

Draft recommendation to the European Commission in complaint 1769/2002/IJH

Recommendation

Case 1769/2002/(IJH)ELB - Opened on 28/10/2002 - Recommendation on 26/06/2003 - Decision on 22/07/2004

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1))

THE COMPLAINT

The complainants, two French citizens, are directors of the company Blue Dragon 2000, which was set up on 4 June 1999 in Agullana, in the Catalan region of Spain.

In summary, the relevant facts according to the complainants appear to be as follows:

The complainants' project was selected by the Local Action Group (LAG) Salines-Bassegoda to benefit from Community funds granted in the framework of the Community Initiative LEADER II. The complainants learnt that the aid application was dated 20 April 1999. However, they are not the authors of this aid application and did not sign it.

On 15 May 2000, the LAG paid part of the Community funds to Blue Dragon 2000 in the form of two drafts, one of 7 million pesetas and one of 2.8 million pesetas. These two drafts were kept by the bank de Sabadell and should have been destroyed when a cheque for the same amount was issued to the complainants on 15 June 2000.

On 18 September 2000, the complainants contacted the European Anti-Fraud Office (OLAF) because they suspected that the Community funds that had been requested on behalf of their company were subject to fraud. On 19 September 2000, the complainants met two investigators from OLAF, Messrs LOMBARD and MICELLI. After considering the information given by the complainants, the investigators concluded that Blue Dragon 2000 should have received only a very small amount of Community funds, as most of the eligibility criteria were not met.

In October 2000, the complainants informed the Spanish authorities of irregularities in the granting of funds in the framework of the Community initiative LEADER II.

On 15 December 2000, the complainants handed a set of relevant documents over to OLAF.



On 2 April 2001, the regional government (Generalitat) of Catalonia gave the complainants a copy of the LEADER file concerning Blue Dragon 2000. According to the complainants, most of the documents in this file are false, since they have been backdated. On 4 May 2001, the complainants personally handed a copy of this file to two OLAF investigators Messrs LOMBARD and CHAMLA.

In June 2001, the complainants learnt that OLAF was opening an inquiry.

In November 2001, the complainants were informed that Messrs LOMBARD and CHAMLA had been transferred to other duties and that Mr LOMBARD had been replaced by Mr MICELLI. At the same time, the complainants received a copy of the report of an inspection carried out by the regional government of Catalonia. The report found a number of problems in the Blue Dragon 2000 project - in particular, that the project had not started - and recommended that the Community funding that had been paid for the project should be recovered.

On 20 and 25 February 2002, the complainants wrote to DG Agriculture of the Commission. They requested the Commission's assistance to obtain compensation for the damages they suffered. They also wished to have access to the findings of OLAF's inquiry and information on European Community services which could provide them with advice on their case. Finally, they asked for protection.

On 9 March 2002, the complainants lodged a complaint with the European Commission against Spain concerning problems in the management, the control and the distribution of Community funds in the framework of the Community Initiative LEADER II in the Region of Catalonia.

On 26 June 2002, the complainants received a reply from the Commission to their letters. The Commission's reply showed that their complaint of 9 March 2002 had been treated as ordinary correspondence.

The complainants consider that there are three levels of collusion in their case : the first between the LAG Salines-Bassegoda, various local actors and the bank de Sabadell, the second between the French diplomatic service, OLAF and the regional government of Catalonia and the third between the General Directorate Agriculture, the European Commission, France and Spain. According to the complainants, the Commission should have begun legal procedures and the complainants would have joined the Commission's action.

The complainants also state that they have received death threats from unknown persons, linked to the present case.

The complainants lodged a complaint with the European Ombudsman on 9 October 2002. They allege that the Commission and OLAF have failed to deal properly with their allegations of fraud and that the system of distribution of LEADER II funds through private sector bodies, as well as inadequate controls by the Commission, have facilitated the fraud. The complainants claim public exoneration, restitution of what has been stolen from them and compensation for economic and moral losses they have suffered.



The complaint to the Ombudsman was accompanied by detailed annexes of several hundred pages. The complainants later sent additional documents by fax.

In their original complaint, the complainants requested that the complaint remain confidential, in accordance with Article 2 (3) of the Statute of the Ombudsman. On 8 April 2003, they informed the Ombudsman that they no longer wished their complaint to be confidential.

THE INQUIRY

The Commission's opinion

The Commission's opinion on the complaint can be summarised as follows:

The Commission had difficulty understanding the sequence of events described in the annexes to the complaint. There is no information in the complaint on the nature of the complainants' project, the funds they were applying for, the eligibility of their project for Community funds, or the administrative steps they took. The Commission concludes that the company Blue Dragon 2000 wished to develop an industrial project in Catalonia with equity capital and public funds.

The Commission considers that it is necessary to recall that, according to Article 1 (3) of the Statute of the European Ombudsman, the latter may not intervene in cases before courts or question the soundness of a court's ruling. Furthermore, in accordance with Article 2 (1) of the Statute, "the Ombudsman shall help to uncover maladministration in the activities of the Community institutions and bodies."

The Commission denies the allegation that it is involved in collusion to the detriment of the company Blue Dragon 2000, as well as any causal link between its behaviour and the damage alleged by the complainants, and rejects any responsibility. It draws attention to the defamatory words used by the complainants about its officials and reserves the right to introduce the appropriate actions.

