

## **Απόφαση στην υπόθεση 1976/2009/ΒΕΗ - Ισχυρισμός περί εσφαλμένης ερμηνείας συμβατικών κανόνων στο πλαίσιο έργου αναπτυξιακής συνεργασίας**

Απόφαση

**Υπόθεση 1976/2009/ΒΕΗ - Εκκίνηση έρευνας στις 22/09/2009 - Απόφαση στις 14/12/2010**

Η αναφορά αφορούσε τη διαχείριση, από την Επιτροπή, ενός έργου για την καταπολέμηση της φτώχειας σε επιλεγμένα χωριά του κρατιδίου Μαχαράστρα (Ινδία). Στο έργο συμμετείχαν ο ενδιαφερόμενος (ίδρυμα που διέπεται από το γερμανικό δίκαιο, το οποίο ενεργεί ως δικαιούχος δυνάμει της σχετικής συμφωνίας επιχορήγησης) και ένας τοπικός εταίρος του έργου στην Ινδία. Τον Φεβρουάριο του 2009 η Επιτροπή εξέδωσε χρεωστικό σημείωμα, ζητώντας από τον ενδιαφερόμενο να της επιστρέψει το ποσό των 127.772,24 ευρώ. Αυτή η εντολή ανάκτησης ήταν κυρίως αποτέλεσμα του γεγονότος ότι οι τοπικοί χωρικοί που επωφελήθηκαν από το έργο έλαβαν το 80 % της αμοιβής τους για την εργασία που παρείχαν στο πλαίσιο του έργου, ενώ το 20 %, παρακρατήθηκε ως «εθελοντική συμμετοχή» στο έργο, την οποία παρείχαν με τη μορφή μη αμειβόμενης εργασίας. Κατά την Επιτροπή, αυτή η «εθελοντική συμμετοχή» έπρεπε να θεωρηθεί μη επιλέξιμη εισφορά σε είδος. Ο ενδιαφερόμενος ισχυρίστηκε ότι το αίτημα της Επιτροπής για την πληρωμή βασίστηκε σε εσφαλμένη ερμηνεία των γενικών όρων που ισχύουν στη συμφωνία επιχορήγησης. Αξίωσε από την Επιτροπή να ανακαλέσει το εν λόγω χρεωστικό σημείωμα.

Κατά τη διάρκεια της έρευνας του Διαμεσολαβητή, η Επιτροπή ισχυρίστηκε ότι δεν πραγματοποιήθηκαν δαπάνες όσον αφορά την «εθελοντική συμμετοχή» των χωρικών, δεδομένου ότι το αντίστοιχο ποσό δεν είχε καταβληθεί στους χωρικούς. Επιπλέον, εάν το σύνολο των αμοιβών των χωρικών θεωρούνταν άμεση επιλέξιμη δαπάνη, η «εθελοντική συμμετοχή» τους θα έπρεπε να δηλωθεί ως έσοδο για το έργο και, κατ' επέκταση, να αφαιρεθεί από το τελικό ποσό της επιχορήγησης.

Στις υποθέσεις που αφορούν συμβατικές διαφορές, συνήθης πρακτική του Διαμεσολαβητή είναι να εξετάζει εάν το εκάστοτε θεσμικό όργανο του έχει εκθέσει με συνεκτικό και λογικό τρόπο τη νομική βάση των ενεργειών του. Ελλείψει συγκεκριμένων στοιχείων που να αποδεικνύουν ότι οι χωρικοί συμφώνησαν να παραιτηθούν από το 20 % των αμοιβών τους, ο Διαμεσολαβητής έκρινε εύλογη την άποψη της Επιτροπής ότι οι αντίστοιχες δαπάνες δεν πραγματοποιήθηκαν. Ομοίως, θεώρησε ότι η Επιτροπή ορθώς έκρινε ότι ο ενδιαφερόμενος παραβίασε τον συμβατικό κανόνα που ορίζει ότι, προκειμένου να είναι επιλέξιμες, οι δαπάνες πρέπει να αντιστοιχούν στις πραγματικές αμοιβές. Αυτό οφειλόταν στο γεγονός ότι οι χωρικοί έλαβαν μόνο το 80 % της αμοιβής τους. Υπό αυτές τις περιστάσεις, ο Διαμεσολαβητής έκρινε ότι θα μπορούσε πράγματι



