

Decision of the European Ombudsman on complaint 476/2000/PB against the European Commission

Decision

Case 476/2000/PB - Opened on 17/05/2000 - Decision on 14/05/2001

Strasbourg, 14 May 2001

Dear Ms S.,

On 21 March 2000, you made a complaint to the European Ombudsman concerning alleged failures by the European Commission to pay your University money due under a research contract, reference AIR-CT-0294.

On 17 May 2000, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 21 August 2000. I forwarded it to you with an invitation to make observations, which you sent on 7 November 2000.

On 29 November 2000, I conducted further inquiries into your case, which I informed you of by letter of 29 November 2000. The Commission sent its second opinion on 31 January 2001. I forwarded it to you with an invitation to make additional observations, which you sent on 20 March 2001.

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

THE COMPLAINT

According to the complainant, the background to the case was the following.

The complainant's organisation, a university, was one of several partners in a project financed by the European Commission. One of the partners was co-ordinator of the project (hereinafter 'the Co-ordinator'). In January 1998, the complainant received from the Co-ordinator the final payment for the work performed under the contract. The final payment had been calculated by the Commission. The complainant considered that the Commission had not refunded all the expenditure incurred, and therefore decided to contact the Commission to make an application for an additional amount.

The relevant correspondence was, according to the complainant, the following:



- On 6 April 1998, the complainant sent to the Commission the application for an additional amount of ₣ 49,458. Part of this amount concerned money due to a sub-contractor (hereinafter "the Sub-contractor") who had done work for the complainant. The complainant sent an additional letter to the Commission on 21 April 1998. Reminders were sent on 10 June and 25 September 1998.
- On 1 October 1998, the complainant was notified by the Co-ordinator that her university had received a further payment of ₣19,404 from the Commission, and that this amount would be credited to the university's bank account. The complainant requested the Commission to inform her about what this amount covered, but received no reply. The complainant concluded that the amount in any case reduced the additional reimbursement requested to ₣ 30,054.
- On 10 December 1998, a letter was sent to the Commission signed on behalf of the complainant and the Co-ordinator. No reply to this letter was received.
- On 2 February 1999, the Commission was on request sent details of the claims not reimbursed in respect of the complainant's Sub-contractor (mentioned above). On 5 March 1999 a reminder was sent to the Commission. A further reminder was sent on 9 April 1999. No replies to these letters were received.
- A fax dated 28 April 1999 was received by the complainant from the Sub-contractor indicating that the latter had been in correspondence with the Commission. The fax indicated that the Commission had accepted the additional claims for the Sub-contractor. On 13 May 1999, the complainant sent a letter to the Commission explaining that any amount due to the Sub-contractor was included in the complainant's additional request for ₣ 49,458 and should be paid to the complainant and not directly to the Sub-contractor.
- On 21 May 1999, the complainant received a further fax from the Sub-contractor confirming that the Commission had accepted the complainant's additional claims but due to financial procedures the complainant would not receive payment for several months. Shortly after receiving this information, the complainant contacted the Commission and received confirmation that the additional claim was accepted.
- A further reminder requesting payment was forwarded to the Commission on 12 August 1999. The complainant never received any reply. On 13 September 1999 the complainant wrote to the relevant head of unit in the Commission, but the only response she received was a telephone call from an official in Directorate General VI who stated that there had been a number of problems affecting the smooth operation of the Directorate General, and that it would be a few months before the complainant would receive payments. The complainant wrote to the Head of Unit again on 18 January 2000. No reply was received.

On the basis of this account of the events, the complainant alleged that:

- the Commission had failed to pay the amount considered by the complainant to be outstanding, i.e. ₣ 49 458, and
- the Commission had failed to reply to the complainant's letters.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission for opinion.



The Commission's opinion first stated that out of the € 49 458 claimed by the complainant, € 30 154 had been paid subsequent to the complainant's lodging of her complaint. The Commission had been able to adequately identify the amount of € 30 154 within the existing cost claims made by the complainant. The remaining amount, i.e. € 19 304, concerned purchases about which there was some confusion. While the complainant had identified this amount as covering the purchase of plants purchased by the Co-ordinator on behalf of the complainant, the Commission had no trace of an invoice for this purchase.

In regard to the money owed by the complainant to the Sub-contractor, the Commission explained that it had identified errors in the complainant's original cost claims. Nevertheless, the Commission found it possible to adequately identify the sub-contractor's entitlements, and had therefore decided to directly pay the sub-contractor the amount due.

As regards the alleged failures to reply, the Commission confirmed the facts presented by the complainant. The Commission explained that there had been a number of problems affecting the smooth operation of the Directorate General in question. It referred to a "transition period" of re-organisation that followed Commission President Prodi's entry into office in 1999. The Commission apologised for the lack of response to the complainant during this period.

The complainant's observations

In her observations, the complainant enclosed a copy of a letter which she had sent to the Commission after the Commission's opinion on the complaint. The letter attempted to clarify the remaining disputed expenses on plants (i.e. the € 19 304).

