

Decision of the European Ombudsman on complaint 380/2000/MM against the European Commission

Decision

Case 380/2000/MM - Opened on 14/06/2000 - Decision on 20/07/2001

Strasbourg, 20 July 2001

Dear Mr K.,

On 13 March 2000 you made a complaint on behalf of the Institut für Designforschung Stuttgart to the European Ombudsman concerning the project "Design as a module in the European Quality Policy", which was co-financed by the European Commission.

On 14 June 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 26 September 2000. I forwarded it to you with an invitation to make observations, which you sent on 20 December 2000.

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

THE COMPLAINT

According to the complainant the relevant facts were as follows:

On 31 January 1997, the complainant was awarded a subsidy by the European Commission regarding his project "Design as a module in the European Quality Policy" (SUB/96/500216). The Commission had made an advance payment of ECU 50.000,- on 19 February 1997. On 20 January 2000, the Commission sent him a recovery order for the advance payment in question.

In his complaint to the Ombudsman, the complainant alleged that the Commission supplied him with inadequate material and withheld document SEC(96)2000. Further, the Commission officials responsible did not have the expertise to evaluate the results of his project. In his opinion, the recovery order was not justified as he had accomplished his scientific, organisational and financial duties. Moreover, the Commission did not respond to his proposal to find a constructive solution.

THE INQUIRY



The Commission's opinion

In its opinion, the Commission made the following comments:

In November 1996, the complainant presented his project "Design as a module in the European Quality Promotion Policy" to the former DG III Industry and applied for a subvention, which was granted by the Commission. The budget was foreseen to amount to ECU 200 000,- and the project to be finished in 12 months. On 16 December 1996, the decision to subsidise the project with 50% (representing ECU 100.000,-) was taken and signed by the complainant on 31 January 1997.

The project defined by the complainant should underline the importance of the design as essential element of the global quality of a product and as key in the innovation process. It should be developed in three phases:

- Scientific research on the design quality;
- Fundamental evaluation method on the design quality;
- Publication of a brochure and a guide with the contribution of professionals in this domain.

The policy in question was established in the document SEC(96)2000 of 30 October 1996, which served as background document to a Communication on the competitiveness of European industry (COM(96) 463 of 30 October 1996).

The developments in this case were as follows:

From 31 January 1997 to 1 December 1997, the complainant did not inform the Commission at all about the development of his project despite repeated requests by the Commission.

On 1 December 1997 the complainant issued an intermediate report, which was far from having achieved the indicated goals. A first request for extension of the project until 31 March 1998 was addressed to the Commission, which was accepted on 9 December 1997.

On 30 July 1998, the complainant asked for a second extension until 31 December 1998, accepted on 19 October 1998 by the Commission's services.

On 30 June 1999, an advance report was presented indicating that the complainant had been seriously ill.

During a meeting on 21 September 1999, the complainant delivered some documents and the date for the end of the project was fixed as 30 November 1999.

Nevertheless, the complainant asked for an additional extension till 31 March 2001. At that stage, the Commission service informed the complainant about its disagreement and the foreseen recovery procedure.

On 3 December 1999, a meeting was held, in which the Commission agreed to receive the reports before the end of the year.



On 15 December 1999, the Commission services rejected the complainant's proposal that they should have access to the documents only during half a day. The complainant then faxed the draft final report and a financial report and requested a payment of ₣ 25 000,-. The responsible service considered these reports to be inadequate. Furthermore, the project seemed unlikely to be finished before the end of the year as agreed during the meeting of 3 December 1999. The complainant was informed by fax on 17 December 1999 and registered letter on 21 December 1999 that the recovery procedure would be launched.

The reasons for launching this recovery procedure were the following:

- the project's objectives were not met;
- after three years (the initial duration of the project was fixed as 12 months) still no valid result was delivered;
- the documents listed in the final report dated 30 November 1999 were never delivered with the exception of 9 documents, part of them dating from June 1996 (6 months before granting the subvention);
- the promotion brochure was never finished;
- the complainant continuously acted in a dilettantish manner towards the Commission, even though the institution showed understanding and flexibility.

On 22 December 1999, the complainant asked for the intervention of Dr. Rolf Linkhor, MEP. The recovery procedure was finally launched on 20 January 2000 by DG Budget. The complainant appealed without success against it. On 7 March 2000, the complainant requested to meet the Director General of DG Enterprises to search for a constructive solution. As the recovery procedure had already been launched, the Commission did not follow-up this proposal.

As regards the complainant's allegations:

The Commission services declared the project to be a failure, comparing the elements forwarded by the complainant to the Commission, on the one hand, and the terms of reference of the project, on the other. The poor quality of the documents delivered was obvious, there was no need to be an expert to identify it. Furthermore, the dates of some documents being previous to the agreed subvention indicated the doubtful quality of the complainant's work.

The Commission stated that it had supported the complainant, even giving its agreement to three extensions, prolonging in this way the length of the study from 12 to 34 months. Even after the last date set on 30 November 1999, the Commission accepted the reports to be delivered before the end of the year. It was only after the negative attitude of the complainant and his request for a fourth extension, that the Commission decided to launch a recovery procedure.

The Commission rejected the complainant's argument that he had completed the project correctly. Since no valid results were obtained by the deadline agreed with the complainant, the Commission acted in accordance with the principles of sound financial management. Three years after having published the document concerning the European Quality Policy, it was of utmost urgency to finish the project. As this was not done, the Commission was obliged to use



the recovery procedure.

Regarding the complainant's allegation that the Commission supplied inadequate material, the Commission stated that this was never mentioned by the complainant before, otherwise the Commission would have corrected it, being in its own interest. As regards document SEC(96)2000, to which the complainant alleged he had been denied access, the Commission pointed out that the complainant had quoted it in his own papers. Furthermore, the document in question was published under a special series entitled "Quality Series" and is still available on the Europa-server.