Following the submission of the complainants' case to OLAF in September 2000, an inquiry was opened in February 2001. The findings of this inquiry were communicated to Directorate General Agriculture on 8 January 2002. OLAF based itself on two inspections carried out by the Spanish Ministry of Agriculture, Fisheries and Food and the Department of Economy and Finances of the Generalitat of Catalonia. These inspections revealed serious irregularities regarding the Blue Dragon 2000 project. Consequently, on 10 December 2001, the Spanish Ministry for Agriculture requested the Local Action Group to repay the Community funds that had been irregularly paid to the Blue Dragon 2000 company. The Commission, when receiving the declaration at the conclusion of the project, will ensure that the amount in question has been correctly deducted from the final payment request.

The directors of Blue Dragon 2000 wrote to the Commission on 20 and 25 February 2002 and 9 March 2002. They characterised the letter of 9 March 2002 as a complaint. The Commission replied to these letters on 26 June 2002, giving information on the organisation and the control



system in the framework of LEADER, on the findings of the inspections concerning the LAG Salines-Bassegoda and on the limited competence of the Commission.

The Commission considered that it was not necessary to register the letter of 9 March 2002 as a complaint because of the nature of the problems and because the financial interests of the Communities had been protected.

The Commission rejects the complainants' criticism of the management and control system of the LEADER initiative, because this system has proved its worth and made it possible to detect irregularities in the present case.

The Commission considers that the findings of the inspections carried out by the Spanish authorities, which it has no reason to question, do not demonstrate that there was any fraud to the detriment of Community funds. Moreover, the Commission does not consider that it would be justifiable for it to begin legal proceedings, or join an action brought by others, because the financial interests of the Communities are protected by the recovery action initiated by the Spanish authorities and by regulatory measures available to the Commission.

Regarding the damage suffered by the complainants, the facts concern directly and only Blue Dragon 2000 and its directors. It is their responsibility to begin proceedings and to prove, by an independent action for damages, the amount of compensation they are claiming. The Commission cannot act on their behalf.

The complainant's observations

In their observations, the complainants repeat their complaint and argue that the cause of their problems is the lack of control by the Commission of the use of Community funds. They consider that the LAG Salines-Bassegoda exploited the weaknesses of the control system set up by the Commission.

THE DECISION

1 Preliminary remarks

1.1 The Commission's opinion mentions court proceedings and recalls Article 1 (3) of the Statute of the Ombudsman. (2) The Ombudsman points out that he is not aware of any court proceedings dealing with allegations of maladministration against the Commission or OLAF. The Ombudsman does not therefore consider that the present inquiry infringes either the exclusion by Article 195 EC of cases where the alleged facts are or have been the subject of legal proceedings, or Article 1 (3) of the Statute of the Ombudsman.

1.2 The Ombudsman recalls that the EC Treaty empowers him to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint. The Ombudsman's inquiries into the present complaint are therefore directed towards examining whether there has been maladministration in the activities of the Commission and/or OLAF.



1.3 The present complaint is against both the Commission and OLAF. This draft recommendation is addressed only to the Commission. The Ombudsman will pursue his inquiry into the complaint against OLAF by requesting further information from OLAF.

2 The alleged failure to deal properly with the complainants' allegations

2.1 The complainants allege that the Commission failed to deal properly with their allegations of fraud and that the system of distribution of LEADER II funds through private sector bodies, as well as inadequate controls by the Commission, have facilitated the fraud. The complainants claim public exoneration, restitution of what has been stolen from them and compensation for economic and moral losses they have suffered.

2.2 The complainants argue that, on 9 March 2002, they sent a letter of complaint to the Commission against Spain for problems in the management, the control and the distribution of Community funds in the framework of the Community Initiative LEADER II in the autonomous Community of Catalonia. The Commission's reply showed that their complaint had been treated as ordinary correspondence.

2.3 According to the Commission, it considered that it was not necessary to register the letter as a complaint because of the nature of the problems and because the financial interests of the Communities had been protected.

2.4 The Ombudsman recalls that in its opinion on the Ombudsman's own initiative inquiry 303/97/PD, the Commission gave a commitment that all complaints are registered and acknowledged by letter to the complainant.

The Ombudsman notes that Point 3 of the Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (3) re-states the above-mentioned commitment and strictly defines certain exceptions.

2.5 The Ombudsman has examined the complainants' letter of 9 March 2002 to the Commission and considers that it clearly contains a complaint against the Spanish authorities. The complainants insist on serious problems in the control system set up to ensure the correct use of Community funds and they question the checks carried out by the Spanish authorities.

2.6 The Ombudsman therefore considers that, in accordance with the undertaking it gave following the above-mentioned own initiative inquiry 303/97/PD, the Commission should have registered the letter of 9 March 2002 as a complaint. Its failure to do so was an instance of maladministration.

Conclusion

3.1 The Ombudsman considers that the Commission should have registered the complainants' letter of 9 March 2002 as a complaint and that its failure to do so is an instance of maladministration.

3.2 The Ombudsman therefore makes the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman.



The draft recommendation

The European Commission should re-examine the complainant's letter of 9 March 2002 and deal with it in accordance with the Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law. (4)

The Commission and the complainants will be informed of this draft recommendation. In accordance with Article 3 (6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion by 30 September 2003. The detailed opinion could consist of acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 26 June 2003

P. Nikiforos DIAMANDOUROS

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ L 1994 113, page 15.

(2) "The Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling."

(3) 2002 OJ C244/5.

(4) 2002 OJ C244/5.