



## Decision of the European Ombudsman on complaint 3167/2005/BM against the European Commission

Decision

**Case 3167/2005/(BM)JMA - Opened on 24/10/2005 - Decision on 12/12/2006**

Strasbourg, 12 December 2006

Dear Mr S.,

On 19 September 2005, you lodged a complaint with the European Ombudsman against the European Commission, concerning the handling of your correspondence by this institution.

On 21 October 2005, you submitted additional information.

On 24 October 2005, I informed the President of the Commission of your complaint and asked him to submit an opinion by 31 January 2006.

On 29 and 30 November 2005, you submitted further information. In your letter of 30 November 2005, you asked me to expedite the handling of your complaint and requested the adoption of urgent measures. On 19 January 2006, I informed you that, in accordance with the Statute of the European Ombudsman, I am not empowered to adopt interim measures in the course of an inquiry.

On 10 February 2006, the Commission requested an extension of the deadline for its opinion, which I granted on 15 February 2006. On 1 March 2006, the Commission sent its opinion in English. On 10 March 2006, the Commission sent a translation of its opinion in Spanish, which was forwarded to you on 13 March 2006, with an invitation to make observations.

You sent me your observations on 25 April 2006.

On 4 June 2006, you contacted my Secretariat by telephone, requesting information about your complaint.

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

THE COMPLAINT *Complaint 2344/2005/BM*

The complainant works in Spain as an intermediary in the property development sector. On 28 June 2005, he lodged a complaint with the European Ombudsman against the European Commission, which was registered under reference number 2344/2005/BM. The complaint concerned the Commission's failure to reply to the letters sent by the complainant on 26 March and 30 May 2005.



The facts of the case, according to the complainant were, in summary, as follows:

In his letter of 26 March 2005, the complainant asked the Commission services (the Directorate-General for the Internal Market and Services, "DG Markt") to halt its financial assistance to a project for the construction of new port facilities in Punta Langosteira, in the province of La Coruña, Spain (1) ("the project"), since it did not appear to respect the applicable EU provisions on public works and the environment. The complainant referred to the failure of the Spanish authorities to carry out an environmental impact assessment prior to the authorisation of the project. The Commission did not reply to this letter.

The complainant wrote again to the Commission services on 30 May 2005 and provided additional information.

In the absence of a reply, the complainant then lodged a complaint with the Ombudsman, in which he alleged that the Commission had failed to respond to his two letters of 26 March and 30 May 2005, respectively.

The Ombudsman informally approached the Commission services in order to obtain a prompt reply. On 28 July 2005, the Commission sent the Ombudsman a copy of the reply to the complainant dated 27 July 2005. The Ombudsman considered that the case had been settled by the institution, and therefore closed the case on 31 August 2005. In his letter to the complainant, the Ombudsman noted that his finding related only to the complaint of failure to reply and did not involve an evaluation of the substance of the answer sent by the Commission.

*Complaint 3167/2005/BM*

On 15 September 2005, the complainant lodged a new complaint with the Ombudsman, concerning the reasoning of the Commission's reply of 27 July 2005 to his letters of 26 March and 30 May 2005 and its failure to reply to his further correspondence of 9 August 2005.

The facts of the case, according to the complainant are, in summary, as follows:

The complainant explained that, in its letter of 27 July 2005, the Commission merely concluded that the information submitted by the complainant did not show that a violation of the relevant EU rules on public procurement had occurred and therefore that there were no grounds to start infringement proceedings on this basis. The Commission also informed the complainant that DG Markt would transfer his allegations on the potential violation of environmental EU rules to the responsible Commission services, (the Directorate-General for the Environment, "DG Environment"), so that they could assess them. However, the complainant's allegations in this respect had not yet been addressed.

In his letter of 9 August 2005 to the Commission, the complainant restated some of his allegations and asked for information on the applicable EU legislation on financial issues and on the Commission unit that would be competent to deal with financial aspects. The complainant did not receive a reply to his letter.



The complainant alleged, in summary, that the Commission failed to: (i) reply formally to his letter of 9 August 2005; and (ii) consider properly the environmental allegations included in his letters of 26 March and 30 May 2005.

#### THE INQUIRY **The Commission's opinion**

In its opinion, the Commission first described the background of the case.