As regards the complainant's proposal of 7 March 2000 to find a constructive solution, the Commission did not follow it up because the recovery procedure had already been launched. The Commission services had already cooperated constructively with the complainant during the previous three years.

The complainant's observations

In his observations, the complainant maintained his complaint. According to the complainant's indications, the abrupt cessation of the project was due to the following reasons:

- the retirement of Mr Jacques Soenens on 31 December 1999 and lack of a clear successor;
- the reorganisation of the DGs, in particular the dissolution of the former DG III;
- the revision of the budgetary guidelines of the Commission from 1 January 2000, which made it impossible to transfer remaining budgetary resources to 2000.

Regarding the financial situation, the advance payment agreed in November 1996 was only paid on 27 February 1997. The complainant's costs for this project amounted to DM 295 223,12, which represents an excess of 53%. The expected payment of \approx 50 000,- at the end of 1999, had not been effected.

Concerning the timing of the project, the tender could only take place after the receipt of the payment in February 1997. Normally, half a year is foreseen for a tender - in his case, the project could already be launched after a quarter of a year. Three members of staff departed during July 1997 and December 1999. Due to the complainant's illness and hospitalisation, he was absent during half a year. Another reason for the delay was the participation of many experts from different Member States, thus the deficiency could not be attributed to the complainant alone. He would not dare to disappoint these personalities by breaking off the project. Taking into account the project being a pilot project and the quality of it, it was impossible to fix a delivery date for it. According to his experience as university professor such delays were quite normal and acceptable.

The results were presented to the Commission officials for inspection in summer/autumn 1999. Instead of examining them, the Commission requested a new report, which was presented on 30 November 1999. 13 files were put at the disposal of the Commission on 15 December 1999. Some documents dated from 1996, were translated and added for information. During the project, the responsibility in the Commission changed twice and since 1 January 2000 no official was responsible for it. According to the complainant, the last official admitted that he had no idea of the project.



The complainant repeated the allegation that he had not received important documents from the Commission. Further, he argued that they have not really assessed the results or even the report dated 30 November 2000. The presented demonstration has to be understood as an uncompleted layout.

Regarding the consequences, breaking off the project would result in an annihilation of all investments and a damage of the complainant's and Commission's reputation. The complainant faces bankruptcy.

The complainant proposed to the Commission to discuss the matter in order to find a solution and finish the project as foreseen.

THE DECISION

1 Alleged failure to supply of adequate information

1.1 The complainant was awarded a subsidy by the European Commission for his project "Design as a module in the European Quality Policy". (SUB/96/500216/IFD). The complainant alleges that the Commission did not supply him with adequate material for the project and that it withheld document SEC(96)2000.

1.2 The Commission stated that it never heard this allegation before, otherwise, it would have corrected the situation immediately, being in its own interest to do so. As regards document SEC(96)2000, which the complainant alleged had been withheld, the Commission pointed out that it was quoted in the complainant's own papers. Furthermore, the document in question was used as background document of COM(96) 463 dated 30 October 1996 and published under the 'Quality Series' on the Europa-server.

1.3 The evidence available to the Ombudsman does not support the complainant's allegation and the Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

2 Alleged failure to evaluate the results of the project

2.1 The complainant alleges that the Commission did not properly evaluate the results of his project and lacked the expertise to do so. According to him, the last official responsible declared he had no idea of the project. Since he retired at the end of 1999, there has been no replacement. The Commission refused to inspect the results as proposed in summer/early autumn and beginning of December 1999. The complainant insists on the point that the promotion brochure has to be understood as an uncompleted layout.

2.2 The Commission states that it based its judgement on the papers forwarded by the complainant, as well as on the terms of reference of the project. In its view, the poor quality of the documents delivered is obvious and no expertise is necessary for this judgement. The Commission services rejected the complainant's proposal that they should have access to the documents only during half a day, as the time allowed was not sufficient. Following this, the complainant faxed the draft final report and a financial report.



2.3 The Ombudsman's inquiry has revealed no evidence to support the allegation that the Commission failed to evaluate the results of the complainant's project, nor that the evaluation was incompetently carried out. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

3 Decision to withdraw the support of the project and to launch a recovery procedure

3.1 The complainant claims that he completed his scientific, organisational and financial duties as agreed with the Commission for the subvention of his project.

3.2 The Commission argues that the project's objectives were never met even after three years, although the initial duration of the project was fixed at 12 months. Only some of the documents listed in the final report dated 30 November 1999 were delivered. Moreover, the promotion brochure was unfinished. Even though the Commission acted with understanding, agreeing to three extensions of the project, the complainant did not communicate and acted in a dilettantish manner, even asking for a prolongation till 31 March 2001. The Commission acted in accordance with the principles of sound financial management.

3.3 The evidence available to the Ombudsman is that the Commission considered that the complainant had not completed the project satisfactorily, despite the three extensions granted, by the final agreed end date of December 1999. The Ombudsman's inquiry has revealed no evidence to show that the Commission was not entitled to reach this conclusion. In these circumstances, the Commission was also entitled to launch the procedure to recover the amount paid in advance. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

4 Lack of response to the complainant's proposal for a constructive solution

4.1 The complainant claims that the Commission did not respond to his proposal dated 7 March 2000 to find a constructive solution to the problem.

4.2 The Commission states that it did not follow up the complainant's proposal because the recovery procedure had already been launched on 20 January 2000. The Commission services had already cooperated constructively with the complainant during the previous three years.

4.3 The Ombudsman considers that the Commission's opinion has adequately explained the reasons why the Commission did not pursue a constructive solution at the date proposed by the complainant. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

5 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration on the part of 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