

Decision of the European Ombudsman on complaint 803/2000/GG against the European Commission

Decision

Case 803/2000/GG - Opened on 11/07/2000 - Decision on 26/06/2001

Strasbourg, 26 June 2001

Dear Mr R.,

On 22 June 2000, you made a complaint against the European Commission concerning the handling of contract ALR/B7-3110/95/138/E3/003 by the Commission. You claimed in particular that the Commission should pay you an outstanding amount of ₣ 8 700.

On 11 July 2000, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 14 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 8 December 2000, you sent me your observations.

My services then contacted the Commission in order to find out when payment of the relevant sum would be made. On 13 February 2001, the Commission informed me that payment had been made on 1 February 2001.

In order to verify this, my services contacted your firm by telephone on 14 February 2001. On 28 February 2001, you informed me that you insisted on receiving interest from the Commission.

On 1 March 2001, I asked the Commission to submit an opinion on this further claim.

The Commission sent its opinion on your further claim on 24 April 2001. I forwarded the Commission's supplementary opinion to you on 26 April 2001 with an invitation to make observations, if you so wished, by 31 May 2001 at the latest. No such observations were received by that date.

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

THE COMPLAINT



The complainant is the director of a French consultancy firm. In a letter of 11 August 1997, the Commission (DG I B) informed the complainant's firm that it had accepted to co-finance its proposal for a sectoral meeting that was due to take place on 5/7 March 1998 within the context of the Commission's AI Invest programme. The Commission indicated that a contract would be prepared and sent to the complainant "very shortly". The contract (which provided for a maximum grant of \approx 80 000) did however not reach the complainant before 3 March 1998. It seems that the meeting was eventually held on 19 March 1998.

In December 1998, the complainant submitted an invoice over \approx 80 000.³⁵ The Commission's Joint Relex Service (SCR) paid \approx 71 300 but refused to pay the excess \approx 0.35 and, more importantly, the remaining \approx 8 700 for travel expenses and daily allowances on the ground that they had been incurred before the contract had been signed. When the complainant queried this, the SCR invited him to produce, within one month, a Commission document authorising the said expenditure. Otherwise the case would be closed. On 18 November 1999, the complainant sent a copy of the Commission's letter of 11 August 1997. The SCR did not react at first. After the complainant had written again, the SCR informed him of its view that the letter of 11 August 1997 did not contain any authorisation for the relevant expenditure.

In his complaint sent on 22 June 2000, the complainant made the following allegations:

- The Commission had failed to handle the contract properly, given that the contract was sent to him only 16 days before the meeting
- The Commission should pay an outstanding amount of \approx 8 700 on account of travel expenses and daily allowances.

THE INQUIRY

The complaint was sent to the Commission for its opinion.

The opinion of the Commission

In its opinion, the Commission made the following comments:

The purpose of the AI Invest programme was to establish co-operation between a network of operators from Europe and South America. Within the context of this programme, 'sectoral meetings' usually held at specialist trade fairs are organised during which the European or Latin American operators selected and co-financed by the Commission assisted the participating companies in presenting their products and profiles.

The complainant had submitted a financial report for a total of \approx 80 000 in respect of the contract, out of which \approx 8 700 had been rejected since the complainant had become active before the contract had been signed and since these invoices were thus ineligible. However, since the costs had been necessary and project-related, the Commission had reviewed the file and intended to pay the "outstanding grant contract amount".

The gap between 11 August 1997 and 3 March 1998 had been due to the gathering of specific data concerning the beneficiary, to internal procedures according to which each service



concerned approved the award of the contract (as illustrated by an internal circulation sheet submitted by the Commission) and to the lack of staff.

The complainant's observations

In his observations, the complainant thanked the Ombudsman for having dealt with his complaint so quickly and noted that he was satisfied with the outcome, subject to payment by the Commission. The complainant also informed the Ombudsman that he had written to the Commission in order to ask it quickly to pay the outstanding amount together with interest at the rate laid down in the contract.

Further inquiries

The Ombudsman thereupon contacted the Commission in order to find out when payment of the relevant sum would be made. On 12 January 2001, the Commission informed the Ombudsman that a sum of $\text{€ } 5\,832,12$ would be paid in the first half of February. On 13 February 2001, the Commission confirmed that the payment had been made on 1 February 2001. The Ombudsman then contacted the complainant's firm. On 28 February 2001, the complainant informed the Ombudsman that he insisted on receiving interest. The Ombudsman therefore asked the Commission to submit an opinion on this further claim.

The Commission's supplementary opinion

In its supplementary opinion, the Commission made the following comments:

The Commission had decided, on an exceptional basis, to pay the further sum of $\text{€ } 5\,832,12$. This sum corresponded to the costs that would have been accepted by the Commission if they had been incurred within the framework of the contract. The complainant now claimed interest on the sum of $\text{€ } 5\,832,12$.

The relevant costs had been incurred prior to the entry into force of the contract (i.e. the date on which it was signed, 3 March 1998) and without prior authorisation or later approval by the Commission. The Commission's letter of 11 August 1997 did not represent such authorisation, as had been explained to the complainant in a letter dated 22 February 2000. Furthermore, the complainant had not made use of the possibility offered by Article 19 of the contract to request, under certain conditions, a retroactive coverage of costs incurred.

In the absence of a contractual obligation, the sum of $\text{€ } 5\,832,12$ had thus been paid on an exceptional basis and in order to avoid litigation. This payment could thus not be subjected to the contractual rules governing the periods during which payment had to be made. In any event, even if the relevant sum had been of a contractual nature, the Commission would have respected the periods for payment foreseen by Article 9 of the contract (60 days upon receipt of the complete request, unless the Commission disputes the claim). This had been explained to the complainant in a letter sent on 2 March 2001 a copy of which was submitted to the Ombudsman. According to this letter, the Commission had received the documents relating to the disputed costs on 28 September 1999 and had informed the complainant on 29 November 1999 that these costs were not eligible for reimbursement. On 11 November 2000, the Commission had informed the complainant that it had decided to settle the matter, and the relevant sum had been paid on 1 February 2001.

The complainant's observations

No further observations were received from the complainant.



THE DECISION

1 Failure to pay outstanding amount and failure to handle contract properly

1.1 The complainant claimed that the Commission had failed to pay the balance of $\text{€ } 8\,700$ due to its firm and had failed to handle the contract properly.

1.2 In its opinion, the Commission informed the Ombudsman that it had reconsidered the matter and had decided to make a further payment. It also explained the reasons for the delay that had occurred.

1.3 Upon being informed of the Commission's opinion, the complainant thanked the Ombudsman for having dealt with his complaint so quickly and noted that he was satisfied with the outcome. In the end, the Commission paid a sum of $\text{€ } 5\,832,12$ to the complainant. Although this sum fell short of the amount originally claimed by the complainant, the latter did not raise any objections in this respect.

1.4 The Ombudsman therefore considers that the Commission has taken steps to settle the matter and has thereby satisfied the complainant in so far as his original allegations are concerned.

2 Failure to pay interest

2.1 The complainant claimed that the Commission ought to pay interest on the amount of $\text{€ } 5\,832,12$.

2.2 The Commission took the view that the further payment of $\text{€ } 5\,832,12$ had been made on an exceptional basis and that the rules regarding the periods for payment foreseen by Article 9 of the contract (60 days upon receipt of the complete request, unless the Commission disputed the claim) should thus not be applicable. In the Commission's view, these rules had in any event been respected.

2.3 The present allegation concerns the obligations arising under a contract concluded between the Commission and the complainant.

2.4 According to Article 195 of the EC Treaty, the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Community institutions or bodies". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle binding upon it (1). Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by the institutions or bodies of the Communities is concerned.

2.5 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. In particular, the Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant



national law and to evaluate conflicting evidence on any disputed issues of fact.

2.6 The Ombudsman therefore takes the view that in cases concerning contractual disputes it is justified to limit his inquiry to examining whether the Community institution or body has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

2.7 In the present case, the Commission has put forward a coherent and reasonable account of the reasons for which it believes that no interest needs to be paid by it on the amount of $\text{¤} 5\,832,12$.

2.8 In these circumstances, there appears to be no maladministration in so far as this allegation is concerned.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that the European Commission has taken steps to settle the matter and has thereby satisfied the complainant in so far as the complainant's original allegations are concerned. It further appears that there is no maladministration in so far as the complainant's additional allegation is concerned. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) See Annual Report 1997, pages 22 sequ.