The letter to the Commission explained that the purchase of plants had been one of the complainant's largest single items of expenditure in the project. It had not been included in the separate or the consolidated cost claims to the Commission because the complainant's financial administration was not aware of the arrangement made by the consortium for the purchase of the plants on behalf of the complainant. The complainant's Scientific Director was aware of the transaction but failed to communicate the arrangement to the complainant's administration before the final claim was submitted.

Enclosed to the complainant's letter to the Commission was a copy of an email from the Co-ordinator who, on the complainant's request, had explained the financial arrangements of the plant purchases. It appears from this email that the consortium (i.e. the project partners) had agreed a kind of shared financing of the plants, due to insufficient budgetary cover for the full costs in the project budget of the complainant's institution. The direct payment of the plants would be made by the Co-ordinator. The email also clarified that the Co-ordinator had never provided the complainant with the relevant invoice. The Co-ordinator claimed, however, that such invoices were in any case not supposed to be sent to the Commission. The relevant cost claims are supposed to be made only on the basis of cost statements. Copies of invoices and a note from the Co-ordinator's file were enclosed to the complainant's letter to the Commission. These confirmed the existence of the financial arrangement and the Co-ordinator's payment of the plants.

Further inquiries

The Ombudsman concluded that it was necessary to request a second opinion from the



Commission. The Commission was asked to state its view on the complainant's remaining claim in light of the documentation provided in the complainant's observations.

In its second opinion, the Commission maintained its rejection of the complainant's claim to be reimbursed for the expenses on plants. The Commission stated that the complainant had conceded that the claim for the plants was not included in claim 1, 2 or 3, or in the original consolidated claim. A claim for costs incurred must normally be in the cost statement covering the relevant period of the project. If a contractor has neglected to claim for a certain expenditure in the relevant period or if a certain cost is disputed, the consolidated cost statement provides a final opportunity for the contractor to make a claim. The contract makes it clear that the consolidated cost statement is the final deliverable of the project, i.e. the final document to be submitted for the completion of the contract. As regards the time frame, three months is laid down as the period within which the consolidated cost statement must be submitted following the completion of the work. The contract terminated on 29.2.1996. Given that the purchasing of the plants was only mentioned in a second consolidated cost statement submitted in late April 1998, the Commission does not consider that any further supplementary payment is due.

As regards the complainant's sub-contractor whom the Commission had decided to pay, the Commission noted that the claims concerning the sub-contractor did not arise before the second consolidated cost statement submitted in April 1998 either. However, the Commission had decided that the lack of payment in regard to the sub-contractor had been due to an error on the complainant's part, and that the sub-contractor should not suffer from the complainant's mistakes.

The Commission's second opinion was sent to the complainant for further observations. In her further observations, the complainant maintained her claim. She appeared to argue that the Commission should, by analogy, show a similar degree of flexibility in the case of her institution as the Commission had done in the case of the Sub-contractor. That is to say, the Commission should alleviate the financial disadvantage that the complainant's institution had suffered due to a lack of clarity between the Co-ordinator and the complainant's institution in regard to the shared financing arrangement of the purchasing of the plants.

THE DECISION

1 The alleged failure to pay

1.1 The complainant has alleged that the Commission has failed to pay her institution money due under a research contract. It appears from the Commission's first opinion that, subsequent to the lodging of the present complaint, the Commission has paid the complainant's institution part of the amount claimed. The amount that remains in dispute concerns one cost item which the Commission has not been able to identify in its records, namely money spent by the complainant on purchasing plants (¤ 19 304).

1.2 The complainant has conceded that a formally correct cost claim for the money spent on purchasing plants was never made. It appears from the complainant's observations that the failure to make a formal cost claim was due to management errors on the part of the



complainant's institution and on the part of the Co-ordinator. These errors related to a financing arrangement that the project partners had independently made to compensate for the lack of budgetary cover for plants in the budget of the complainant's institution.

1.3 In arguing that the Commission should nevertheless reimburse the complainant's institution for the money spent on plants, the complainant has put forward that her institution's situation is comparable to that of the complainant's Sub-contractor who was paid by the Commission even though a correct cost claim had not been made in respect of the money owed by the complainant's institution to the Sub-contractor. The complainant appears to argue that the Commission should act consistently in making exceptions, whereas the Commission appears to have concluded that the situation of the complainant's institution is not comparable to that of the Sub-contractor.

1.4 The Ombudsman does not consider the Commission's view unreasonable, and the argument that the Commission has failed to make exceptions in a consistent manner can therefore not be considered valid. The Ombudsman concludes, therefore, that there does not appear to have been any maladministration in regard to the Commission's refusal to reimburse the complainant's institution for its expenses on plants.

2 The allegation of failure to reply

2.1 The complainant has alleged that the Commission has failed to reply to her letters. The Commission appears to confirm the complainant's account of the latter's attempts to obtain replies from the Commission (i.e. the correspondence outlined in points 1-7 above). The Commission has explained that there had been a number of problems affecting the smooth operation of the Directorate General in question. It referred to a "transition period" of re-organisation that followed Commission President Prodi's entry into office in mid-1999. The Commission apologised for the lack of response to the complainant.

2.2 The Ombudsman notes that the complainant has been given the information requested, and that the Commission has apologised for its failures to reply. The Ombudsman concludes, therefore, that there is no maladministration in regard to this aspect of the complaint.

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