



## **Decision in case 541/2014/PMC concerning the European Commission's decision to co-finance, under different conditions, two simultaneous programmes promoting the sale of olive oil in third countries**

Decision

**Case 541/2014/PMC - Opened on 23/04/2014 - Decision on 11/04/2016 - Institutions concerned** European Commission ( Settled by the institution ) | European Commission ( No further inquiries justified ) |

The complainant, a consortium of olive oil producers from Italy, complained to the Ombudsman concerning the Commission's decision to co-finance, under different conditions, two simultaneous programmes promoting the sale of olive oil outside the EU. In the complainant's view, inconsistencies between the terms of these programmes resulted in a competitive advantage for Spanish olive oil producers.

In the course of her inquiry, the Ombudsman found that the EU legislator had adopted new regulations with provisions on improved coordination of the two funding programmes, which implies that cases such as the present will not occur in the future. The Ombudsman thus considered the systemic aspect of the complaint to have been resolved. However, the Ombudsman found that she was not in a position to address the complainant's individual situation. She therefore closed the case.

### **The background to the complaint**

**1.** The complainant, a consortium of olive oil producers from Italy, promotes the sale of olive oil in countries outside the EU, namely India, Russia and China. It received some funding for this work from the European Agriculture Guarantee Fund (EAGF), managed by the European Commission's Directorate-General for Agriculture and Rural Development (DG AGRI). According to the relevant rules [1], in order to receive funding the promotional campaign had to have a message based on the specific qualities and characteristics of the product. Only references to the European - and not to the national - origin of products are allowed. The Union's contribution to the complainant's promotion actions covered 50% of expenses, while Italy and the complainant covered 20% and 30% respectively.

**2.** In the course of its promotional programme, the complainant discovered that the European Regional Development Fund (ERDF), managed by the Commission's Directorate-General for Regional and Urban Policy (DG REGIO), co-finances a similar promotional programme for European agricultural products in the same third countries as the complainant, but under different conditions. The actions financed through the ERDF were allowed to promote the product's country of origin.



**3.** In March 2012, the complainant contacted the Commission to complain about the fact that, while it was contractually required, under the EAGF, to promote its (Italian) olive oil as "European" in Russia, China and India, its Spanish competitors could, under the ERDF, promote their olive oil as "Spanish" in those same countries.

**4.** In response, the Commission explained that DG AGRI applies the regulations in force. In accordance with Regulation 3/2008, the actions co-financed by DG AGRI under the EAGF are not brand-oriented and do not encourage the consumption of any product on grounds of its specific geographic origins. The Commission stated that there are, however, also other ways to obtain financing, such as under the ERDF. According to the Commission, Article 7 of Regulation 1080/2006 [2] on the ERDF does not exclude funding of promotion actions for olive oil in third countries. The Commission therefore concluded that the actions financed by Spain through the ERDF are in compliance with the applicable rules.

**5.** The complainant addressed its grievance to the Italian Ministry of Agriculture, which wrote to the Commission stating that it found it "embarrassing" to realise that it had co-financed a promotional campaign which "damages" the interests of its own olive oil producers. It therefore asked the Commission to (i) suspend the ongoing promotional programme in China and Russia with immediate effect and (ii) compensate the complainant for the costs it had incurred. The Commission replied to the Ministry that the fact that there are programmes financed by DG REGIO for the promotion of the same agricultural products on the same markets does not justify the complainant's request to be allowed to stop its promotional campaign for olive oil. The Commission relied on the fact that the contracts in force had to be respected. Dissatisfied with the Commission's position, the complainant eventually turned to the Ombudsman in March 2014.

#### **The inquiry**

**6.** The Ombudsman opened an inquiry into the allegation that, by simultaneously co-financing two similar programmes promoting olive oil on the same international markets, but under different conditions, the Commission acted contrary to principles of good administration. [3]

**7.** In support of its allegation, the complainant put forward the following supporting arguments: (i) By allowing Spanish olive oil producers to advertise their oil as "Spanish", while requiring Italian producers to refer to their oil as "European", the Commission provided an unjustified competitive advantage to Spanish producers to the detriment of Italian producers; (ii) the Commission did not seek to remedy this distortion but merely emphasised the contractual obligations incumbent on the complainant; and (iii) the Commission had failed to coordinate the work of its services, which resulted in its adoption of two different and inconsistent policies.

