

Decision of the European Ombudsman on complaint 3678/2006/JMA against the European Commission

Decision

Case 3678/2006/JMA - Opened on 25/01/2007 - Decision on 04/09/2007

THIS COMPLAINT WAS TREATED AS CONFIDENTIAL. THE DECISION HAS THEREFORE BEEN ANONYMISED. THE MASCULINE FORM HAS BEEN USED THROUGHOUT.

Strasbourg, 4 September 2007

Dear Mr X,

On 4 December 2006, acting on behalf of Y, you submitted a complaint to the European Ombudsman, against the European Commission. Your complaint concerned a request for public access to a number of documents held by the Commission.

In your complaint, you alleged that the Commission failed to reply to your confirmatory application of 18 August 2006 and your further letter of 17 October 2006. In your letter of 17 October 2006 to the Commission, you requested access to all unpublished documents relating to the notification process regarding the merger between two undertakings. You claimed, therefore, that the Commission should deal with your confirmatory application.

On 25 January 2007, I informed the President of the Commission of this complaint and asked him to submit an opinion by 31 March 2007. On 8 March and 30 April 2007, the Commission requested an extension of the deadline for its reply. I granted these requests on 19 March and 22 May 2007 respectively, and informed you, on the same dates, of my initiatives. On 4 June 2007, the Commission sent its opinion to me, in which it noted that, in April 2007, you had lodged an application with the Court of First Instance of the European Communities, pursuant to Article 230 of the EC Treaty, seeking annulment of the relevant Commission's decision. In the Commission's view your application concerned the same request for access to documents which was the subject-matter of your complaint to me, and the same details provided in the complaint had been reproduced in your application before the Court of First Instance. Accordingly, the Commission submitted that the complaint should be declared inadmissible and the file closed.

On 22 June 2007, I forwarded the Commission's opinion to you, with an invitation to make observation by 31 July 2007. I have received no observations from you. On 31 July 2007, my Secretariat informally contacted you in order to verify whether you intended to send me any further information. You explained that, as the Commission had pointed out in its opinion, the



subject-matter of your complaint was currently the object of an appeal before the Court of First Instance, and that you would not be forwarding any further comments or observations to me as regards your complaint.

Article 195 of the EC Treaty provides that:

" (...) the Ombudsman shall conduct inquiries for which he finds grounds (...) except where the alleged facts are or have been the subject of legal proceedings.(...) "

Furthermore, Article 2(7) of the Statute of the European Ombudsman states as follows:

" When the Ombudsman, because of legal proceedings in progress or concluded concerning facts which have been put forward, has to declare a complaint inadmissible or terminate consideration of it, the outcome of any inquiries he has carried out up to that point shall be filed definitively. "

In view of the information available to the Ombudsman, it appears that the facts which you have put forward in your complaint to me are the subject of legal proceedings before the Community Courts. In accordance with Article 2(7) of the Statute of the European Ombudsman, I have therefore decided to terminate the consideration of your complaint and to file, without further action, the outcome of the inquiries carried out so far.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS