

## **Decision of the European Ombudsman on complaint 471/99/ME against the European Commission**

Decision

**Case 471/99/ME - Opened on 21/05/1999 - Decision on 19/07/2001**

Strasbourg, 19 July 2001

Dear Mr L.,

On 26 April 1999, you made a complaint to the European Ombudsman on behalf of the Centre for European Policy Studies concerning alleged irregularities in relation to a Phare contract.

On 21 May 1999, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 15 September 1999. I forwarded it to you with an invitation to make observations, which you sent on 15 November 1999. On 28 November 2000, I asked the Commission for further information. The Commission sent its second opinion on 31 January and on 1 March 2001 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

On 27 July, 7 September and 17 December 1999 and 14 April and 5 May 2000, you sent me further information.

On 15 May 2001, the Commission sent me further information. I forwarded it to you with an invitation to make observations, which you sent on 11 July 2001.

I am writing now to let you know the results of the inquiries that have been made.

I apologise for the length of time it has taken to deal with your complaint.

### **THE COMPLAINT**

In April 1999, the complainant, the Director of the Centre for European Policy Studies (CEPS), lodged a complaint with the European Ombudsman concerning Phare contract No 95-1111.00. The contract concerned the Approximation of Legislation in Romania and was awarded by the European Commission to a consortium headed by CEPS in 1995.

According to the complainant, the project fell into two quite distinct phases. During the first



eighteen months, the consortium had considerable difficulty in fulfilling its obligations. The complainant therefore intervened directly in the project in 1997. A settlement was reached with a cut of approximately 20% in fees. The Principal Adviser was replaced and the Commission agreed to an extension of the project for a further six months until June 1998 so that most work could be completed.

The level of commitment and quality of work improved enormously in this last period and the Romanian government praised the consortium, its Principal Adviser as well as CEPS on several occasions. Unfortunately, at the same time, the Commission no longer administered the project rationally or reasonably. The complainant stated that CEPS never disputed the Commission's right and obligation to scrutinise the consortium's output and financial administration. The overriding problem during the last fifteen months had however been that CEPS received no detailed documentation indicating why and at what points the Commission was dissatisfied with the consortium's work. The complainant had tried to contact the Commission several times and enclosed a diary of its contacts with the Commission from the end of 1997 to April 1999 illustrating the Commission's behaviour.

Against this background the complainant alleged that (i) the Commission had not paid any invoices, and (ii) the Commission did not provide any information indicating what was wrong or why the invoices had not been paid.

## THE INQUIRY

### **The Commission's opinion**

In its opinion, the Commission initially explained that within the framework of the Community's "Pre-accession Strategy", the Commission concluded contracts with consultants in order to assist and advise the governments of the accession countries in central and Eastern Europe in all matters relevant to approximating their internal legislation to the Communities' "acquis communautaire". CEPS won the contract for Romania.

The implementation of the project was beset by problems from the start. According to the Commission, the provision of training and documentation to the Romanian authorities could be considered acceptable, but the reports established on various sectors of Romanian law were of poor quality. In 1997, this led to a reduction of CEPS's remit, a replacement of the Principal Adviser and a reduction in the Commission's payment for the services rendered up to June 1997.

Although the Commission admitted that CEPS's performance improved from then on, the poor quality of most reports submitted and the unacceptability of other reports, was still the main issue of contention between the parties. The Commission's main objections were summed up in a letter of 13 July 1999 to the complainant. As a result of a special audit carried out in 1998, and after thorough analysis of all reports submitted, the Commission had proposed a final settlement with respect to the disputed invoices for the period between July 1997 and June 1998. According to the Commission, no invoices were outstanding in the Commission's books.



As regards the complainant's allegation that the Commission did not provide information as to why the invoices were not paid, the Commission rejected this and referred to the diary attached to the complaint and the audit in 1998, thereby stating that CEPS was fully aware at all times of the issues.

The Commission concluded that CEPS may not be satisfied with the proposal for a settlement but knows very well why it was made.

#### **The complainant's observations**

In his observations, the complainant maintained his complaint.

In additional letters to the Ombudsman, the complainant put forward a number of comments regarding the Commission's behaviour. The complainant inter alia referred to the fact that invoices relating to training had never been disputed by the Commission, still they were paid only in July 1999. The most significant delay was the substantive report itself for which it took the Commission eight months to make minor amendments although the text was repeatedly requested by the complainant.

#### **Further inquiries**

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman asked the Commission to submit further information in relation to (i) why the non-disputed parts of the contract (work performed in relation to training and documentation) were not paid on an earlier stage but instead included in the financial audit, (ii) the Commission was asked to explain the time it took to issue two payments, (iii) the question of interest for late payments was raised, and (iv) the Commission was asked to comment on the allegation that during eight months, no significant changes were made to the substantive report.

#### **The Commission's second opinion**

In its second opinion, the Commission put forward in summary the following points.

As regards the costs incurred during the period 1 July 1997 to 31 March 1998 (which included costs in respect of training), payments could not be made because of several difficulties which it explained in more detail. It had decided that the financial audit should comprise a complete examination of the contract. As regards the two payments, the Commission accepted that it took more time than normal to issue these and provided some reasons. As to the question of interest for late payments, the Commission put forward that it is for the contractor to request interest.

#### **The complainant's second observations**

The Commission's second opinion was forwarded to the complainant for observations. No observations appear to have been received from the complainant.

#### **Further information**

In May 2001, the Commission informed the Ombudsman that following meetings with the complainant in February and March 2001, a settlement agreement had been informally approved by both parties on 26 April 2001. The agreement would be processed within the Commission and then submitted to the complainant for counter-signature.

The Ombudsman forwarded this information to the complainant for comments. The complainant subsequently informed the Ombudsman that he had accepted the settlement proposed by the



Commission and that it was signed on 15 May 2001. As part of the agreement, the complainant had undertaken not to pursue the complaint with the Ombudsman. Finally, the complainant thanked the Ombudsman for his efforts in this case.

## **THE DECISION**

### **1 The complainant's allegations concerning lack of payment, lack of information and the substantive report**

1.1 The complainant alleged that the Commission had not paid any invoices and that it had not provided any information indicating what was wrong or why the invoices had not been. Moreover, regarding the substantive report, the complainant alleged that no significant changes had been made during eight months.

1.2 The Commission rejected the allegations and explained its standpoint both in its first and second opinion. It stated that the invoices had been paid and it had kept the complainant informed. As regards the substantive report, the Commission did not put forward any specific comments.

1.3 In May 2001, the Commission informed the Ombudsman that a settlement agreement had been informally approved by both parties on 26 April 2001. In July 2001, the complainant informed the Ombudsman that a settlement had been signed on 15 May 2001. As part of the agreement, the complainant had undertaken not to pursue the complaint with the Ombudsman.

1.4 The Ombudsman notes that a settlement has been reached between the Commission and the complainant. It therefore appears that the matter has been settled.

### **2 Conclusion**

It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN