

## Decision of the European Ombudsman on complaint 3204/2006/DK against the European Commission

Decision

**Case 3204/2006/DK - Opened on 09/11/2006 - Decision on 06/12/2007**

Strasbourg, 6 December 2007

Dear Mr X,

On 10 October 2006, you made a complaint to the European Ombudsman against the European Commission's Delegation to Uganda, concerning the recruitment process for a long-term post of Technical Adviser for the Uganda Wildlife Authority.

On 9 November 2006, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 11 February 2007. I forwarded it to you with an invitation to make observations, which you sent on 30 March 2007.

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

### THE COMPLAINT

According to the complainant, the relevant facts are, in summary, as follows:

In December 2005, the complainant applied for a long-term post of Technical Adviser ("TA") with the Uganda Wildlife Authority ("UWA"), a post financed by the European Development Fund. Following the interview of the three short-listed candidates on 26 April 2006, the complainant was orally told by the Director of the UWA that he was the best candidate. However, the European Commission's Delegation to Uganda ("the Delegation") decided later that the second ranked candidate should be recruited, since the complainant should have been barred initially from applying for the post, given that he had already had a post with the UWA as a TA. (The complainant first had a two-year contract as a Technical Adviser until October 2005, and then received a short-term contract for 3 months, which was later extended with four months, until 1 April 2006.) The complainant added that, when the Delegation asked him in November 2005 to help prepare the recruitment documentation for the long-term post, he declared to the Delegation that he wanted to apply for this post and that he therefore considered that he should not be involved in the preparation of the said documentation. His consideration was accepted and confirmed by the Delegation and thus he did not participate in the



preparation. The complainant argued that, since it had been aware of his intention to apply for this post, the Delegation should have informed him that accepting the short-term contract (which ran until April 2006) would automatically bar him from applying and obtaining a long-term post.

On 12 July 2006, the complainant sent a letter to the Delegation and raised his grievances concerning the recruitment process for the long-term TA post. The Delegation replied to the complainant by letter of 5 October 2006, addressing the issues raised by him.

The complainant was dissatisfied by the reply and submitted the present complaint to the Ombudsman on 10 October 2006.

In his complaint, the complainant alleged that:

- the Delegation has failed to inform him that accepting a short-term contract would automatically bar him from applying for and obtaining a long-term post at the Uganda Wildlife Authority;
- the Delegation has failed to provide a clear and understandable reasoning for the rejection of his candidacy;
- the Delegation attempted to exclude him from the recruitment process before his interview was held.

## THE INQUIRY

### **The Commission's opinion**

In its opinion, the Commission first recalled the background of the case by explaining that a technical assistance contract was signed on 18 November 2005 between the Government of the Republic of Uganda, represented by the National Authorising Officer ("NAO"), as the contracting authority ("the CA"), and the complainant as contractor. The contract was financed by the resources of the 8<sup>th</sup> European Development Fund ("the Fund"), in accordance with the Framework of Mutual Obligations on the utilisation of the 1999 STABEX transfers concluded between the Government of Uganda and the European Commission on 25 March 2003. The award and execution of the contract is therefore governed by the Lomé IV Convention of 15 December 1989 (1). Within the system of division of powers of the Lomé IVbis Convention between the Commission and the ACP countries, the Commission's role with regard to contracts is limited to financing and endorsing decisions taken by the CA. The Commission can only act, from a contractual point of view, within the limit of its competences described in Articles 311 and 317 of the Lomé IVbis Convention. From a financial point of view, the Commission must ensure a sound management of the resources of the Fund and is therefore subject to the control obligations laid down in the Financial Regulation (2) applicable to the Fund.

In Uganda, the Ministry of Finance, Planning and Economic Development is the NAO, as well as the CA, for any European Development Fund project or programme. The NAO is responsible for preparing, negotiating and awarding any subsequent contract, and, according to Article 312 of the Lomé IVbis Convention, can delegate some of its functions. The role of the European Commission's Delegation to Uganda ("the Delegation") is limited to verifying that procedures have been correctly followed and to endorsing or not the decision adopted by the NAO (or the



CA).

