

Decision of the European Ombudsman on complaint 977/2000/JMA against the European Commission

Decision

Case 977/2000/JMA - Opened on 30/08/2000 - Decision on 07/12/2001

Strasbourg, 7 December 2001

Dear Mr R.,

On 3 August 2000, you lodged a complaint with the European Ombudsman jointly with Professors Comella Carnicé and Costa Leja from the " *Centre de Transferència de Tecnologia* " (CTT) of the University of Lérida (Spain), against the European Commission. The complaint concerned the financial loss you suffered as a result of the Commission's alleged lack of due diligence in making the payments of a project undertaken by CTT (project LIFE97/ENV/E/260), and financed through the EC LIFE programme.

On 30 August 2000, I forwarded the complaint to the President of the European Commission. I received the Commission's opinion on 11 December 2000, which I forwarded to you, with an invitation to make observations. You sent me additional information on 4 October 2000. On 25 January and 12 February 2001, you sent me your observations. On 14 March 2001, I wrote to the President of the European Commission in order to seek further information. The Commission sent its second opinion on 27 April 2001, which I forwarded to you. I received your observations on the Commission's second opinion on 3 September 2001.

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

THE COMPLAINT

The complainants, on behalf of CTT, had requested financial assistance from the EC LIFE programme for the development of a project involving the growth of medicinal plants in rural areas near the Pyrenees. The Commission agreed to fund a maximum of 132.479 € of the project's total costs [Commission Decision of 17 July 1997 (project LIFE 97-ENV/E/000260)].

A first payment of 40% of the EC contribution was made in November 1997. In accordance with the provisions of Annex 2 (Administrative, Technical and Financial Conditions) of the Commission Decision, the complainants submitted a mid-term report on 25 September 1998, with a request for an intermediate payment corresponding to 40% of the Community contribution



(52,991 ₺).

Even though the office for technical assistance in charge of LIFE in Spain (Proymasa) had informed the complainants that the second payment would be made at the end of March 1999, no transfer took place at that date. The complainants contacted the responsible Commission services in May 1999, and were informally told that the payment had already been made. In a fax dated 17 May 1999, the same services informed the complainants that the payment was still pending due to the "evaluation of the 1999 Life projects which started in January", although it should be made in a matter of weeks.

At the time the project was completed in July 1999, no transfer had been received for the intermediate payment. On 1 July 1999, the complainants wrote to DG ENV Director General, Mr Currie, as well as to the Director in charge of the LIFE programme, Ms Adinolfi. No reply was received to any of these letters.

On 9 July 1999, the responsible Commission services made a technical inspection of the project which, the complainants alleged, concluded satisfactorily as reported by the local press.

Not having received any reply to their requests, the complainants addressed the Environmental Commissioner, Margot Wallström, by letter of 19 October 1999. They explained to her that having submitted a request for an intermediate payment more than a year ago, the only response they had received was indifference, verbal abuse and threats from the Commission. The reply from a member of her Cabinet of 25 January 2000, assured the complainants that DG ENV would undertake the necessary measures shortly.

CTT submitted the final project on 28 October 1999. The Commission replied by letter of 2 December 1999 in which it requested a wide range of information and documents concerning the implementation of the project, so that compliance with the financial and administrative clauses of the contract could be verified. On 22 March 2000, the complainants forwarded the requested information.

In the absence of any further communication from the Commission, the complainants lodged a complaint with the European Ombudsman on 3 August 2000. In their complaint, they alleged that the Commission had not,

- 1) complied with the terms of their contract;
- 2) paid in due time the amounts corresponding to the intermediate and final payments
for the project;
- 3) replied to the requests for information from the complainant;
- 4) ensured the appropriate behaviour from its services towards the complainants.



THE INQUIRY

The Commission's opinion

The Commission explained in its opinion that the beneficiary had sent a intermediate report and a payment request at the end of September, 1998. The report with its supporting documents had been analysed by the Commission services, which reached the conclusion that the information was incomplete. The beneficiary was then asked to provide a missing certificate as a condition for the second payment. This certificate was received by the Commission services five months later. In the meantime, the human resources responsible for the management of the programme became involved in the evaluation of the LIFE projects submitted in 1999. The Commission pointed out that the beneficiary was fully aware of this working situation both through the Commission services and from the technical assistance for LIFE in Spain (PROYMASA).

On 14 July 1999, the responsible Commission services, accompanied by the technical assistance group, inspected the project. As a result of the monitoring visit, the Commission services identified a possible risk of double financing, and accordingly a decision on the intermediate report was suspended.

The beneficiary submitted the final report in November 1999, as well as a request for the final and intermediate payments. The Commission requested additional information on 2 December 1999, in order to verify some aspects of the project. The requested documentation was sent to the Commission on 22 March 2000, that is to say, four months from the date of the request.

The Commission recognised that delays had occurred in this case as a result of the 1999 LIFE Evaluation procedure as well as the long reaction time taken by the beneficiary to reply to the Commission's requests. The institution indicated that its services are working on streamlining their procedures to improve the processing of files, and that improvements should be expected following the proposed financial reforms ("Guidelines Concerning Commission Payment Times").

The Commission concluded by pointing out that,

- 1) The responsibility for the delay of the intermediate and the final payments was shared by both the Commission and the beneficiary.
- 2) All requests sent by the complainants had been properly replied to by the Commission, either through formal letters, or by telephone calls or personal exchanges.
- 3) The final payment for the project had been made on 19 September 2000.

Further information from the complainant

On 4 October 2000, the complainants wrote to the Ombudsman explaining that on 21 September 2000 they had received an amount of 79.487 ₣ from the Commission corresponding to the intermediate and final payments (60% EC contribution to the project). Since this amount did not include interests for the late payment of the intermediate instalment, the complainants



had formally requested payment of these interests on 3 October 2000.

The complainant's observations

On 25 January and 12 February 2001, the complainants sent their observations on the Commission's opinion. In their first letter, the complainants expressed their disagreement with the reasoning given by the institution. They asked that the Commission, (i) pay interests for the late payments of the intermediate and final instalments, since only their services were to be deemed responsible for the delays; and (ii) formally apologise for the incorrect behaviour of its services since the institution had been unable to provide any evidence which could call into question the diligence of the complainants.

The complainants thoroughly explained their previous allegations in the second letter, which includes a number of supporting materials. They stated that the Commission had never raised any formal objection to their request for an intermediate payment dated 25 September 1998. They became aware of the need for additional documents only after a phone conversation with the responsible Commission services at the beginning of 1999. On 3 February 1999, the complainants forwarded the requested certificate, which, they stressed, had already been included in their original submission.

As regards the Commission's concern of a possible double source of financing following the inspection of the project, the complainants expressed their surprise for the failure of the responsible services to provide any evidence in support of these findings, of which they had not been informed. On the basis of these considerations, they believed that only the Commission was responsible for the delay in their payments.

The complainants included in their observations a letter from the Commission services dated 31 January 2001, in which the institution had agreed to pay interests, but only those related to the final payment. Since this last payment had been approved on 19 June 2000, but was only made on 19 September 2000, the Commission took the view that interest should be paid only on the basis of 47 days-delay (623 ₧). In a letter dated 12 February 2001, the complainants contested the Commission's reasoning, and argued that the institution should also pay interest corresponding to the 371-day-delay corresponding to the intermediate payment (3.280 ₧).

FURTHER INQUIRIES

In the Ombudsman's view, the complainants had raised in their observations two additional requests: (i) the reimbursement of all interests for the delay in the intermediate and final payments; (ii) an apology from the Commission for the incorrect behaviour of its services. Since these issues were closely connected to the allegations made in the original complaint, the Ombudsman wrote to the Commission on 14 March 2001 seeking additional information on the complainants' requests.

The Commission's second opinion

In its second opinion, the Commission first justified the delays of the intermediate payment as a result of the complainant's failure to include a certificate among the enclosed documents, the heavy workload involved in the evaluation of 1999 Life projects, and the need to verify a



potential double financing of the project.

The Commission insisted on the fact that the request for the intermediate payment sent by the complainants did not include a certificate. This document was forwarded only a few months later, on 4 March 1999. It stressed that the Commission services had asked the beneficiary both by phone and by e-mail to provide the missing certificate. The LIFE technical assistance office in Spain had also requested the certificate by phone several times.

The Commission also pointed out that following the inspection carried out by its services in July 1999, a possible risk of double financing of the beneficiary was identified. This risk derived from the fact that the project had been jointly developed with a public organisation, "*Centro Tecnológico Forestal de Catalunya*", which was also being financed with EC funds (FEOGA). Accordingly, the Commission services began an internal verification. In accordance with Art. 10 (2) of the Life Regulation no information was transmitted to the beneficiary since the process required a certain degree of discretion.

No definitive conclusions have yet been drawn, since this verification takes a great deal of time. The Commission services also indicated that being aware of the amount of time needed to carry out this procedure, they decided to carry out the intermediate and final payments in order to avoid causing difficulties to the beneficiary. As soon as the findings from the verification are ready, the Commission should be in position to consider whether to apply the provisions envisaged in Article 11 of the Regulation (reduction, recovery or suspension by the Commission of financial assistance).

The Commission explained that it has already paid late interest of an amount of 623.33 € based upon the total project expenditure (including the interim claim). In reply to the complainants' request for interest concerning the delays in the intermediate payment, the Commission made a proposal for an additional payment of 1,144 € . Having discounted the interests already paid, this amount would correspond to a 197-day-delay from the date at which all the documents concerning the intermediate report were received by the Commission (4 March 1999) to the date payments were made (19 September 2000).