**8.** In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainants in response to the Commission's opinion. Her inquiry team also carried out an inspection of the Commission's file on the matter. The complainant sent observations in relation to the inspection report. The Commission's alleged violation of principles of good administration



## The arguments presented to the Ombudsman

**9.** The Commission rejected the complainant's allegation and stated that the scope and main objectives of the two EU programmes were different. Moreover, due to the different legal frameworks applicable to DG AGRI and DG REGIO programmes, the conditions for eligibility for funding under these are also different.

**10.** The promotion policy implemented by DG AGRI (EAGF) [4] aims at financing activities, on the internal market or in third countries, advertising European agricultural products and their method of production, as well as food products based on European agricultural products. The goal is to promote the image of EU products in the eyes of consumers in the European Union and in third countries. The indication of the region or Member State of origin on the advertised products is not permitted, in order to respect the principle of free movement of goods within the internal market and to avoid any discrimination. However, the applicable rules allow for the use of specific labels for products that come from specific areas. [5]

**11.** The Commission further explained that the regional policy implemented by DG REGIO, on the other hand, aims at reducing differences in levels of development among the various European regions. This regional policy objective is pursued through different funds, such as the ERDF. The Commission added that it may not intervene in the selection of projects, as this is the exclusive competence of the national management authorities. Spain had sought to promote actions by Spanish olive oil producers as part of the Spanish ERDF operational programmes and the ERDF Regulation did not exclude this possibility. Italy could - like Spain - have applied for funding under the ERDF.

**12.** The Commission also argued that the complainant had signed a legally binding contract with the competent national authority and that the contract had to be respected.

**13.** Finally, the Commission informed the Ombudsman that, on 21 November 2013, it had presented a legislative proposal on the promotion policy of European agricultural products with a view to open up new markets, increase consumer awareness of products quality and to encourage greater openness in including indications of origin and trademarks.

**14.** In its observations, the complainant stated that the Commission had entirely failed to address the essence of its complaint, namely, the question of whether the existence of two different promotional programmes, advertising the same agricultural product under different conditions, would grant an unjustified competitive advantage to Spanish producers to the detriment of Italian ones. The complainant stated that it was aware that DG REGIO had asked DG Competition for an opinion on this matter, but the complainant did not know the outcome. The complainant stated that it was also aware that DG AGRI has written to DG REGIO proposing better cooperation between the two services in the future. The complainant questioned why the Commission's opinion did not refer to this correspondence.

**15.** The complainant acknowledged being legally bound by the contract with the Italian



national authority. However, it added that the Commission had a duty to inform it of the existence of another similar programme before the complainant signed the contract. If the complainant had been aware of the other programme, it would never have signed the contract in question.

**16.** Finally, the complainant welcomed the Commission's legislative proposal which, however, does not make good the damage caused. In the complainant's view, the existence of two similar promotional programmes meant that the Italian olive oil producers co-financed the EU programme in support of the Spanish olive oil producers. The complainant therefore concluded that it would have been more appropriate if the Commission had financed the complainant's actions by 100%.

## The inspection of documents

**17.** On 11 November 2014, the Ombudsman's inquiry team inspected the Commission's file on the matter complained about. The inquiry team identified three letters exchanged between DG REGIO and DG AGRI on the matter, but no documents exchanged with DG Competition.

**18.** The Commission staff present at the inspection stated that there had been no meeting between DG AGRI and DG REGIO to discuss the matter. They also pointed out that new regulations [6] have been adopted underlining the importance of coordination between the various EU funds and providing for the visibility of commercial brands and product origin.

**19.** In its observations on the inspection report, the complainant argued that the Commission had still failed to address the issue of the two programmes creating a distortive effect on competition.

