanating from the Tunisian administration, which were received and held by the Commission in the framework of bilateral co-operation of the European Union and the Republic of Tunisia, as formalised in the Financial Framework Convention signed on 20 September 1997;

(2) documents emanating from the Commission and addressed to the Tunisian administration in the framework of the above-mentioned Convention;

(3) Commission internal documents;

(4) the technical offer of the successful bidder, that is, the company Sogepro;

(5) the CVs of the persons who reviewed the evaluation procedure.

(12) The relevant documents forwarded to the complainant the following:

- Opening reports and evaluation reports of tenders EuropeAid/116502/D/S/TN and EuropeAid/116670/D/S/TN, the grids of administrative conformity and the grids used for the technical evaluation;
- Letters sent by the Tunisian Ministry of Agriculture to the Commission on 2 January 2004, 10 February 2004, 13 October 2004 and 2 November 2004;
- Commission's note of 4 June 2003, fax of 5 February 2004 approving the report of the Evaluation Committee in tender EuropeAid/116670/D/S/TN, fax of 6 February 2004;
- Commission's note of 26 May 2003 and note of 26 September 2003 approving the report of the Evaluation Committee in tender EuropeAid/116502/D/S/TN.

(13) OJ 2002 L 248, p. 1.

(14) OJ 2002 L 357, p. 1.