

Decision of the European Ombudsman on complaint 943/14.10.96/XXX/GR/BB/OV against the European Commission

Decision

Case 943/96/OV - Opened on 17/12/1996 - Decision on 29/07/1998

Strasbourg, 29 July 1998 Dear X, On 11 October 1996 you made a complaint to the European Ombudsman concerning an alleged lack or refusal of information by UCLAF relative to allegations of illegal activities in the administration, management and control of European Social Fund (ESF) programmes in Greece between 1994 and 1996. On 17 December 1996, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 26 March 1997 and I forwarded it to you with an invitation to make observations, if you so wished. On 9 June 1997, I received your observations on the Commission's opinion. On 14 November 1996 and 16 January 1997 I had already received complementary documentation from you concerning your complaint. On 18 June 1997 you sent me other documents relative to your complaint. I am writing now to let you know the results of the inquiries that have been made. To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman. The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

THE COMPLAINT

According to the complainant, the relevant facts were as follows : X complained to the Ombudsman on behalf of Y, a Greek initiative group which has its seat in Athens. Between September 1995 and June 1996 Y wrote three letters to the Directorate F (UCLAF - Coordination of fraud prevention) of the Secretariat-General of the Commission alleging irregularities in the management of European Social Fund resources in Greece from between 1994 to 1996 : In a first letter dating from 6 September 1995 and backed up by documentary evidence, Y put forward substantiated charges concerning illegal acts in the management of European Social Fund resources by a company called Z, involving both the Greek Ministry of Labour and the General Secretariat for the Younger Generation (GSYG) which co-funded the subventioned programme. In its letter Y asked for an immediate action by the Community



authorities. In reply to its letter, Y received from the UCLAF Directorate a standard letter dated 28 September 1995 thanking for their interest and stating in general terms that investigations would be carried out. In a second letter dated 6 March 1996, Y furnished additional and detailed information concerning the alleged irregularities by the Ministry of Labour, the GSYG and the General Secretariat for Adult Education in the management of the Community Social Fund resources between 1994 and 1996 (illegal allocations of billions of Greek drachmas, channelling of Community funds by the political leadership). The UCLAF Directorate did not reply to this letter. Since the Commission failed to respond to the allegations it had put forward, Y sent on 28 June 1996 a third letter to the UCLAF Directorate in which it repeated the data set out in the second letter and added new information concerning the alleged mismanagement and quoting other government and private bodies involved in it. In reply to this third letter, Y received a new standard letter from the UCLAF Directorate dated 7 August 1996 stating this time that it was investigating the case and would take the appropriate measures. Given this alleged lack of interest shown by the UCLAF Directorate of the Commission, Y wrote in October 1996 to the Ombudsman in order to put an end to the alleged mismanagement of the European Social Fund activities in Greece. It more particularly complained that its letters had not received an adequate response. It asked for an urgent intervention, given that newspaper articles showed that Community funds would be used to back candidates in recent elections.

THE INQUIRY

The Commission's opinion The Commission first observed that a first and later a second acknowledgment receipt had been sent to Y and that the information received from the complainant had immediately been examined within the UCLAF Directorate. The Commission further stated that in November 1995 its services asked the Greek authorities for information concerning the ESF projects for which irregularities had been alleged. The Greek authorities furnished this information in March 1996 and also informed the Commission about a case concerning Z in October 1995. On basis of this information, the Commission decided and carried out an on the spot investigation from 29 to 31 October 1996, which in particular concerned the GSYG and the projects of the beneficiaries Z and another company, because of the additional information furnished by the complainant. A visit to the GSYG was organized in order to evaluate the role of this body in the management and the follow-up of the FSE projects and to verify the allegations of the complainant. The investigation showed non eligible expenditures for the controlled projects in terms of non rational amounts and practices of the GSYG. The national authorities agreed with the results of this investigation and promised to proceed to the necessary corrections and to extend their control to all the programmes of the beneficiary Z. The Commission further observed that its services carried out a series of controls in Greece during the years 1995 - 1996 with as result the rejection of the totality of the certifications of the Greek centres for professional formation (KEK) and a demand to reform the Greek certification system. On basis of the above information the Commission concluded that it had not been inactive further to the information received from the complainant, but that the mission and the tasks of the UCLAF Directorate do not permit a divulgence of information. **The complainant's observations** In the observations, presented in a long memorandum, the complainant stated that the Commission had not taken into consideration all the allegations made by Y and that its conclusions were incomplete. More particularly, the complainant observed that the audit carried out by the UCLAF Directorate failed to examine all the cases for



which Y had made allegations, and had deliberately avoided a detailed examination of many cases such as various private companies, the Ministry of Labour, the GSAE Labour Institute as well as certain vocational training centres which had benefited from generous funding. The complainant forwarded a codification of all the allegations Y had made in its three original letters.