According to the provisions of his short-term contract, the complainant was employed from 18 November 2005 to 1 April 2006 as a short-term Technical Adviser ("TA") to the Uganda Wildlife Authority ("UWA"). His contract was financed by the Fund under the EU-funded Private Sector-oriented programme (project reference: SX99/15). The overall objective of his assignment was to enhance the capacity of the UWA to plan and earn revenue from tourism and to manage links with the private sector. One of his specific assignments was to " *assist UWA in the design, implementing and monitoring of current and future support programmes under EU financing* " (3) . In addition, the complainant was scheduled to prepare the recruitment documentation for the long-term TA post which was part of the same project as the one of the short-term position he held. The Commission pointed out in this regard that Article 1 of the Special Conditions of the short-term contract, as well as Article 1 of the special conditions of the long-term contract, showed that the two contracts were part of the same programme entitled " *EU support to promote private sector-oriented capacity building and programme development at the [UWA]* ". After having signed his contract as short-term expert at the UWA, the complainant sent an e-mail to the Delegation, in November 2005, indicating informally his intention to participate in the tender for the long-term TA post. The Delegation replied, by e-mail of 25 November 2005, that the complainant should then not get involved in the preparation of the relevant documentation.

The recruitment process for the long-term TA post was advertised on 21 December 2005, and the complainant submitted his application to the NAO on 21 February 2006. The evaluation committee conducted the interviews of the three short-listed candidates, including the complainant, on 21 April 2006. Although the results of the recruitment process were not communicated to the candidates, the complainant claimed to have been informed that he would be excluded from the recruitment process. He therefore contested this decision with the Delegation and with the Executive Director of UWA, and asked the NAO to conduct an administrative review of the recruitment process. He also requested that the Ombudsman conduct an investigation into the matter.

As a result of the complainant's complaints, and due to changes in the local context, the NAO encountered substantial delays in the recruitment process for the long-term TA post. Therefore, the NAO decided, by letter of 14 November 2006, addressed to the Delegation, to (i) cancel the tender and (ii) relaunch it with a new Terms of Reference ("TOR") in light of the changed context. The Delegation agreed to this proposal.

By letter of 14 December 2006, the NAO notified tenderers, including the complainant, about the cancellation of the recruitment procedure of the long-term TA post at the UWA. The complainant was also informed, by e-mail of 8 December 2006, that the Government of Uganda was seeking to recruit a new technical expert for an EU-supported programme for a period of 12 months. The complainant confirmed by e-mail of 8 December 2006, his interest in the post.

On the complainant's allegations, the Commission made, in summary, the following submissions.



*The allegation that the Delegation has failed to inform him that accepting a short-term contract would automatically bar him from applying for and obtaining a long-term post at the Uganda Wildlife Authority*

The Commission recalled that the complainant, after having signed his contract for the short-term TA post, sent immediately an e-mail to the Delegation indicating informally his intention to apply for the long-term position. In this regard, the Commission pointed out that, first, the complainant's e-mail dated from November 2005 and that, at that time, the recruitment process for the long-term TA post was not yet launched. Second, the complainant should have raised the issue of his eligibility for both the short-term and long-term TA posts with the CA, which was the NAO and not the Delegation. Third, the possibility of a situation of conflict of interest depends, to a large extent, on factual elements which have to be considered by the CA on a case-by-case basis. Therefore, one can never say that a possible situation of conflict of interest leads to an "automatic bar", as claimed by the complainant. In order to allow the CA to make the necessary assessment of a potential situation of a conflict of interest, Article 46.3 of the Special Conditions, which were included both in the complainant's contract for the short-term TA post and in the tender dossier for the long-term TA post, provided that "*when putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project. Should such a situation arise during the performance of the contract, the contractor must immediately inform the contracting authority.*" Furthermore, since the likelihood that a situation of a conflict of interest could occur is higher when a tenderer is submitting an offer for a project or programme in which he was previously involved, both the Special Conditions (Articles 46.1; 46.2 and 46.3), and the General Conditions (Article 12.2) of the complainant's contract for the short-term TA post provided that "*except with the written permission of the contracting authority, the consultant and any other contractor or supplier with whom the consultant is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.*" The complainant never applied for such a written permission from the CA, which could have allowed him to tender for the long-term TA position.