## The Ombudsman's assessment

**20.** The Ombudsman acknowledges that the objectives of the two EU Funds at issue - the European Agriculture Guarantee Fund (EAGF) and the European Regional Development Fund (ERDF) - are different. The conditions for funding are therefore also different. The merits of the relevant legal provisions in force at the time when the complainant entered into a funding contract cannot constitute maladministration, given that they set out the will of the EU legislator.

**21.** Each Member State chooses which EU funded scheme(s) it wishes to adhere to. Italy could thus have applied for funding under the ERDF in the same way as Spain. Any competitive advantage accruing to the Spanish producers results from the fact that the Italian authorities did not assist their producers to apply for the ERDF programme which they were entirely free to apply for (for example, by at least informing them of the existence of that ERDF programme). However, the Italian authorities opted for the EAGF programme. It must ultimately be the Member States' responsibility to choose the funding schemes that



they consider to be the most appropriate for their specific needs. The complainant concluded a contract with the Italian authorities fully aware of the conditions by which it had to abide, such as that the reference to the origin of products should be secondary to the central message of the campaign. The Commission is not responsible for the national authorities' choice of funding scheme(s), the details of which were decided upon and administered by the respective Member State.

**22.** While the Ombudsman can understand the complainant's surprise and ensuing dissatisfaction at learning that another, arguably more advantageous financing programme existed, she does not share the complainant's view that the Commission was obliged to make special efforts to inform either it or the Italian authorities of the existence of the ERDF programme. Rather, it is incumbent on any signatory of a contract to gather all the necessary information, which was freely available to them, before entering into a contractual relationship. Furthermore, at Member State level it is normal that national authorities will have an interest in ensuring that all relevant information on EU schemes will be made available to interested parties.

**23.** However, whereas the Commission correctly relied on two different legislative bases for explaining the different aims of the EAGF and the ERDF, the mere fact that two programmes are governed by different legislative provisions does not automatically mean that the Commission could not have better coordinated its actions, nor does it mean that their specific implementation could not lead to rather bizarre, confusing, unwanted and wasteful effects. While the EU money may have been used in two perfectly legal ways, these two ways had objectives and effects which were not consistent with each other. The Ombudsman thus believes that better coordination and internal communication would have been possible, and indeed desirable when approving the funding requests.

**24.** While poor coordination and poor internal communication can constitute maladministration, the Ombudsman notes that the EU legislature has now adopted new regulations [7] with provisions on improved coordination, which implies that cases such as the present should not occur in the future. The Ombudsman considers that the systemic aspect of the complaint has been resolved. The Ombudsman thus considers that no useful purpose would now be served by making a finding of maladministration against the Commission. She thus closes her inquiry with a finding that no further inquiries are justified into the present case.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusions:

**The systemic aspect of the issue complained about has been resolved. No further inquiries are justified.**

The Commission and the complainant will be informed of this decision.

Strasbourg, 11/04/2016



Emily O'Reilly

European Ombudsman

[1] That is, Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the material market and in third countries, OJ 2008 L 3, p. 1; and Commission Regulation (EC) No 501/2008 of 5 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the material market and in third countries, OJ 2008 L 147, p. 3

[2] Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, OJ 2006 L 210, p. 1.

[3] With regards to the complainant's claim, namely that the Commission should reimburse the complainant the costs incurred with respect to its promotional actions, the Ombudsman considered that there were insufficient grounds for including it in her inquiry. In fact, it was difficult for the Ombudsman to see how the existence of a further Commission programme which could potentially be incompatible with the programme in which the complainant participated and which has been defined by the EU legislature, could oblige the Commission to reimburse the complainant for the costs incurred in its promotional activities. Moreover, it appears that the complainant signed the relevant contracts of its own accord and only bore part of the costs incurred.

[4] That is, according to Regulation 3/2008 and Regulation 501/2008.

[5] Such as Protected Designation of Origins, Protected Geographical Indications, and Traditional Speciality Guaranteed (otherwise known as PDO, PGI and TSG, respectively).

[6] Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006. OJ 2013 L 347, pp. 320–469; and Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008. OJ 2014 L 317, pp. 56–70.

[7] See point 13, as well as footnote 6 further above.