

Decision of the European Ombudsman on complaint 287/2000/PB against the European Commission

Decision

Case 287/2000/PB - Opened on 30/03/2000 - Decision on 23/08/2001

Strasbourg, 23 August 2001

Dear Mr F.,

On 22 February 2000, you made a complaint to the European Ombudsman concerning the alleged failure by the European Commission of prompt payment for evaluation work.

On 30 March 2000, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 16 June 2000. I forwarded it to you with an invitation to make observations, which you sent on 1 August 2000. On 8 November 2000, I requested the Commission for a second opinion, which I received on 22 December 2000. I forwarded the Commission's second opinion to you on 23 January 2001. It appears that no further observations have been received from you. On 14 May 2001, I wrote to you to suggest a proposal for a friendly solution. On 7 June 2001, you finally rejected my suggestion for a proposal for a friendly solution.

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

THE COMPLAINT

In February 2000, the complainant submitted a complaint to the Ombudsman, concerning payment problems in connection with a contract with the Commission. According to the complainant, the background to the complaint was the following:

On 22 July 1999, the complainant submitted an invoice with a claim for payment for fees and expenses incurred in the course of his contractual performance. On 18 August 1999, the Commission official responsible for the contract, Mr Albert Gauthier, requested the complainant, by email, to modify the invoice. Mr Gauthier wanted two non-reimbursable cost categories to be removed from the invoice, namely travel and work insurance, and fees to the travel agency through which the complainant's air-ticket had been purchased.

On 26 August 1999, the complainant wrote to the Commission official, by email, that he did not



wish to make the changes to the invoice. He stated that he had ordered the ticket for Brussels at the usual travel agency which is known to be efficient and inexpensive and which is specialised towards assisting enterprises to obtain the best possible offers.

On 18 October 1999, the complainant asked Mr Gauthier why he had not received any payment. Mr Gauthier replied that the payments were under way, and that the previous questions that he had asked about the invoice had caused the delay. The complainant responded immediately, complaining about the delay. Mr Gauthier replied that he understood the complainant's problem, and that he hoped the payment would reach the complainant very soon.

On 19 October 1999, the complainant wrote to Mr Gauthier again, asking if the official had been in contact with the "accounting clerks", and asking whether the official would recommend him to send a dunning letter. Mr Gauthier stated that he had been in contact with the persons referred to, and that a dunning letter should not be necessary.

On 5 November 1999, the complainant sent a registered letter to request the payment.

On 10 November 1999, the complainant inquired about the payment again, by email. Mr Gauthier stated that the Commission service in charge of the payment would make the payment as soon as possible. Mr Gauthier apologised for the delay.

On 17 November 1999, the complainant was contacted, by email, by Ms Georgiou, who wrote on behalf of Mr Gauthier. Ms Georgiou informed the complainant that the Commission service in charge of the payment had rejected his claim for travel and work insurance and the fees to the travel agency: i.e. the same cost categories that had been rejected in the email of 18 August 1999. Ms Georgiou apologised sincerely for the delay, attributing the delay to normal delays within the Commission. The complainant was requested to send another invoice. On 18 November, the complainant replied that he had understood the lack of reply to his email of 26 August to mean that his objections to modify the invoice had been accepted. He furthermore maintained his refusal to modify the invoice, and stated that he had not received any adequate reasons why he should not be reimbursed. The complainant asked to be informed about the possibilities of complaining against the Commission.

On 22 November 1999, Mr Gauthier wrote an email to the complainant. He stated that he disagreed with the complainant's view that the Commission should reimburse the costs for the travel and work insurance, and the travel agency fee. He agreed, however, that the overall payment was late. He proposed again that the complainant should send a modified invoice to settle the matter. On 22 November 1999, the complainant complained about this reply. On 23 November 1999, the complainant sent a modified invoice to the Commission, as requested by Mr Gauthier.

On 22 December 1999, the complainant wrote to Mr Gauthier again, complaining about not yet having received any payment. On 13 January 2000, the complainant sent a dunning letter to the Commission, this time enclosing an additional invoice in which he claimed also to be paid



interest for the late payment, amounting to Danish Kroner 1.008, as well as payment for the two dunning letters that he had sent, totalling Danish Kroner 400.

On 27 January 2000, Mr Gauthier wrote to the complainant to explain that the Commission is not entitled to modify invoices; therefore, even when small amounts have to be corrected, a new invoice must be submitted by the contractor. Mr Gauthier also apologised for the late reply to the complainant's modified invoice, explaining that December had been a very busy month as the Commission had had many contracts to finalise.

On 21 February 2000, the complainant wrote to the Commission again to complain about the lack of payment. He enclosed an updated version of the additional invoice, first submitted on 13 January, the amounts having been increased to Danish Kroner 1260 and 600 respectively.

In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to pay him promptly for his work.

The complainant claimed payment from the Commission, and furthermore asked for payment for the time and effort he had used on the matter.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the European Commission, which produced the following opinion.

The Commission acknowledged that delays had occurred, but these had been due partly to the errors in the complainant's claim for payment. The payment claimed in the complainant's modified invoice of 23 November 1999 had been sent on 7 March 2000. The interest for late payment would be paid in accordance with the contractual provisions.

Furthermore, the Commission staff involved have been reminded to pay special attention to rapid processing of payment files when these are formally or in substance not in compliance with the relevant regulations.

The complainant's observations

In his observations, the complainant stated that he had received the money demanded in the modified invoice. However, his additional invoice, totalling Danish Kroner 1860, had not been paid. He had only received Danish Kroner 139 for late payment.