να υποστηριχθεί ότι το 20 % των σχετικών εργασιών πραγματοποιήθηκε αμισθί και ότι αυτό συνιστούσε μη επιλέξιμη εισφορά σε είδος. Ωστόσο, ακόμη και αν γινόταν δεκτή η άποψη του ενδιαφερόμενου ότι η «εθελοντική συμμετοχή» πρέπει να θεωρηθεί επιλέξιμη, ο Διαμεσολαβητής έκρινε ότι αυτό θα σήμαινε ότι η συμμετοχή του 20 % θα έπρεπε να δηλωθεί ως έσοδο για το έργο. Τέτοιου είδους έσοδα θα έπρεπε κανονικά να αφαιρεθούν από το συνολικό κόστος του έργου. Ωστόσο, ο ενδιαφερόμενος δεν φαίνεται να έχει δηλώσει τέτοια έσοδα. Υπό το πρίσμα αυτών των περιστάσεων, ο Διαμεσολαβητής περάτωσε την υπόθεση με τη διαπίστωση ότι δεν υπήρξε κρούσμα κακοδιοίκησης.

## The background to the complaint

1. The present complaint concerns the European Commission's handling of project B 76000/PVD/2001/605/FRG/PR, entitled " *Community Based Natural Resource Management Along Watershed Lines for Sustainable Rural Livelihoods - India* " ('the Project'). The aim of the Project was to alleviate poverty in selected villages in the State of Maharashtra. Its overall objective was to regenerate the productive capacity of the local environment in micro-watersheds in order to meet basic livelihood needs.
2. The Project ran from 1 January 2002 to 31 December 2006. The parties involved were the complainant (a foundation under German law), which was the beneficiary under the relevant Grant Agreement, and a local project partner in India, the NGO Watershed Organisation Trust ('WOTR').
3. According to the Grant Agreement, the total cost of the Project that was eligible for EU funding amounted to EUR 1 414 085. The Commission undertook to provide a maximum of EUR 1 000 000, which was the equivalent of 70.71% of the Project's total cost. The implementation of the Project was governed by the " *General Conditions applicable to European Community grant contracts for external aid* ", dated 6 December 2000 ('the General Conditions').
4. In 2008, the Commission contracted the audit company Ernst & Young ('the Auditor') to perform a financial audit of the Project. The auditor concluded that the complainant had unduly received funds for ineligible expenditure. The Auditor recommended that the Commission should recover from the complainant the amount of EUR 127 772.24. This recommendation resulted, among other things, from the following two audit findings:
  - According to the Auditor, villagers from local communities, who benefited from the project, were remunerated for 80% of the work they performed in the framework of the Project. The remaining 20% of their work was considered to be their voluntary contribution to the Project, which took the form of free labour. In the Auditor's view, this voluntary contribution was to be considered as an ineligible contribution in kind.
  - Costs for vehicles and office premises were to be considered ineligible.
5. In relation to both of these findings, the Auditor invoked Articles 14(1) and 14(6) of the



General Conditions which read as follows:

Article 14(1)

*" To be considered eligible in the context of the Operation, costs must: ... have actually been incurred, be recorded in the Beneficiary's or beneficiary's partners' accounts, be identifiable and verifiable, and be backed by originals of supporting evidence. "*

Article 14(6)

*" Any contributions in kind made by the Beneficiary and listed separately in Annex III shall not be considered eligible costs for Community financing. The Beneficiary must, however, undertake to make such contributions in accordance with the terms of this Contract. "*

6. In an exchange of e-mails with the Commission's Delegation in New Delhi ('the Delegation'), the complainant challenged the Auditor's findings. It insisted that costs considered ineligible by the Auditor were in fact eligible. In the course of this correspondence, the Delegation insisted on the validity of the Auditor's findings.

7. On 26 February 2009, the Commission issued a debit note asking the complainant to remit the amount of EUR 127 772.24 to the Commission. A reminder letter was sent to the complainant on 16 April 2009. On 24 June 2009, the Commission sent a letter of formal notice to the complainant, and demanded payment of the original amount, plus default interest.

8. On 30 July 2009, the complainant turned to the Ombudsman.

## **The subject matter of the inquiry**

9. In its complaint to the Ombudsman, the complainant submitted the following allegation and claims.

**Allegation:**

On the basis of a wrong interpretation of the General Conditions, and in particular Articles 14(1) and (6) thereof, the Commission wrongly issued a debit note in the amount of EUR 127 772.24 (plus interest).

**Claims:**

(1) The Commission should revoke the aforesaid debit note.

(2) The Commission should issue clear guidelines serving the interests of development policy for future projects.



## **The inquiry**

10. The complaint was forwarded to the President of the Commission for an opinion. The Commission's opinion was forwarded to the complainant with an invitation to make observations. The complainant submitted observations on 29 April 2010. In light of these observations, further inquiries by the Ombudsman proved necessary. Thus, in a letter dated 7 July 2010, the Ombudsman requested the Commission to provide him with further information concerning the complainant's case.

11. The Commission's reply was forwarded to the complainant with an invitation to make observations. The complainant submitted observations on 19 October 2010.

## **The Ombudsman's analysis and conclusions**

### **Preliminary remarks**

12. Given their factual connection, it is appropriate to consider the complainant's allegation and the first claim together.

### **A. Allegation of wrong issue of debit note and related claim**

#### **Arguments presented to the Ombudsman**

13. In support of its allegation, the complainant asserted that the Commission's interpretation of the General Conditions was not acceptable, since it ran counter to the idea of helping others to help themselves, and it torpedoed the aim of giving the local population a sense of ownership in the Project. The complainant explained that remunerated work carried out by the local population was calculated in line with local minimum wages, and was considered a voluntary contribution to the Project. A fixed share of the villagers' wages was reinvested in the Project. In the interest of administrative efficiency, that share was retained by WOTR directly at source. Referring to Article 14(1) of the General Conditions, the complainant pointed out that all such transfers were duly documented. According to the complainant, the Auditor stated informally that there would have to be evidence that transfers were made between different accounts. However, in the complainant's view, this was not required by the General Conditions. As regards Article 14(6) of the General Conditions, the complainant asserted that the Auditor did not recognise the villagers' financial contributions, which were definitely made and fully documented. The complainant pointed out that the method chosen was the only way for local, impoverished farmers to contribute to the Project. The complainant also criticised the Auditor for failing to recognise expenditure relating to the acquisition of vehicles, and the renting of office space.



14. In its opinion, the Commission commented on the events which gave rise to the debit note. It essentially stated that the debit note originated from the findings of the Auditor, on which the complainant was given the chance to comment. Following written exchanges between the Commission and the complainant, on 13 January 2009, the Commission confirmed the validity of the Auditor's findings. In this context, the Commission also recalled that, during a meeting, the complainant had acknowledged that the villagers did not actually receive the money at issue. The Commission, therefore, maintained that the relevant costs were not incurred, and were thus ineligible.

15. The Commission outlined the basic principles underlying grant agreements with civil society organisations, namely, that (a) beneficiaries bear full responsibility for project implementation, (b) Commission funding is only partial, and (c) grants must not give rise to profits. The Commission acknowledged that contributions in kind, made by a Project's target group, could be an important instrument for promoting ownership of a project, and its sustainable development once EU financing comes to an end. However, given that the Commission was only a co-financer of the Project, its contribution was necessarily linked to paying a percentage of actual, identifiable, and verifiable eligible costs, as stipulated by the General Conditions, in particular, Article 14.

16. The Commission stated that the complainant contested only two of the Auditor's findings, namely, "*Contributions in kind by communities*" (first audit finding), and "*Contributions in kind of vehicle, motorcycle and rent*" (second audit finding).

17. Concerning the **first audit finding**, the Commission put forward that the local population contributed to the implementation of the Project through their labour. To be precise, 80% of the estimated value of their contribution was rewarded through payment of wages, and the remaining 20% was not actually paid to the workers, but recorded as Project expenditure. According to the Commission, "[t]he audit report considered that this was an ineligible cost since it had not been actually incurred, since the wages had not been paid out to the workers". The Commission acknowledged the complainant's understanding that the villagers' contribution was a cash contribution, and, therefore, a cost actually incurred. According to the complainant, instead of accepting payment, the workers reinvested a part of their wages in the Project. The 'reinvested wages' were used to pursue additional approved works, as envisaged in the approved Project. For reasons of simplification, that contribution was retained, directly at source, from the villagers' wages.