THE DECISION

1. Request to the Ombudsman to put an end to the alleged mismanagement of ESF funds 1.1

The responsibility to counter fraud with the financial interests of the Community falls primarily to the Member States, which, according to article 209a of the EC Treaty, shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests. This responsibility of the Member States is shared with the Commission in the frame of its general task of ensuring that the Community budget is properly implemented. As regards more particularly the operations financed by the Structural Funds, the responsibilities of both the Member States and the Commission with regard to the financial control are set out in article 23 of Council Regulation (EEC) No. 2082/93 of 20 July 1993 (1). 1.2 The final financial control of the operations financed by the Structural Funds falls with the Court of Auditors which, according to article 188c (2) of the EC Treaty, examines whether all revenue has been received and all expenditure of the Community has been incurred in a lawful and regular manner and whether the financial management has been sound. In this frame, article 188c (3) of the EC Treaty particularly empowers the Court of Auditors to carry out audits on the spot in the Member States. According to article 188c (4) the Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions. 1.3 The EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Ombudsman has no mandate to inquire into possible instances of maladministration by national authorities, such as the Greek government and private bodies involved in the present case. 1.4 For those reasons, as regards the request of the complainant to put an end to the alleged mismanagement of ESF funds in Greece, the Ombudsman has no power to inquire into a possible instance of maladministration at the national level. 2. *The alleged failure of adequate response from the UCLAF Directorate* 2.1

The complainant sent a first letter to the Commission on 6 September 1995 and received a reply on 28 September 1995 thanking for their interest stating in general terms that investigations would be carried out. Y sent a second letter with additional information on 6 March 1996 and received no reply. Finally it sent a third letter on 28 June 1996 and received on 7 August 1996 a similar reply stating in general terms that investigations were going on and that appropriate measures would be taken.

Therefore the complainant considered that its letters directed to the UCLAF Directorate had not received an adequate response. 2.2 The Commission observed that a first acknowledgment receipt had been sent for the letter dated 6 September 1996 and a second acknowledgment receipt for the two other letters. It also indicated that, upon receipt of the allegations, the UCLAF Directorate immediately started to investigate the information received from the complainant. But the Commission concluded that the mission and the tasks of the UCLAF Directorate did not permit a divulgence of information concerning the actions it had undertaken. 2.3 The Ombudsman notes that the information which the Commission obtains in the frame of investigations into fraud with regard to operations financed by the Structural Funds is covered



by professional confidentiality. Reference can in particular be made to article 10 of the UCLAF regulation of 11 July 1994 (Commission Regulation (EC) No. 1681/94) (2) which deals with the exchange of information in this field between the Member States and the Commission. This provision foresees that Member States and the Commission shall take all necessary precautions to ensure that the information which they exchange remains confidential. It stipulates that this information may not, in particular, be sent to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it (article 10(2)).

2.4 It appears thus from the above provision that the UCLAF Directorate was entitled not to divulge to the complainant the results of its investigations, because of the requirements of its mission and tasks. It appears to the Ombudsman that providing information to third parties about ongoing Commission investigations into fraud in a Member State and the results thereof could risk to jeopardize ongoing investigations of the UCLAF Directorate.

2.5 For those reasons, the fact that the UCLAF Directorate, in its response to the complainant, informed only in general terms about the ongoing investigations and gave no details concerning its inquiries into the alleged mismanagement of the funds did not constitute an instance of maladministration.

3. *The alleged failure of action of the UCLAF Directorate further to the complainant's allegations of mismanagement of ESF funds*

3.1 It appears from the information presented in the Commission's comments that the UCLAF Directorate has immediately started, upon receipt of the allegations of mismanagement of ESF funds contained in the first letter of the complainant, to examine those allegations. It equally appears that the UCLAF Directorate investigated the matter and carried out an on the spot investigation from 29 to 31 October 1996 and a series of other controls. However, in its observations on the Commission's comments, the complainant stated that the audit carried out by the UCLAF Directorate had been incomplete and had failed to examine all the alleged cases of mismanagement.

3.2 The office of the Ombudsman has contacted the competent services of the UCLAF Directorate and was informed that the complainant has sent new allegations of mismanagement to be investigated, which are currently dealt with by the UCLAF Directorate. In this frame, the Ombudsman will also send to the UCLAF Directorate the allegations contained in the complainant's memorandum of May 1997. On basis of the above information, there appeared to be no indication of an instance of maladministration in the way the UCLAF Directorate dealt with the complainant's allegations.

3.3 The Ombudsman however would like to draw the attention of the complainant on the fact that the final financial control of the operations financed by the Structural Funds will fall within the competence of the Court of Auditors. According to article 188c (2) of the EC Treaty, the Court of Auditors examines whether all revenue has been received and all expenditure of the Community has been incurred in a lawful and regular manner and whether the financial management has been sound.

4. *Conclusion* On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case.

Yours sincerely Jacob Söderman

cc: Jacques Santer, President of the Commission Jean-Claude Eeckhout, Director

(1) Council Regulation (EEC) No. 2082/93 of 20 July 1993 amending Regulation (EEC) No. 4253/88 laying down provisions for implementing Regulations (EEC) No. 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments, OJ 1993 L 193/20.



(2) Commission Regulation (EC) No. 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organization of an information system in this field, *OJ* 1994 L 178/43.