The complainant furthermore strongly objected to the Commission's view that the delays had been due, partly or otherwise, to himself. He pointed out that the Commission had not responded to his objection to the Commission's request that he modify his first invoice of 22 July 1999, and that the Commission had later informed him that payment was forthcoming, when it was not. Thus, the complainant considered that the payment delay that occurred up to the complainant's submission of his modified invoice was due to the Commission's wrongful handling of his objection to the Commission's request that he modify his first invoice. The



Commission was therefore obliged to pay interest for late payment dating back to 22 July 1999.

Further inquiries

The Ombudsman requested the Commission for more detailed information on its position concerning the additional invoice submitted by the complainant to the Commission on 13 January 2000, which included a claim for interest dating back to 22 July 1999.

In its reply, the Commission first apologised for the fact that no letter was sent to the complainant to explain how the interest was calculated. This had been corrected, and an appropriate letter had recently been sent to the complainant.

In regard to the substance of the dispute, the Commission stated that the Commission is not liable for payment until a correct invoice has been submitted. In this case, the complainant's invoice was not contractually correct and the complainant had been informed about this on 18 August 1999.

Therefore, the Commission services had calculated interest from 25 November 1999 with a payment due date of 24 January 2000 and with 7 March 2000 as effective payment date. In consequence, the payment delay was 104 days and the Commission has paid interest on the amount due (≈ 3342,45) for 44 days. The interest rate applied is specifically indicated in Article 4.2.4 of the contract and was also mentioned in the letter sent to the complainant on 30 November 2000.

The Commission did not consider that the compensation claim regarding the dunning letters was founded.

Finally, Commission staff has been reminded to pay special attention to inform contractors about how the interest is calculated.

The Commission's second opinion was forwarded to the complainant, who appears not to have submitted further observations.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

On the basis of his inquiries, the Ombudsman considered that there could be maladministration in regard to the complainant's first allegation (see below). On 14 May 2001, the Ombudsman therefore presented a draft proposal for a friendly solution to the complainant. The complainant rejected the Ombudsman's draft proposal for a friendly solution. The Ombudsman therefore considered that a friendly solution could not be achieved.

THE DECISION

1 The allegation of late payment

1.1 The complainant alleged late payment of an amount that he had asked for, on 22 July 1999,



under a contract with the Commission. The amount included items which the Commission had refused to pay. The Commission did not consider that the complainant was entitled to claim payment of the items, and had therefore asked the complainant, in an email of 18 August 1999, to submit a modified invoice.

1.2 Following correspondence with the Commission, the complainant submitted a modified invoice on 25 November 1999. After the submission of the complaint to the Ombudsman, the Commission paid the amount asked for in the complainant's modified invoice. The Commission has furthermore admitted that after it received the complainant's modified invoice, on 25 November 1999, a payment delay occurred. It has paid interest to the complainant for that delay.

1.3 The complainant disputed the date from which the interest should have been calculated. The Commission considered that the period of delay should be calculated from the date when the Commission received the complainant's modified invoice, i.e. 25 November 1999. The complainant appears to regard the date of submission of his first payment claim as the relevant date, i.e. 22 July 1999.

1.4 The Commission requested the complainant, on 18 August 1999, to modify a payment claim that the complainant had made under his contract with the Commission. The complainant objected to this request, but did not receive any reply to his objection. Later, the Commission wrongly informed the complainant several times that payment was under way. The complainant could therefore reasonably expect that payment would be made. He could not have known that he remained obliged to submit a modified invoice to actually obtain payment. When the Commission later informed the complainant in clear terms that no payment would be made without a modified invoice, the complainant complied and submitted a new invoice.

1.5 During the disputed period of delay, the Commission therefore failed to produce a response to the complainant's objection to submit a modified invoice, and also failed to inform the complainant that payment would not be forthcoming without the submission of a modified invoice. These failures by the Commission appear to have been the effective causes of the delay that occurred before the complainant submitted his modified invoice. A critical remark is made below.

1.6 On 14 May 2001, the Ombudsman presented a draft proposal for a friendly solution to this aspect of the complainant. The Ombudsman proposed that the Commission could be asked to consider to pay the complainant interest for the period preceding the complainant's submission of his modified invoice. The complainant rejected the Ombudsman's draft proposal for a friendly solution. He stated that he would not accept a proposal for a friendly solution which does not include his claim for compensation for his time and efforts in trying to obtain payment (see paragraph 2 below). The Ombudsman therefore considered that a friendly solution could not be achieved and that there are no grounds for further inquiries into this issue.

2 Claimed compensation for time and effort

2.1 The complainant claimed compensation for his efforts in trying to obtain the payment that he eventually received from the Commission. The Commission refused to pay compensation for



the complainant's efforts in trying to obtain payment.

2.2 It appears that there is no precisely defined rule of compensation in regard to individuals' efforts in complaining about maladministration. The Commission's response in this case therefore appears reasonable. There is therefore no maladministration on the part of the Commission in regard to this aspect of the complaint.

3 Conclusion

As the complainant did not support the draft proposal for a possible friendly solution presented to him by the Ombudsman, a friendly solution was not possible in this case. The Ombudsman therefore closes the case with the following critical remark:

During the disputed period of delay, the Commission failed to produce a response to the complainant's objection to submit a modified invoice, and also failed to inform the complainant that payment would not be forthcoming without the submission of a modified invoice. These failures constitute instances of maladministration.

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

Yours sincerely,

Jacob SÖDERMAN