18. In addressing the complainant's view, the Commission noted the following: "*Although the description of the action includes several references to the 'free labour', nowhere in such description did the grant beneficiary explain the system applied*" [1] **The Commission added that, if the total amount of wages paid to the villagers were accepted as a direct eligible cost, the villagers' voluntary contribution would have to be declared as revenue for the Project and, as such, would have to be deducted from the total costs of the Project when establishing the final amount of the grant.**, i.e. that the 'free' labour would be collected through deducting a part from the salary paid by the action. **The description did not mention**



**either that the value of the 'free labour' would go towards other activities not included in the grant contract;** on the contrary, only activities covered by the action were mentioned in the action's description in connection with free labour. The budget of the operation did not even include a reference to this contribution in kind (Annex 6).

19. The Commission maintained its view that the beneficiary's partial use of non-paid labour was a contribution in kind, as defined in the General Conditions. The costs charged to the Project did not correspond to the amounts finally paid to the villagers. When the complainant, therefore, requested payment for amounts which did not represent the wages actually paid out but, rather, artificially increased wages which exceeded the expenditure actually incurred, it breached Article 14(2) of the General Conditions [2] , given that its statements did not reflect reality.

20. The Commission also pointed out that it identified a similar practice on the complainant's part in another grant agreement which dated back to almost the same period of time as the Project. The Project's General Conditions were also applicable to the said grant agreement. One of the Commission's findings was that the local labour contribution in kind was recorded as expenditure, but no financial transfer was made from the accounts of the project concerned. In that case, the complainant did not object to this finding, and submitted a revised request for payment to the Commission. The Commission also explained that, since 2005, the General Conditions stipulated that "*salaries cannot be considered as in-kind contributions and may be considered as co-financing in the Budget of the Action when paid by the Beneficiary or its partners*".

21. Concerning the **second audit finding** , the Commission noted that it concerned (i) the purchase of a vehicle and two motorcycles already owned by WOTR, and (ii) the use of WOTR's premises. In relation to the purchased vehicles, the Commission noted that the budget submitted by the complainant did not mention a relevant contribution in kind. However, on page 31 of the description of the action, the complainant committed itself to providing a jeep and two motorcycles [3] . As regards the use of WOTR's premises, the Commission stated that many beneficiaries used their own premises without incurring any extra cost. The Commission, therefore, did not accept that the costs for using WOTR's premises could be claimed by the complainant as rent, since this would have generated a profit for the beneficiary. As a consequence, these costs could not be considered eligible.

22. In view of the above, the Commission submitted that the contested debit note was correct and did not, therefore, have to be revoked. The Commission asserted that it had complied with the provisions of the grant agreement and fully respected the complainant's rights. Furthermore, it had acted in good faith, and applied the principle of sound financial management. In conclusion, the Commission underlined that its services had acted properly in the complainant's case. It also stated that it had provided the same information in its reply to a written question from a Member of the European Parliament (MEP) in 2009.

23. In its observations, the complainant objected to the Commission's decision to consider that the labour costs the complainant had submitted constituted artificially increased wages which



exceeded expenditure actually incurred. According to the complainant, this assessment did not correspond to reality, and the Auditor had not questioned the accuracy of the relevant calculations. The complainant reconfirmed that the wages it had indicated were an accurate reflection of remunerated work actually performed by the local population, which was necessary for the implementation of the Project. This had been confirmed by the Auditor. The complainant also denied the Commission's statement that the value of the labour costs was going to be used for other activities which were not included in the grant agreement.

24. Referring to Article 14(1) of the General Conditions, the complainant asserted first, that all relevant revenue and expenditure was clearly recorded and documented. Second, there was no requirement in the General Conditions for expenditure to be reflected by transfers between different accounts.

25. The complainant expressed its surprise that the Commission insisted on its position, given that the Commission itself had stated that the 2005 version of the General Conditions specified that wages could not be considered to be contributions in kind. The complainant finally submitted that the way in which it had made its calculations complied with the principle of sound financial management. It further failed to understand why the Commission would not accept the acquisition of used, as opposed to new, vehicles at usual market conditions, given that this did not incur any expenditure in excess of the agreed budget.

26. In conclusion, the complainant pointed out that the Commission's approach would lead to the involvement of third parties, instead of the local population which ultimately stood to benefit from the Project, and, in addition, would contribute to a tendency for the costs of the Project to increase. The complainant also submitted that the approach adopted by it did not lead to savings in costs. On the contrary, the Commission's debit note meant that the complainant was faced with substantial additional expenses. The complainant asked the Ombudsman to seek an appropriate solution, and it underlined the Project's success.

27. In his request for further information, the Ombudsman asked the Commission a number of questions. First, he noted that the Auditor considered the 20% of the villagers' wages, which the latter did not receive, to constitute a contribution in kind and, therefore, to be ineligible, pursuant to Article 14(6) of the General Conditions. In its opinion, however, the Commission appeared to assume that it was Article 14(2) of the General Conditions which the complainant had breached, since its calculations did not reflect costs actually incurred. The Ombudsman asked the Commission to explain the reasons for this difference in approach. Second, he noted that, according to the complainant, the 2005 version of the General Conditions clarified that wages cannot be considered as contributions in kind. Against this background, he asked the Commission to explain why it considered the above-mentioned 20% of the villagers' wages to constitute contributions in kind. Third, the Ombudsman referred to the 2009 Call for Proposals concerning the Food Facility (EuropeAid/128608/C/ACT/Multi) programme, to which the complainant had drawn his attention. He asked the Commission to explain why contributions in kind may be accepted under that Call for Proposals.

28. In its reply, the Commission pointed out, in relation to the **first question**, that costs for 20%





of the villagers' wages were not actually incurred by the beneficiary, since the villagers were paid only 80% of the declared wages. This was in breach of Articles 14(1) and 14(2) of the General Conditions. In addition, since unpaid labour was free labour, it fell under the definition of contribution in kind which, according to Article 14(6), could not be considered as eligible costs. The Commission, therefore, submitted that there was no discrepancy in its approach, when stating that there was a breach of Articles 14(2) of the General Conditions, as well as a breach of 14(6) of the General Conditions.

29. In relation to the Ombudsman's **second question**, the Commission submitted that the rule underlying both the 2000 and the 2005 versions of the General Conditions was the same, namely, that staff costs assigned to an action are eligible on condition that they were actually incurred. Thus, wages would actually have to be due, which was not what occurred in the complainant's case. The Commission, moreover, asserted that it did not consider the 20% of villagers' wages to constitute contributions in kind, but rather the unpaid, completed work reportedly corresponding to an estimated share of 20% of the overall value of the work done.

30. As regards the **third question**, the Commission essentially submitted that each call for proposals is different and, within the limits of the Financial Regulation [4], is adapted, as far as possible, to the specificities of the programme at stake. The Commission asserted that Article 113 of the Financial Regulation and Article 172 of its Implementing Rules [5] provide that external co-financing in kind may be accepted, if considered necessary or appropriate. Although it does not usually accept contributions in kind in the field of external actions, the Commission stated that it decided to allow this kind of contribution in the 2009 Call for Proposals concerning the Food Facility programme, given the tight deadlines under which the programme had to be launched, and the compulsory completion date of proposed actions under that particular programme. The Commission explained that very few proposals included contributions in kind. All the contributions in kind which had been approved by the evaluation committee concerned equipment, such as vehicles, computers, photocopying machines, and tools, allowing a quick start-up of an action. The Commission also pointed out that, unless specifically provided for in a call for proposals, the general prohibition of the General Conditions applies, which is what occurred in the complainant's case. The Commission finally pointed out that, even if they were accepted in a given call for proposals, contributions in kind "*may in no case give rise to eligible costs in the framework of grants directly awarded by the Commission*". Given that they are provided by third parties to a beneficiary, contributions in kind do not amount to expenditure actually incurred by the beneficiary and, therefore, do not comply with one of the criteria for cost eligibility.

