

Decision of the European Ombudsman on complaint 677/99/(IJH)/PB against the European Commission

Decision

Case 677/99/PB - Opened on 30/06/1999 - Decision on 27/10/2000

Strasbourg, 27 October 2000 Dear Mr W., On 14 June 1999, I received a complaint submitted by you on behalf of a company in your constituency, IPRIAS Ltd., against the European Commission, DG 3. The complaint, submitted on a form dated 3 May 1999, concerns late payment of cost claims under an ESPRIT project and alleges mismanagement of the payment process. On 30 June 1999, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 4 November 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. I am writing now to let you know the results of the inquiries that have been made. I apologise for the time it has taken to finish the inquiry.

THE COMPLAINT

The complaint was submitted by Mr W., Member of the European Parliament, on behalf of IPRIAS Ltd. The complaint concerned an ESPRIT Programme called "ASSISTEC" ('Assistance to Small and Medium-Sized Enterprises in the pre-licence phase of exploitation of their intellectual property'), the purpose of which was to assist the SME community towards successful exploitation of their intellectual Property. The "ASSISTEC" Project was set up as an ESPRIT accompanying measure to be carried out by 5 contracting partners. The IPRIAS Ltd. was given the role of co-ordinator and responsible for the technical management, while another contracting partner, INPG, was to be made responsible for the financial management of the Project. As the financial co-ordinator of the Project, INPG would be responsible for submitting to the Commission valid cost statements in the time frame mentioned in the contract together with the corresponding periodic progress reports consolidated by IPRIAS Ltd. The contract between IPRIAS Ltd. and the Commission was issued in November 1997, and signed on 23 December 1997. A project review was conducted on 11 September 1998, with some corrections being requested by the Commission, and shortly afterwards carried out by IPRIAS Ltd. In early December 1998, IPRIAS Ltd. was informed by the Commission that it would receive a payment in early 1999. IPRIAS Ltd. appears to have expected this payment to be made in late November 1998. On 11 December 1998, IPRIAS Ltd. wrote to MEP W. to request that action be taken to prompt the Commission to execute the payment referred to above. On 17 March 1999, IPRIAS Ltd. informed the MEP W. that it had received the payment in question. The company stated that it would itself contact the Commission to claim interests on what they considered a late payment. IPRIAS Ltd. also called upon the MEP to more generally investigate problems of late



payments by the Commission. MEP W. forwarded to the European Ombudsman his correspondence with IPRIAS Ltd., which contained the allegations that: a) there is general mismanagement in the payment process of the Commission, and b) the Commission had made the specific payment referred to above too late.

THE INQUIRY

The Commission's opinion In its opinion, the Commission first pointed out that, in accordance with Article 4.3 of the contract, a first payment was made by the Commission on 13 February 1998, i.e. within 60 days from the last signature of the contract on 23 December 1997. As for the specific problem of the case in question, the Commission stated that according to Article 3.1 of the contract the first periodic progress report, along with the corresponding cost statements, were due on 1 May 1998. The Commission received the first periodic progress report from the Project on 24 July 1998. However, no cost statements were attached to the report. The cost statements for the first reporting period were only received on 12 August 1998. After analysis by the Commission services it was found that the reporting period covered by these cost statements (8 months from the commencement date of the Project) did not correspond to the provisions of Article 3.1 of the contract which refers to the submission of periodic progress reports each 6 months from the commencement date. Besides this, some of the costs had been submitted on a 'Full Costs' (FC) basis instead of the correct 'Additional Costs' (AC) basis. Instead, the Commission services informed the Project Manager of these errors at the first Project Review that was held on 11 September 1998 (i.e. within one month from the receipt of the cost statements which should have accompanied the first periodic progress report, as contractually provided), and asked that they be corrected. A revised version of the cost statements was received by the Commission in late September 1998. After analysis of the revised cost statements it appeared that the reporting period was still incorrect. However, at this point in time the Commission services failed to inform the consortium within the contractually agreed period of one month that all errors had not been corrected. Recognising this delay and trying to remedy the problem, the Commission services, on 24 November 1998, agreed to process - exceptionally - the cost statements in spite of the incorrect reporting period. The acceptance of the cost statements was confirmed by letter of 21 December 1998. The payment to the financial co-ordinator of the "ASSISTEC" Project (INPG) was executed on 11 January 1999. Under the contractual arrangements for the Project, the further transfer of the payment from the financial co-ordinator to IPRIAS Ltd. was the responsibility of the financial co-ordinator. The Commission concluded that having accepted to examine the cost statements belatedly submitted by the "ASSISTEC" Project, its services did in fact only react after two months (with a maximum of one foreseen in the contract) to the revised, but still not correct versions of the cost statements presented end September. The Commission did, however, accept the cost statements as they were at this stage. The corresponding payment was made to the financial co-ordinator within the 60 days limit stipulated in the contract. The Commission added that for subsequent delays in the sphere of the financial co-ordinator, the Commission cannot accept responsibility. The Commission finally stated that the "ASSISTEC" Project was granted, on 25 January 1999, a 4.5 month extension of the project duration by the Commission. Having received payment following the second set of cost statements on 15 June 1999, the Project is currently in the course of completion. **The complainant's observations** The Ombudsman received no observations from the complainant.



THE DECISION

1 Preliminary remarks by the European Ombudsman 1.1 As regards the first allegation that there is general mismanagement in the payment process of the Commission, the Ombudsman draws attention to his own initiative inquiry into the subject of late payment by the Commission (1) . That inquiry is still on-going, for which reason the Ombudsman does not examine the first allegation of the present complaint. **2 The alleged delay in the concrete case** 2.1 The second allegation was that the Commission had made the payment referred to above too late to the company IPRIAS Ltd. In the opinion submitted by the Commission, contractual errors by the company were pointed out. The Commission accounted for its efforts to correct and remedy those errors, and explained how payment was finally made. **3 Conclusion** On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob Söderman (1) <http://www.ombudsman.europa.eu/latepay/en/default.htm> [Link]