When the recruitment process for the long-term TA post was launched, the complainant was a short-term TA at the UWA. The TOR of his contract indicated that he was specifically recruited to assist the UWA in designing, implementing and monitoring current and future EU-financed support programmes. The complainant thus could have had an advantage over the other candidates due to his explicit and detailed knowledge of the new programmes and specific activities to be undertaken, which he had developed. Therefore, the complainant ought to have known that the ethics clauses of the short-term contract applied to him, and that a potential conflict of interest could emerge with regard to future assignments in the same project. He should have therefore requested written permission from the CA to submit his candidacy to the tender in question. In any event, given the division of competences within the framework of projects financed by the Fund, only the NAO is competent to conduct tender evaluations or to establish the result of this examination, as provided for in Article 313 (1) (b) and (d) of the Lomé IVbis Convention.

For these reasons, and in particular in view of the fact that there is no "automatic bar", the



Delegation had no obligation to inform the complainant that accepting a short-term contract would automatically bar him from applying and obtaining a long-term post at the Uganda Wildlife Authority.

*The allegation that the Delegation has failed to provide a clear and understandable reasoning for the rejection of the complainant's candidacy*

The Commission recalled that the complainant claimed to have learnt the results of the evaluation process through one of the voting members of the evaluation committee. In this regard, the Commission stressed that the evaluation committee only makes a recommendation to the CA. As long as the CA has not taken a final decision, the recruitment procedure is not finalised, and the internal deliberations of the evaluation committee and of the CA prior to the award decision do not create a right for the tenderers and should remain confidential. The Commission pointed out that if the complainant were able to substantiate his above claim, it would constitute a serious violation of the confidentiality of the tendering procedure, since Article 3.3.9.2 of the EDF Practical Guide to EC external aid contract procedures ("the EDF Practical Guide") provides that " *all members of the Evaluation Committee and any observers must sign a declaration of impartiality and confidentiality. No information about the examination, clarification, evaluation or decisions about the contract award can be disclosed before signature of the contract by the contracting authority.* " In addition, Article 2.4.13 of the Ethic Clause to the EDF Practical Guide provides: " *any attempt by a candidate or a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its candidacy or tender and may result in administrative penalties.* " Finally, it also has to be taken into account that the principle of fair competition, laid down in Article 2.3.6. of the EDF Practical Guide provides that " *to avoid any conflict of interest, any firm (including firms within the same legal group, other members of the same consortium and subcontractor) or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work.* "

The Commission added that the CA finally decided to cancel the relevant award procedure and that all internal deliberations and evaluations arrived at prior to the final decision had no consequence. The Commission also recalled that the Delegation's competencies are limited to endorsing the CA's decision, if it is considered that the pertinent procedures have been respected.

The allegation that the Delegation attempted to exclude the complainant from the recruitment process before his interview was held

In this regard, the Commission noted that the CA is not subject to any time-limits and may at any time, and thus up to the end of the award procedure, eliminate a candidate on account of an unfair advantage which he is presumed to have gained. On the hypothesis that the recruitment procedure in question had been successful and had led to the conclusion of the contract (quod non), the fact that the complainant was allowed to take part in the interviews would not have prevented the CA from having taken the decision to exclude him from the tender due to a potential situation of conflict of interest. However, in the present case, no such final decision was taken by the CA since the recruitment process was cancelled. The complainant



ought to be aware of the fact that participating in a recruitment procedure does not create an enforceable right to the tenderer to have the contract awarded. Moreover, Article 2.4.12. of the EDF Practical Guide provides that "*the contracting authority may, before the contract is signed, either call off the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation. Cancellation may occur, for instance, where there have been irregularities in the procedure, in particular where these have prevented fair competition (...). In no event is the contracting authority liable for any damages whatsoever including, without limitation, damages for loss of profits in any way connected with the cancellation of a tender.*"

The Commission concluded its opinion by stating that it had recognised that the delays in the recruitment process for the long-term TA post have affected the performance of the service contract and that therefore the Delegation has endorsed the cancellation of the recruitment procedure in question, as requested by the NAO.

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

In his observations, the complainant maintained his complaint and made, in summary, the following comments.

The Commission's opinion omitted any reference to his earlier work with UWA under project SX99/01, during which he provided TA services to UWA for 10 months. This contract was completed on 12 October 2005. Following the request of the Ministry of Tourism, Trade and Industry to the NAO, he was asked to remain at the UWA to continue with the implementation of the original project's work plan, which has been adopted as the programme of work for the Channelling Agreement for project SX99/15. His short-term contract under project SX99/15 did not involve him in any project design work since the Channelling Agreement had already been approved; nor did it require him to "*prepare the recruitment documentation for the long-term TA post*", as stated by the Commission in its opinion. He only advised on the preparation of the budget estimate for the first year of the new project.

The complainant's reaction, when he was requested by the Delegation to draft the recruitment documentation for the long-term TA post under project SX99/15, was that he should not be asked to do so because of his intention to apply for that post. In fact, it was the job that he had already been doing. He was aware that a clear breach of the ethics rules would have occurred if he had helped to draft the documentation. Following consultations at a senior level within the Delegation, he was informed that he should indeed not get involved in drafting it. However, no objections were raised by the Delegation about his potential application for the post, and he therefore did not consider it necessary to seek any written clearance under Article 46 of the Ethics clauses. Moreover, no such clearance had been required by the Delegation before he was offered a contract under project SX99/15, despite his earlier employment with UWA under project SX99/01. It therefore did not appear to be necessary to obtain such a clearance for a second employment contract under project SX99/15, which consisted of identical project implementation duties. Between the submission of his formal application for the long-term post on 20 February 2006 and his interview on 26 April 2006, he received no indication from the Delegation or from the NAO that such clearance would be required. He was of the opinion that no such clearance was required because no situation of conflict of interest existed, and his





inclusion amongst the short-listed candidates reinforced his belief that he was an eligible candidate. Furthermore, no clause to this effect was included in the advertisement for the post, despite the fact that the Delegation was aware of his intention to apply. In addition, he had recently been invited to express his interest for the same long-term post and was interviewed by an evaluation committee on 22 February 2007. He was again not asked to submit any clearance concerning a situation of conflict of interest and neither was the matter raised at the interview or after.

The Commission's opinion also omitted to address the issue that the Delegation had not provided a clear and understandable reasoning for the rejection of his candidacy for the long-term post. Moreover, he was never given any notification about the rejection of his candidacy following his interview with the evaluation committee on 26 April 2006.

The Commission's opinion further omitted to address his allegation that the Delegation has attempted to exclude him from the recruitment process before his interview was held. In fact, the representative of the Delegation insisted that he should be barred from the interview and, as a result, the interviews were delayed by one hour until the consensus view prevailed that he should be interviewed.

The complainant concluded his observations by stating that his family has suffered extraordinary stress as a result of the alleged maladministration, which has severely disrupted their life and health for the preceding 12 months and has also been a source of financial loss to them.

## THE DECISION

### **1 Allegation that the European Commission's Delegation to Uganda failed to inform the complainant that accepting a short-term contract would automatically bar him from applying for and obtaining, a long-term post at the Uganda Wildlife Authority**

1.1 In his complaint, the complainant alleged that the European Commission's Delegation to Uganda ("the Delegation") had failed to inform him that accepting a short-term contract would automatically bar him from applying and obtaining a long-term post at the Uganda Wildlife Authority ("the UWA").

1.2 In its opinion, the Commission rejected this allegation and pointed out that the complainant should have raised the issue of his eligibility with the contracting authority ("the CA"), which, for both the short-term and long-term technical adviser ("TA") posts, was the National Authorising Officer ("the NAO") and not the Delegation. The Commission recalled that, according to Article 46 of the Special Conditions of the complainant's short-term contract, a prior written authorisation of the CA must be obtained in case a potential situation of conflict of interest exists. The complainant, having signed his contract for the short-term TA post, ought to have known that its ethics clauses applied to him and that a potential conflict of interest could emerge with regard to future assignments in the same project. He should have therefore requested the written permission of the CA in order to be able to participate in the recruitment process for the long-term TA post at the UWA. However, the complainant never applied for such a written



permission from the CA. The Commission added that the possible situation of conflict of interest depends on factual elements that have to be assessed by the CA on a case-by-case basis, and that therefore a possible situation of conflict of interest does not entail an " *automatic bar* " to a candidates' participation. The Commission stated that, for the above reasons, the Delegation had no obligation to inform the complainant that accepting a short-term contract would bar him from applying for and obtaining, a long-term post at the UWA.

1.3 In his observations, the complainant stated that, when he was requested by the Delegation to draft the recruitment documentation for the long-term TA post under project SX99/15, he informed the Delegation about his intention to apply for that post, since he was aware that a clear breach of the ethics rules would have occurred if he had contributed in drafting it. The Delegation had confirmed that he should not be involved. However, no objections were raised by the Delegation about his intention to apply for the post, and he therefore did not consider it necessary to request written authorisation under Article 46 of the ethics clauses. Moreover, between the submission of his formal application for the long-term post on 20 February 2006 and his interview on 26 April 2006, he received no indication from the Delegation, or from the NAO, that such clearance would be required. Furthermore, no clause to this effect was included in the advertisement for the post, despite the fact that the Delegation was aware of his intention to apply.

1.4 The Ombudsman first notes that Article 46 of the Special Conditions to the complainant's service contract (account no SX/99/15) (4) , which was signed between the complainant and the Deputy National Authorising Officer, on 18 November 2005, provided that

*" Without the [CA's] prior written authorisation, a contractor and his staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. (...) This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the contractor. (...) When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project. Should such a situation arise during the performance of the contract, the contractor must immediately inform the contracting authority. (...) "*

Second, the Ombudsman notes that the complainant has not invoked any specific evidence to the effect that the Delegation had the obligation to inform him, before the conclusion of his short-term contract, that he would or could be prevented from applying and obtaining a long-term post at the Uganda Wildlife Authority.

Third, the Ombudsman notes the Commission's argument, not rebutted by the complainant, that the possible existence of a conflict of interest depends on factual elements that have to be assessed by the CA on a case-by-case basis, and does not entail an "automatic bar" to a candidates' participation, which may still be authorised by the CA.

1.5 In view of the above, the Ombudsman concludes that the complainant's allegation has not





been substantiated. The Ombudsman therefore finds no corresponding instance of maladministration.

## **2 Allegation that the Delegation failed to provide a clear and understandable reasoning for the rejection of the complainant's candidacy**

2.1 In his complaint, the complainant alleged that the Delegation failed to provide a clear and understandable reasoning for the rejection of his candidacy.

2.2 In its opinion, the Commission rejected this allegation and recalled that the complainant claimed to have learnt the results of the evaluation procedure through one of the voting members of the evaluation committee. The Commission pointed out in this regard that (i) the evaluation committee only makes a recommendation to the CA, (ii) as long as the CA has not taken a final decision, the recruitment process is not finalised, and (iii) the internal deliberations prior to the award decision do not create a right for the tenderers and should remain confidential. The Commission pointed out that if the complainant were able to substantiate this claim, this would constitute an important violation of the confidentiality of the tendering procedure, in view of Articles 2.3 and 2.4 of the EDF Practical Guide to EC external aid contract procedures (version May 2004) (5) . However, the Commission recalled that the CA finally decided to cancel the pertinent award procedure. The Commission also recalled that the Delegation's competencies are limited to endorsing the CA's decision, if it is considered that the pertinent procedures have been respected.

2.3 In his observations, the complainant stated that the Commission's opinion omitted to address the issue that the Delegation had not provided a clear and understandable reasoning for the rejection of his candidacy for the long-term post. In fact, he had never been given any notification about the rejection of his candidacy following his interview with the evaluation committee on 26 April 2006.

2.4 The Ombudsman first notes that the complainant submitted his application for the long-term TA post on to the NAO on 21 February 2006 and that the interviews of the three short-listed candidates were conducted by the evaluation committee on 21 April 2006. The Ombudsman also notes that, by letter of 14 November 2006, the Deputy National Authorising Officer informed the Delegation that:

*" ... we have been in the process of recruiting a long-term TA to UWA since early this year. During the process[,] the Public Procurement and Disposal of Public Assets Authority [PPDA] queried the procedure used in the recruitment exercise. This was due to complaints that were raised by one of the candidates who was interviewed for the post. We clarified on the issues raised by PPDA and got the clearance to proceed with [the] recruitment process. During the period of clarifying on the queries raised by PPDA, we encountered a lot of delays and also, the selected candidate requested for changes in the period of performance on the service contract. This was discussed during the project steering committee meeting held on 24.10.2006 and the meeting was informed that the delays encountered will greatly affect the performance of the service contract. On that basis, and in line with article 2.4.12 of [the] practical guide to contract procedures financed from 9 th EDF (version May 2004), it was agreed that we cancel the tendering/recruitment process. The purpose of this letter therefore, is to inform [you] of our*



*agreement to cancel [the] tendering process for the long-term TA [post] to UWA and seek your concurrence. "*

The Ombudsman further notes that, by letter of 4 December 2006, the Delegation confirmed its concurrence with the NAO's decision to cancel the recruitment procedure of the long-term TA post to UWA. Subsequently, the complainant was informed, by letter of 11 December 2006, about the cancellation of the recruitment process in question. The Ombudsman also takes note of the Commission's point that its role was limited to a review of the selection procedure following its completion and the CA's relevant decision (6) .

2.5 The Ombudsman recalls that the complainant's allegation was that the Delegation has failed to provide a clear and understandable reasoning for the rejection of his candidacy. However, in view of the above, the Ombudsman remarks that it has not been established that there was a Commission decision rejecting the complainant's candidacy. In this regard, the Commission pointed out in its opinion that, as long as the CA has not taken a final decision, the recruitment procedure is not finalised, and the internal deliberations of the evaluation committee or of the CA prior to the selection decision have no consequence whatsoever. It appears that the recruitment procedure in question was cancelled before the CA made a decision (subject to the Commission's review) concerning the exclusion of candidates and the selection of the successful candidate.

2.6 In view of the above, the Ombudsman concludes that the complainant's allegation has not been substantiated. The Ombudsman therefore finds no corresponding instance of maladministration.

### **3 Allegation that the Delegation attempted to exclude the complainant from the recruitment process before his interview was held**

3.1 In his complaint, the complainant alleged that the Delegation attempted to exclude him from the recruitment process before his interview was held.

3.2 In its opinion, Commission rejected this allegation and recalled that, in accordance with the provisions of the EDF Practical Guide, the CA is not subject to any time-limits and may, until the end of the award procedure, eliminate a candidate if unfair advantage is presumed to have been gained. The fact that the complainant was allowed to take part in the interviews would not have prevented the CA from having taken the decision to exclude him from the tender due to the situation of a potential conflict of interest. The complainant ought to be aware of the fact that participating in a recruitment process does not create an enforceable right to the tenderer to have the contract awarded.

3.3 In his observations, the complainant stated that the Commission's opinion omitted to address this allegation. In fact, the representative of the Delegation at his interview insisted that he should be barred from the interview and therefore the interviews were delayed by one hour until the consensus view prevailed that he should be interviewed.

3.4 The Ombudsman notes that the Commission did not contest the truthfulness of the factual basis of the complainant's allegation that the Delegation attempted to exclude him from the



interview stage of the recruitment procedure. Moreover, it seems that such an attempt would be difficult to be squared with the Commission's position that its role was limited to the endorsement of the CA's selection decision if it were considered that the pertinent rules of the recruitment procedure had been respected. However, as noted by the complainant, eventually the "consensus view" prevailed that he should be interviewed.

3.5 In view of the above, the Ombudsman finds that no further inquiry into and consideration of the complainant's allegation appear to be justified.

#### **4 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission corresponding to the first and second allegations made by the complainant. Moreover, no further inquiry into and consideration of the complainant's third allegation appear to be justified. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) As modified by the Agreement signed at Maurice on 4 November 1995 (Lomé IVbis Convention, OJ 1998 L 156.), by the 1999 STABEX transfers, as well as by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the General Regulations (OJ 1990 L 382.) and General Conditions (OJ 1990 L 382.) for service contracts financed by the European Development Fund.

(2) OJ 1998 L 191.

(3) See point 7 of the Terms of Reference to the complainant's contract.

(4) A copy of this contract was provided to the Ombudsman in an attachment to the Commission's opinion on the present complaint.

(5) Available on the Commission's EuropeAid website:

[http://ec.europa.eu/europeaid/tender/gestion/index\\_en.htm](http://ec.europa.eu/europeaid/tender/gestion/index_en.htm) [Link]

(6) In this regard, the Ombudsman recalls that, according to Articles 311 and 317 of the Lomé IVbis Convention, invoked by the Commission in its opinion, the Commission shall, by the chief authorizing officer, " (...) (f) approve the proposal for placing of the contract, subject to the powers exercised by the delegate under Article 317 " and that " [t]he delegate [of the Commission] shall have the necessary instructions and delegated powers to facilitate and expedite the preparation, appraisal and execution of projects and programmes and shall be provided with the necessary back-up support to do so. To this end, and in close cooperation with the national authorizing



*officer, the delegate shall:(...) (g) approve within 30 days the national authorizing officer's proposal for the placing of the contract for all: (i) direct-agreement contracts; (ii) service contracts; (...) (k) ensure that the projects and programmes financed from the resources of the Fund managed by the Commission are properly executed from the financial and technical viewpoints ".*