31. In its observations, the complainant insisted that the costs for work carried out by the local population were paid entirely from project funds. Therefore, the eligibility condition set by Article 14(1) of the General Conditions was fulfilled. The complainant further considered that there were no particular requirements regarding the recording of relevant transfers and, in particular, there was no need for such transfers to be made through the project account. It added that this view was confirmed by the Delegation in the framework of a recent on-the-spot mission. The complainant reiterated that all relevant revenue and expenditure was clearly recorded and documented.





32. The complainant further asserted that it failed to understand why the Commission referred to a "*voluntary contribution*". The complainant explained that the contribution to the Project of 20% of the labour costs was an explicit requirement, which a particular commune had to satisfy in order to be able to participate in the Project.

33. Concerning the Commission's comments on the 2009 Call for Proposals concerning the Food Facility programme, the complainant submitted that there was no clear, logical explanation as to why tight deadlines and a compulsory completion date allowed contributions in kind to be accepted in connection with that call. The complainant reiterated its above statements (see paragraph 26 above). Noting the Commission's reference to Article 113 of the Financial Regulation, and Article 172 of the Implementing Rules, the complainant submitted that these provisions allow the Commission a margin of discretion concerning contributions in kind, and that the Commission could decide to exercise that discretion if it decided further to insist on classifying 20% of the labour costs as contributions in kind.

## **The Ombudsman's assessment**

34. The present case concerns a dispute over payment obligations arising from a contract.

35. The Ombudsman considers that the scope of the review he can carry out in cases concerning the interpretation of contractual obligations entered into by an institution is necessarily limited. In particular, the Ombudsman takes the view that he should not seek to determine whether there has been a breach of contract by either party. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law, and to evaluate conflicting evidence on any disputed issues of fact.

36. The Ombudsman, therefore, considers that, in cases concerning contractual disputes, he is justified in limiting his inquiries to an examination of whether the institution provided him with a coherent and reasonable account of the legal basis for its actions, and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry did not reveal an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

37. In the present case, the Commission argued that its recovery order was based on the Auditor's findings. Given that, in its complaint, the complainant objected to the Commission's reliance on two of the Auditor's findings, all the Ombudsman has to assess is whether the Commission provided a coherent and reasonable account of its actions in relation to those two findings. In order to avoid any misunderstanding, it appears useful to point out that the Ombudsman's assessment does not, therefore, extend to evaluating the success of the implemented project. For the sake of clarity, it would appear appropriate to analyse the Commission's position in relation to each of these findings separately.



## As regards the first audit finding

38. The Ombudsman considers that the parties to the dispute agree that the villagers received only 80 % of the wages which the complainant indicated it had paid to them. There is disagreement, however, as to whether the Commission was, in these circumstances, right to consider the balance, amounting to 20 % of the villagers' wages, as ineligible contributions in kind, and as costs not incurred, in line with the General Conditions.

39. The 'Description of the Project', which is attached to the Grant Agreement, refers, on a number of occasions, to the voluntary character of the work carried out by villagers [6] . However, the Description of the Project does not indicate that the equivalent of 20% of the villagers' wages for work carried out would be retained at source, and then reinvested in the Project. Article 14(1) of the General Conditions provides that, in order for costs to be considered eligible, they must actually have been incurred. There is no concrete evidence to show that the villagers agreed to forego 20 % of their wages which would otherwise have been due to them, and that the only purpose of retaining this amount was to avoid the need for the villagers to retransfer that amount back into the Project. The Ombudsman considers, therefore, that it is reasonable for the Commission to take the view that Article 14(1) was not respected in this case.

40. The Ombudsman further notes that, pursuant to Article 14(2) of the General Conditions and in order to be eligible, staff costs declared by the complainant must correspond to actual wages (including social security and other contributions). In view of the above finding that the villagers, in fact, received only 80% of their wages, the Ombudsman considers that it is also reasonable for the Commission to take the view that Article 14(2) was not respected in this case.

41. In view of the fact that the villagers were effectively paid only 80 % of the wages that were declared by the complainant, it could indeed be argued that 20 % of the relevant work was provided free of charge, and thus constituted a contribution in kind, which, in accordance with Article 14(6) of the General Conditions, cannot be considered eligible. However, even if one were to accept the complainant's argument that the villagers' contribution should be considered eligible, the Ombudsman considers that this would mean that, as the Commission correctly observed, their contribution would have to be considered as revenue for the Project. As the Commission explained, such revenue would have to be deducted from the total costs of the Project when establishing the final amount of the grant. However, no such revenue appears to have been declared by the complainant. In these circumstances, if the relevant amount were to be considered an eligible cost, it would, in effect, mean that the Project could yield a profit.

42. The Ombudsman notes that the Commission did not dispute the complainant's assertion that the amount which corresponded to 20 % of the villagers' wages was used for the benefit of the Project. However, this fact does not alter the conclusion that the Commission was entitled to consider the relevant amount as ineligible. In view of the conclusion reached in paragraph 41 above, the Ombudsman further considers that there is no need for him to address the rules on



contributions in kind in either the 2005 version of the General Conditions, or the Call for Proposals 2009, in so far as the Food Facility programme is concerned. Nor does the Ombudsman consider it necessary, again in view of the conclusion reached in paragraph 41 above, to assess whether, as submitted by the complainant, the Commission may be able, pursuant to the Financial Regulation and the Implementing Rules, to exercise its discretion with regard to accepting contributions in kind in a given project.

## As regards the second audit finding

43. The second audit finding relates to (i) costs for the purchase of a vehicle and two motorcycles, and (ii) rental costs for office space.

44. As regards the **first item**, given that the complainant's project partner committed itself to providing a vehicle and two motorcycles, it is clearly reasonable for the Commission to consider that the acquisition costs for those items are ineligible. Concerning the **second item**, the Ombudsman understands the Commission's position to be that charging rental costs for a beneficiary's existing premises, which the beneficiary did not specifically rent for the purpose of implementing the project, would give rise to a profit on the beneficiary's part. Again, the Ombudsman considers the position taken by the Commission to be reasonable.

## Conclusion

45. In view of the above, the Ombudsman considers that the Commission provided a coherent and reasonable account of why it considered that the villagers' voluntary contribution to the Project, and the costs for the acquisition of a vehicle and two motorcycles, as well as rental costs for office premises, were ineligible. The Ombudsman finds no maladministration in the way in which the Commission administered the payment for the Project. The complainant's allegation and related claim cannot, therefore, be upheld.

## B. Claim to issue clear guidelines

### Arguments presented to the Ombudsman

46. The complainant claimed that the Commission should issue clear guidelines serving the interests of development policy for future projects.

47. In its opinion, the Commission took the view that the applicable provisions were already sufficiently clear. It added that it had, nevertheless, made a great effort in the course of the last few years further to clarify and simplify them. Thus, the rules on contributions in kind contained in the Financial Regulation have been clarified, and a Practical Guide has been issued. Moreover, since 2005, the General Conditions stipulate that wages cannot be considered as



contributions in kind. For the purposes of a project budget, they may be considered as co-financing if they are paid by the beneficiary or its partners. The Commission drew attention to its publications on the EuropeAid website, through which it is also possible to ask questions, as well as to its information days.

48. The complainant did not submit any observations regarding its claim.

## The Ombudsman's assessment

49. In view of the explanations given by the Commission and his findings in relation to the complainant's allegation, the Ombudsman considers that there has been no maladministration as regards the complainant's second claim.

## C. Conclusions

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

**There has been no maladministration in the Commission's activities as regards the complainant's allegation and claims.**

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

P. Nikiforos Diamandouros

Done in Strasbourg on 14 December 2010

[1] Emphasis in the original.

[2] Article 14(2) of the General Conditions reads as follows: "*The following direct costs shall be eligible: - the cost of staff assigned to the Operation, corresponding to actual salaries plus social security charges and other remuneration-related costs; salaries and costs must not exceed those normally borne by the Beneficiary, and rates must not exceed those generally accepted on the market in question; ...*".

[3] Point 4.2 of the 'Description of the Project' (entitled 'Means and inputs') provides as follows: "... ? WOTR will provide a vehicle (Jeep). ? WOTR will require 6 motor cycles (2 will be provided by WOTR), ...".

[4] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p.



1).

[5] Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

[6] For instance, in point 3.1 and 4.2.