

Decision of the European Ombudsman on complaint 780/2000/GG against the European Commission

Decision

Case 780/2000/GG - Opened on 22/06/2000 - Decision on 27/11/2001

Strasbourg, 27 November 2001

Dear Mr B.,

On 8 June 2000, you lodged a complaint with the European Ombudsman against the European Commission which concerned the fulfilment of the Commission's obligations under Project D/93B/1/3120/Q-FPC.

On 22 June 2000, I forwarded the complaint to the Commission for its comments. The Commission sent its opinion on your complaint on 13 November 2000. I forwarded the Commission's opinion to you on 23 November 2000 with an invitation to make observations, if you so wished.

On 13 November 2000, you sent me further information in relation to your complaint.

On 5 December 2000, I wrote to the Commission in order to ask for further information in relation to the complaint. The Commission sent its reply on 13 February 2001, and I forwarded it to you on 16 February 2001 with an invitation to make observations, if you so wished, by 31 March 2001. On 28 February 2001 and 31 March 2001, you sent me your observations on the Commission's letter.

On 10 April 2001, I wrote to the Commission in order to propose a friendly solution. The Commission sent its opinion on 28 June 2001, and I forwarded it to you on 4 July 2001 with an invitation to make observations, if you so wished. On 24 August 2001, you sent me your observations on the Commission's opinion.

Given that your observations raised a new claim, I forwarded them to the Commission on 30 August 2001. The Commission sent its opinion on 12 November 2001, and I forwarded it to you on 15 November 2001 with an invitation to make observations, if you so wished.

On 23 November 2001, you informed me that you were satisfied with the Commission's response.



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

THE COMPLAINT

In 1994, ASS \approx Arbeits- und sozialwissenschaftliche Systemberatung, a German consultancy firm represented by the complainant, entered into a contract with the Commission for the provision of consultancy services within the framework of the 'Force' Programme (Project D/93B/1/3120/Q-FPC). According to the contract, the total cost of the project was \approx 88 000 and the maximum Community contribution was \approx 65 000. The contract further provided that 80 % of the Community contribution were to be paid within 30 days of the reception of the duly signed contract. The remaining 20 % were to be paid after the Commission had received and accepted the report and the financial statement that were to be submitted by the contractor by 14 November 1994 at the latest.

The complainant claimed the Commission had failed to pay the last instalment due to ASS. She further claimed that the Commission had failed to react to various inquiries she had made by telephone, fax and registered letter. According to the complainant, she had been assured by Mr. P. Louis from the Commission's services, on the occasion of a visit to the Commission on 5 November 1999, that payment appeared to have been made, that this had to be ascertained by electronic means in the 'Force' files and that she would be informed. The complainant alleges, however, that she was subsequently only informed that the 'Force' files were not accessible by electronic means. She then asked for a copy of the transfer form. No reply was received by her.

In her complaint to the Ombudsman, the complainant made the following allegations:

- (1) The Commission should send her a copy of the transfer form
- (2) The Commission should pay the relevant sum if it had yet not done so

THE INQUIRY

The opinion of the Commission

In its opinion, the Commission made the following comments:

The 'Force' programme had officially terminated in 1995. The files relating to this programme had then been entrusted to S.A. Agenor, the technical assistance office of the Commission for the implementation of the 'Leonardo da Vinci' programme (1995-1999) with a view to closing the remaining projects. However, by the time this technical assistance office was closed in February 1999, a certain number of files including the complainant's had still not been closed.

Unfortunately the Commission was not in possession of the relevant files which had been sealed by the Belgian judiciary in February 1999 and had still not been returned. The Commission did thus not have access to these files at the moment and was therefore unable immediately to comply with the complainant's requests.



On 6 September 2000, the Commission had written to the Belgian *juge d'instruction* in order to ask for access to the files relating to the complainant's case. The Commission was unable to give a real explanation as to what had happened in the present case before having had access to these files. The Commission had also written to the complainant, on 20 October 2000, in order to ask her to supply the Commission with a copy of her own documents relevant to the case.

The complainant's observations

In her observations (which were addressed to the Ombudsman after the complainant had received the Commission's letter of 20 October 2000), the complainant claimed that she had already provided the Commission with copies of her documents on several occasions. She also claimed that on the occasion of her visit to the Commission in November 1999 she had found that the documents were with the Commission. In any event, documents relating to the payment should be in the Commission's service in charge of paying out such amounts.

Further inquiries *Request for further information*

Having received the complainant's observations, the Ombudsman considered that he needed further information in order to deal with the complaint. He therefore asked the Commission to inform him (1) whether *all* the relevant documents were presently in the hands of the Belgian judiciary and (2) whether the Belgian judiciary had replied to its letter of 6 September 2000 and, if not, what measures the Commission proposed to take in order to deal with the complainant's case.

The Commission's reply

In its reply, the Commission made the following comments:

The Commission had in the meantime re-established a copy of the relevant file in the archives of the Directorate-General Education and Culture. No proof of payment for the relevant sum had been found there. Neither was there any trace in the Commission's internal accounting system of a payment made by the technical assistance office. The Commission's services had thus proceeded to a new evaluation of the file. However, this evaluation had not permitted to close the file and it had turned out to be necessary to ask the complainant for further information notably in relation to questions raised by the auditors of the Commission as a result of a control mission concerning another 'Force' project for which the complainant had also been the co-ordinator. The Commission had therefore written to the complainant on 29 January 2001. The file would be dealt with on the basis of the supplementary information that had been requested. The Commission's services would give priority to this case.

The Belgian authorities had replied on 24 January 2001, allowing the Commission to have access to the files concerned. The Commission was actually in the process of cross-checking the information in its possession with that contained in the original file.

The complainant's observations

In her observations, the complainant stressed that she had already sent her documents to Mr Louis on several occasions. Regarding the other project mentioned by the Commission (project E/92/2/1608), the complainant claimed that she had never received the evaluation report that the Commission had announced it would send to her.



The complainant submitted a copy of the Commission's letter to her of 29 January 2001 in which she was asked to provide various items of information within 30 days. She pointed out that gathering this information would necessitate a lot of work, given the lapse of time that had occurred. The complainant therefore asked for an extension of time (1) .

On 31 March 2001, the complainant informed the Ombudsman that she had provided the information that had been requested of her.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The Ombudsman's analysis of the issues in dispute

After careful consideration of the opinion and observations and the results of the further inquiries, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claims.

The Ombudsman noted that according to Article 5.1 of the contract payment of the remaining 20 % were to be made within 60 days of the submission of the report and the financial statement by the contractor "subject to acceptance" by the Commission. It appeared that in the present case the Commission had not yet been able to assure itself that the financial statement could be accepted. Since the complainant's claim for payment was subject to this acceptance, it appeared that the Commission was not yet bound to make a further payment.

However, according to the contract the contractor had to hand in the report and the financial statement by 14 November 1994 at the latest. The Commission had not claimed that this duty had not been complied with. It followed that more than six years after that date the Commission was still not able to deal with the complainant's claim. The Ombudsman considered that even taking into account the need to verify certain issues or ask for further information this delay was manifestly excessive. The fact that part of this delay might be due to a failure to proceed with the matter on the part of Agenor could not exonerate the Commission. The Ombudsman further noted that whilst the Commission had argued at the beginning that it was unable to deal with the case since the relevant documents had been sealed by the Belgian judiciary, in its reply to his request for further information it had stated that it had in the meantime re-established a copy of the relevant file in the archives of the Directorate-General Education and Culture.

The Ombudsman's provisional conclusion from these considerations, therefore, was that the failure by the Commission to deal with this matter within a reasonable period could be an instance of maladministration.

The possibility of a friendly solution

On 10 April 2001, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should finalise its assessment of the complainant's claim as quickly as possible and pay out the relevant amount (to the extent that it was finally recognised by the Commission).

In its reply of 28 June 2001, the Commission informed the Ombudsman that on the basis of the



documents submitted by the complainant it appeared that the latter's claims in respect of staff costs were appropriate and conclusive. The Ombudsman would be informed when the balance due would be paid to the complainant. On 16 July 2001, the Commission informed the Ombudsman that a sum of $\text{€} 7\,403$ had been paid to the complainant and that the complainant had been informed accordingly.

In her observations sent on 24 August 2001, the complainant informed the Ombudsman that she was satisfied with the payment made by the Commission. She took the view, however, that interest should be paid by the Commission on account of the delay in payment and of the costs she incurred pursuing her claim.

THE ADDITIONAL INQUIRY

The complainant's additional claim was submitted to the Commission for its opinion. On 12 November 2001, the Commission acknowledged that interest at a rate of 7.5 % should be paid for the period from 27 February 1995 until 25 June 2001 (the date when payment had been made). The resulting sum of $\text{€} 3\,422,62$ would be paid out to the complainant.

On 23 November 2001, the complainant informed the Ombudsman that the sum calculated by the Commission was acceptable. She insisted, however, that the Commission should pay out this sum before the end of the year.

THE DECISION

1 Failure to pay the relevant sum

1.1 The complainant claimed that the Commission should pay the balance due under the contract concluded in 1994 between ASS = Arbeits- und sozialwissenschaftliche Systemberatung, a German consultancy firm represented by the complainant, and the Commission for the provision of consultancy services within the framework of the 'Force' Programme (Project D/93B/1/3120/Q-FPC).

1.2 On 16 July 2001, the Commission informed the Ombudsman that a sum of $\text{€} 7\,403$ had been paid to the complainant and that the complainant had been informed accordingly.

1.3 The complainant informed the Ombudsman that she was satisfied with the payment made by the Commission.

1.4 It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle this aspect of the complaint and has thereby satisfied the complainant.

2 Interest to be paid

2.1 In her observations on the Commission's reply to the Ombudsman's proposal for a friendly solution, the complainant claimed that interest should be paid by the Commission on account of the delay in payment and of the costs she incurred pursuing her claim.



2.2 On 12 November 2001, the Commission acknowledged that interest amounting to \approx 3 422,62 would be paid out to the complainant.

2.3 On 23 November 2001, the complainant informed the Ombudsman that the sum calculated by the Commission was acceptable. She insisted, however, that the Commission should pay out this sum before the end of the year.

2.4 The Ombudsman trusts that the Commission will pay the relevant sum as quickly as possible.

2.5 It thus appears that the Commission has taken steps to settle this aspect of the complaint and has thereby satisfied the complainant.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes his file.

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

Yours sincerely,

Jacob SÖDERMAN

(1) In a telephone conversation with the Ombudsman's Office on 26 February 2001, the complainant was advised that any such request had to be addressed to the Commission.