As regards the first allegation, the Commission explained that, on 11 November 2005, it had, in fact sent a reply to both the complainant's letter of 9 August 2005 and his further correspondence of 21 October 2005. The latter included a decision of the Spanish Court of Auditors regarding the proceedings opened in connection with the project against the Spanish authorities. In its reply, the Commission responded to the complainant's allegations against the Spanish authorities and concluded that it had no intention to propose the opening of infringement proceedings. The Commission regretted the delay in replying to the complainant's correspondence.

The Commission enclosed a copy of its reply of 11 November 2005 with its opinion.

As regards the second allegation, in its letter of 11 November 2005, DG Markt explained to the complainant that, on 23 February 2001 (2), the Spanish authorities had carried out an environmental impact assessment of the project. After informal contacts with the responsible services, the complainant was also informed that DG Environment was not, at that moment, in a position to adopt a decision on the existence of environmental irregularities affecting the project. The complainant was also informed that the relevant information was to be transferred to the responsible Commission services in DG Environment, so that the issue could be reconsidered in order to provide him with a formal reply.

In its letter of 27 July 2005, the Commission had already informed the complainant of its intention to transfer his allegations on potential environmental irregularities of the project to DG Environment. However, in its opinion, the Commission regretted that, as a consequence of an administrative oversight, the relevant documentation was only forwarded to DG Environment on 14 November 2005.

The Commission further explained in its opinion that, by letter of 28 November 2005, DG Environment informed the complainant that the Spanish authorities did not appear to have infringed EU environmental provisions. In its letter, enclosed with the opinion, DG Environment noted that the project had been subject to an environmental impact assessment carried out by the Spanish authorities on 23 February 2001. Having studied all documents included with the environmental impact assessment, DG Environment concluded that the environmental impact assessment complied with the relevant EU legislation, namely Council Directive 97/11/CE of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (3) ("Directive 97/11/EC") and, accordingly, that the Spanish authorities had not infringed any EU provision. The complainant was invited to inform the Commission of any violation of EU legislation which may occur during the implementation stage of the project.



According to the Commission, although the complainant wrote again to DG Environment on 12 December 2005, he did not submit any new technical or legal arguments, which he had promised to send at a later stage. A copy of this letter was also provided with the Commission's opinion.

The Commission concluded that the complainant had been informed by letter of 28 November 2005 that no infringement of EU environmental legislation could be found, since the project had been subject to an environmental impact assessment by the Spanish authorities, which respected the applicable EU rules. The Commission stated that the complainant's letter of 12 December 2005 had not added any new information. The Commission further stated that, should the complainant submit information which might reveal a potential infringement of EU public procurement or environmental law, it would re-examine the case.

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

In his observations on the Commission's opinion, the complainant stated that his allegations against the Spanish authorities were based on an investigation on the project that was currently being carried out by the Spanish Court of Auditors. According to the complainant he had sent relevant information to the Commission but that information had been dismissed without being appropriately examined.

As to his environmental allegations, the complainant pointed out that the Commission had received information from the media, according to which the Spanish authorities had developed a project different from the initial one and for which no environmental impact assessment had been carried out. He referred to a report prepared by the Spanish regional authorities which seemed to oppose the development of the port, because of its detrimental environmental impact. According to the complainant, the Commission had not properly assessed the available information. He mentioned that the Commission had started further investigations which should help unveil potential irregularities.

### **THE DECISION 1 Preliminary remark**

1.1 The European Ombudsman notes that, in his observations, the complainant has made what appear to be new allegations against the European Commission, concerning the latter's handling of (a) information supplied by the complainant during the course of the inquiry and (b) information available from the Spanish media and from a report prepared by the Spanish regional authorities opposing the development of the project.

1.2 The Ombudsman takes the view that it would be appropriate for the complainant to contact the Commission directly with information pertinent to the present case, which he considers relevant to the latter's functions as Guardian of the Treaty. If the complainant does so and considers that the Commission has failed to respond adequately, he could consider making a new complaint.

The Ombudsman will therefore only consider the complainant's original allegations, namely, the Commission's failure to: (i) reply formally to his letter of 9 August 2005; and (ii) consider properly the environmental allegations included in his letters of 26 March and 30 May 2005.

### **2 Failure to reply to the complainant's letter**

2.1 The complainant alleges that the Commission failed to reply formally to his letter of 9



August 2005. In this letter, the complainant had contested the arguments put forward by the Commission in its reply of 27 July 2005, concerning the violation of EU law by a project for the construction of new port facilities in Punta Langosteira, La Coruña (Spain) ("the project").

2.2 In its opinion, the Commission argues that, on 11 November 2005, it replied to the complainant's letters of 9 August and 21 October 2005.

The Commission expresses regret for its delay in replying to the complainant's correspondence.

2.3 The Ombudsman notes that Article 14 of the European Code of Good Administrative Behaviour provides that:

*"Every letter or complaint to the Institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period."*

Furthermore, the Commission's Code on Good Administrative Behaviour, in Section 4 ("Dealing with Enquiries") establishes that:

*"A reply to a letter addressed to the Commission shall be sent within 15 working days from the date of receipt of the letter by the responsible Commission department. (...)."*

2.4 The Ombudsman notes that, in its opinion, the Commission explained that, on 11 November 2005, it replied to the complainant's letters of 9 August and 21 October 2005. The Ombudsman also notes that the Commission has expressed regret for its delay in replying to the complainant's correspondence.

2.5 In view of the fact that, following the Ombudsman's inquiry, the Commission replied on 11 November 2005 to the complainant's letters of 9 August and 21 October 2005, and that the Commission has apologised for the delay, the Ombudsman considers that that it is not necessary to make further inquiries as regards this aspect of the case.

### **3 Failure to properly consider the complainant's allegations as regards EC environmental rules**

3.1 The complainant alleges that the Commission failed to consider properly the environmental allegations included in his letters of 26 March and 30 May 2005. In this correspondence, the complainant argued that the Spanish authorities had not respected EU environmental rules by failing to carry out an environmental impact assessment prior to the authorization of the project.

In its opinion, the Commission argues that no infringement of EU environmental legislation can be found in the present case, since the project has been subject to an environmental impact assessment. The Commission notes that, as stated in its letters to the complainant of 11 November 2005 and 28 November 2005, the project had been subject to an environmental impact assessment, carried out by the Spanish authorities on 23 February 2001 (4).



Having studied all documents included with the environmental impact assessment, the Commission's services concluded that the environmental impact assessment complied with the relevant EU legislation, namely Council Directive 97/11/CE of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (5) ("Directive 97/11/EC") and, accordingly, that the Spanish authorities had not infringed any EU provision. Although the complainant was invited to inform the Commission of any violation of EU legislation which might occur during the implementation stage of the project, his letter of 12 December 2005 did not add any new evidence.

3.3 The Ombudsman notes that the Commission has justified its position not to pursue further inquiries into the complainant's environmental allegations on the grounds that the Spanish authorities did not appear to have infringed the relevant EU environmental legislation, since they carried out an environmental impact assessment of the project on 23 February 2001, prior to its authorisation. The Ombudsman is mindful of the fact that no information has been produced in the course of his inquiry, which could lead him to question the Commission's view that the environmental impact assessment of the project had been carried out in accordance with the applicable EU provisions, namely, Directive 97/11/EC.

The Ombudsman takes the view therefore that the Commission's explanation appears to be reasonable. The Ombudsman is also mindful of the fact that the Commission informed the complainant of its position in its letter of 28 November 2005, in which it also invited him to submit any possible new evidence of a potential infringement of EU rules during the implementation of the project.

The Ombudsman therefore concludes that there appears to be no maladministration as regards this aspect of the case.

3.4 The Ombudsman notes that, on the basis of the available information, it does not appear that the complainant's correspondence with the Commission (letters of 26 March, 30 May and 9 August 2005) was registered as a complaint, in accordance with the provisions of the Commission's Communication to the European Parliament and the European Ombudsman on Relations with the Complainant in respect of infringements of Community law (6) ("the Communication").

However, in view of the fact that the complainant did not make any allegation relating to the Commission's failure to register his correspondence as a complaint, the Ombudsman will not pursue this question.

### **Conclusion**

On the basis of the Ombudsman's inquiries into this case, the Ombudsman finds that no further inquiries are necessary as regards the complainant's first allegation and that there appears to be no maladministration as regards his second allegation. The Ombudsman therefore closes the case.

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



Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Spanish Official Gazette, *Boletín Oficial del Estado (BOE)* , N° 48 of 25 February 2004, p. 1737.

(2) Spanish Official Gazette, *Boletín Oficial del Estado* n° 63 of 14 March 2001, p. 9591.

(3) OJ 1997 L 73, p. 5.

(4) Spanish Official Gazette, *Boletín Oficial del Estado* n° 63 of 14 March 2001, p. 9591.

(5) OJ 1997 L 73, p. 5.

(6) COM (2002) 141 final of 20 March 2002, OJ 2002 C 244, p. 5.