

Decision of the European Ombudsman on complaint 603/2000/GG against the European Commission

Decision

Case 603/2000/GG - Opened on 19/05/2000 - Decision on 07/06/2001

Strasbourg, 7 June 2001

Dear Mrs B.,

On 26 April 2000, you lodged, on behalf of APID, a complaint with the European Ombudsman against the European Commission concerning the payment of a grant for project Itc/89/97.

On 19 May 2000, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 18 October 2000. I forwarded this opinion to you on 26 October 2000 with an invitation to make observations, if you so wished.

On 27 November 2000, you sent me your observations on the Commission's opinion.

On 6 December 2000, I sent a request for further information to the Commission. The Commission replied on 19 March 2001, and I forwarded this reply to you on 20 March 2001, with an invitation to make observations by 30 April 2001 at the latest. No observations were received from you.

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

THE COMPLAINT

Council Decision 95/593/EC of 22 December 1995 (1) initiated a medium-term Community action programme for women and men (1996 - 2000). The implementation of this programme was in the hands of the European Commission. In order to carry out this task, the Commission relied on the technical support unit ANIMA, which was a legal entity of E.E.I.G. (European Economic Interest Grouping) FUTURA.

In October 1997, FUTURA entered into a contract with Mrs Giovanna Rolle of APID in which it appointed the latter as the promoter of project Itc/89/97 entitled W.E.L.L. Women Entrepreneurs Learning for Leaders. The estimated costs of the project amounted to - 100 210. The



Community was to contribute a maximum sum of ₣ 50 000.

The complainant sent its final report on the project to ANIMA/FUTURA on 30 September 1998. Further documents and a corrected version of the financial statement were submitted to ANIMA/FUTURA on 12 November 1998.

According to the complainant, the Commission accepted in April 1999 that a sum of ₣ 7 397 was still due to the complainant.

In its complaint to the Ombudsman lodged on 26 April 2000, the complainant claimed that the Commission still had not paid the balance of the grant that was due to it.

The Commission's opinion

In its opinion, the Commission made the following comments:

FUTURA had been entrusted by the Commission with the task of the administrative and financial handling of the grants accorded within the framework of the relevant programme. The relevant contracts were thus concluded by FUTURA, acting on behalf of the Commission, and the promoters of the projects concerned. The Commission transferred to FUTURA the funds needed to pay the promoters. When the last contract with FUTURA had expired on 31 March 1999, several projects from 1997 and 1998 had not yet been closed. For 22 projects including the complainant's, the Commission had already transferred the relevant funds to FUTURA by 31 March 1999. In respect of the 54 other projects, the Commission had not yet proceeded to such a payment.

A dispute had arisen between the Commission and FUTURA and been brought before a court on account of the Commission's decision not to extend its contract with FUTURA, and the latter had unilaterally decided to suspend all payments to promoters whose projects had not yet been closed. As soon as the Commission had been informed thereof, it had suspended all further transfers of funds to FUTURA. However, FUTURA had already received the funds for 22 projects and had only paid the promoters of three of these projects. The complainant belonged to the 19 others who had not been paid.

The Commission had thus adopted the following two-pronged approach in order to protect the interests of the projects concerned and to safeguard the proper implementation of the Community programme:

With regard to the 54 projects for which no funds had yet been transferred to FUTURA, the Commission had considered that it could and should pay the promoters directly, given that the relevant contracts had been concluded on behalf of the Commission. As to the 19 projects for which FUTURA had received funds but not paid the promoters, the Commission had taken the view that it could not pay the promoters directly since doing so would create the risk of a double payment if it could not recover the funds already transferred to FUTURA. It had thus considered that the execution of these payments should be dealt with within the framework of the resolution of its dispute with FUTURA.



The Commission had tried to achieve a friendly settlement of its dispute with FUTURA. When these efforts had failed, the Commission had moved towards resuming the law-suit pending before the courts. The promoters concerned had been informed of this dispute and of the steps taken by the Commission, and they would be kept abreast of future developments.

The Commission was aware of the problems of the promoters of the 19 projects concerned and regretted that no satisfactory solution had yet been found. It considered, however, that the principles of sound financial management implied that it should not expose itself to the risk of a double payment. It further submitted that it had undertaken the necessary steps to protect the interests of both the institution and the promoters concerned.

The complainant's observations

In its observations, the complainant maintained its complaint. It submitted that the Commission should be held responsible to pay its claim and that it should also receive interest on account of late payment. The complainant further requested to be given the names of the 18 other promoters that were in a similar position.

Further inquiries *Request for further information*

In view of the above, the Ombudsman considered that he needed further information in order to deal with the complaint. He therefore asked the Commission to explain the reasons on the basis of which it believed that the position regarding those 19 projects for which funds had already been forwarded to FUTURA was different from the position regarding the 54 others. The Ombudsman also requested the Commission to provide details as to the proceedings against FUTURA pending before Belgian courts and as to the stage these proceedings had reached. A copy of the complainant's observations was also forwarded to the Commission for its comments.

In its reply to this request for further information, the Commission made the following comments:

All the relevant contracts had been concluded by FUTURA within the framework of its mission to provide technical assistance. This was clearly laid down in the contracts concluded between FUTURA and the promoters. Article 5.2 of these contracts provided expressly that FUTURA could not be obliged to make payments to the promoters if it had not previously received the necessary funds from the Commission. The Commission had not proceeded directly to pay the 19 promoters concerned since it had already transferred the necessary funds to make these payments to FUTURA. It was thus FUTURA that was responsible for carrying out these payments. By failing to do so, FUTURA had infringed both its contractual obligations towards the promoters and its obligations towards the Commission. The Commission had proceeded directly to pay the 54 promoters for whose projects FUTURA had not yet received the necessary funds in order to guarantee a proper implementation of the Community programme. It had always insisted that FUTURA should pay the 19 remaining promoters.

The dispute between the Commission and FUTURA was pending before the Belgian courts. There had been discussions between the parties with a view to achieving a friendly settlement that had been suspended temporarily but were to be resumed shortly.

The Commission pointed out that it had published periodically the list of promoters of projects



that had been supported. It enclosed a list of all the projects that had been supported in 1997 and 1998. However, the Commission considered that it could not divulge data concerning specific promoters to other promoters, particularly since the Commission was not a party to the contracts concluded between these persons and FUTURA.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Failure to pay a sum due under a contract

1.1 The complainant claims that the Commission should pay the balance of $\text{€} 7\,397$ due under a contract for project Itc/89/97 concluded between the complainant and FUTURA, a technical assistance office entrusted by the Commission with the task of helping it implement the medium-term Community action programme for women and men (1996 - 2000) initiated by Council Decision 95/593/EC of 22 December 1995 (2) .

1.2 The Commission replies that the relevant contract (like all other contracts with promoters) was concluded between the complainant and FUTURA. The latter had been entrusted by the Commission with the task of the administrative and financial handling of the grants accorded within the framework of the relevant programme. The Commission transferred to FUTURA the funds needed to pay the promoters. When the Commission's last contract with FUTURA had expired on 31 March 1999, several projects from 1997 and 1998 had not yet been closed. For 22 of these projects including the complainant's, the Commission had already transferred the relevant funds to FUTURA. Only three of these promoters were paid by FUTURA. In respect of 54 other projects, the Commission had not yet proceeded to such a payment to FUTURA.

A dispute had arisen between the Commission and FUTURA and been brought before the Belgian courts on account of the Commission's decision not to extend its contract with FUTURA, and the latter had unilaterally decided to suspend all payments to those promoters whose projects had not yet been closed. As soon as the Commission had been informed thereof, it had suspended all further transfers of funds to FUTURA.

The Commission had then decided directly to pay the promoters of the 54 projects for which no funds had yet been transferred to FUTURA. As to the 19 projects (including the complainant's) for which FUTURA had received funds but not paid the promoters, the Commission had taken the view that it could not pay the promoters directly since doing so would create the risk of a double payment if it could not recover the funds already transferred to FUTURA.

1.3 The Ombudsman notes that the contract on which the complainant bases its claim was concluded between the complainant and FUTURA. Article 5.2 of this contract provided expressly that FUTURA could not be obliged to make payments to the promoter if it had not previously received the necessary funds from the Commission. However, the Commission appears to have transferred the funds necessary to pay the complainant to FUTURA. The Ombudsman concludes, therefore, that any request for payment should in the first place be addressed to FUTURA.



1.4 The Ombudsman considers that the Commission's argument according to which paying the complainant (and the 18 other promoters who find themselves in a similar position) would create the risk of a double payment is reasonable. It is good administrative practice for the Community institutions and bodies to act prudently in relation to the funds put at their disposal and to account for the way in which these funds are used. Since the Commission appears to have transferred the sum needed to pay the complainant to FUTURA and given that it is not at all certain that the Commission will be able to retrieve this sum from FUTURA, it is reasonable that the Commission awaits the outcome of its lawsuit against FUTURA before making any payments to the complainant.

1.5 It is true that the Commission has decided directly to pay 54 out of the 73 (54 plus 19) promoters who have not been paid by FUTURA. However, the Commission points out that it had not yet transferred the funds necessary to pay these promoters to FUTURA. The Commission's decision to pay these promoters directly thus represents a positive step towards ensuring a proper implementation of the Community programme which also protects the interests of the promoters concerned.

1.6 The Ombudsman further notes that the Commission appears to have taken the necessary steps in order to try and make FUTURA comply with its obligations to pay the remaining 19 promoters. A case concerning these obligations is pending before Belgian courts. It also appears that the Commission has informed the 19 promoters of the situation and of the steps that it had taken. The Commission confirms that it will keep these persons informed of future developments.

1.7 In view of these circumstances, the Commission's decision not to pay the sum due to the complainant before the Commission's dispute with FUTURA is settled, appears to be in conformity with principles of good administrative practice. It is therefore not necessary to consider the further claim for interest on account of late payment that the complainant has raised in its observations on the Commission's opinion.

1.8 The Ombudsman's conclusion, therefore, is that there appears to have been no maladministration on the part of the Commission.

2 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 file.

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

Jacob SÖDERMAN

(1) OJ L 335, page 37.



(2) OJ L 335, page 37.