As for the complainants' request for an apology, the Commission insisted on the correctness of its actions. It underlined that the attitude of its services towards the complainants had been adequate by explaining its actions. Since the institution considered that its services had provided full evidence of the situation, it concluded that the complainants' allegations were not justified. In this context, the Commission added, however, that some provisions of the Life Regulation might not have not been complied with by the complainants, and therefore that the institution could be led to apply Art. 11 of the Regulation (reduction, recovery or suspension by the Commission of financial assistance).

The complainants' observations on the Commission's second opinion

The complainants contested the arguments put forward by the Commission, and repeated some of the allegations made in the complaint.

They insisted that the certificate which the Commission refers to in order to partly justify its



delay, had in fact been included in their original request. They enclosed a copy of a letter from the LISU ("*Logística Serveis Universitaris*"), an independent firm hired out by the University of Lleida, which confirmed this claim. Moreover, they explained that the Commission had never formally notified them of the need for any missing certificate. In January 1999, the institution had merely informed LISU of the situation by telephone. The complainants faxed the certificate on 3 February 1999, and on the same day they sent it by express mail.

As for the risk of double financing, the complainants pointed out that this point had already been raised by the Commission services (letter of Mr Rouam, Head of Unit DG ENV.B.4 dated 2 December 1999). They explained that all necessary explanations as well as the required documents had already been sent in reply on 22 March 2000.

The complainants concluded by underlining that the interests suggested by the Commission had not been calculated on the basis of the proper dates. They indicated, however, that they had to accept the offer made by the Commission due to the excessive length of this procedure.

THE DECISION

1. Compliance with the contract: delays and interests corresponding to the intermediate payment

1.1 The complainants allege that the Commission has not complied with the terms of the contract, since the intermediate and final payments for the project were not made in due time. They therefore claim the payment of interests for this delay.

1.2 The Commission explained that it has already paid late interest of an amount of 623.33 €, based upon the total project expenditure. In reply to the complainants' request for interest on the intermediate payment, the Commission agreed to make an additional payment of 1,144 €. Having discounted the interests already paid, this amount would correspond to a 197-day-delay.

1.3 The Ombudsman notes that the complainants have accepted the Commission's proposal for the payment of additional interests. The Ombudsman therefore concludes that the Commission has taken steps to satisfy the complainants as regards this aspect of the case.

2. Request for a formal apology from the Commission

2.1 The complainants allege that the Commission did not reply to all their requests for information (letters to the Commission services dated 1 July 1999), and complained about the behaviour of its services. They pointed out that the Commission services had called their diligence into question, without putting forward any evidence in support of the claims. The complainants therefore asked for a formal apology from the Commission.

2.2 The Commission has not formally apologised to the complainants, and has insisted on the correctness of its actions. It underlined that the attitude of its services towards the complainants has always been adequate by explaining its actions, and providing full evidence of the situation.

The institution recognised that delays occurred in the handling of this project, but suggested that the complainants also bore some degree of responsibility. It also hinted at the possibility of an



irregular double-financing on the part of the complainants, which might lead to the application of Art. 11 of the Life Regulation to the project (reduction, recovery or suspension by the Commission of financial assistance).

2.3 The Ombudsman notes that some of the letters which the complainants addressed to the Commission in order to verify the stage of their request for an intermediate payment, namely their letters of 1 July 1999 to both DG ENV Director General, Mr Currie, as well as to the Director in charge of the LIFE programme, Ms Adinolfi, were not replied to. The Commission has not mentioned this point at all in any of its replies, nor has it apologised for it.

It is good administrative behaviour to reply to citizens' letters within due time, as stated in point 4 of the Commission's Code of Good Administrative Behaviour. In this case, the Commission did not reply in writing to the complainants' letters of 1 July 1999 to both DG ENV Director General, Mr Currie, as well as to the Director in charge of the LIFE programme, Ms Adinolfi. The Ombudsman will therefore address a critical remark to the Commission concerning this aspect of the case.

2.4 As for the handling of the project, and the information given to the complainants, it is important first to recall the relevant legal rules.

The Commission's Decision of 17 July 1997, which granted LIFE funds for the CTT project, also constitutes its legal basis. Annex II of the Decision sets out the applicable administrative, technical and financial conditions. Point 3.4 of Annex II describes the procedure to be followed for the payments:

"Payments will be made within 60 days from the date a request has been received [²]. None the less, the Commission, having previously notified the beneficiary, can postpone the payment if it has some objection concerning the activities related to that request for payment [²] In these cases, the beneficiary will not be entitled to any interest or indemnity from the Commission".

2.5 From the evidence submitted during the inquiry, the Ombudsman notes that the requirements set out in the above provisions appear not to have been followed by the Commission:

(i) as regards the non-inclusion of a certificate in the complainants' request for the intermediate payment dated 15 September 1998, the Commission has been unable to provide any evidence which might show that it gave formal notice of its objections to the complainants;

(ii) in relation to the need to verify a potential double financing of the project, the Commission recognised that no information was ever furnished to the complainants, in breach therefore of the obligations set out in point 3.4 of Annex II of the Decision. It has justified its actions on the grounds that the process required a certain degree of discretion, as laid down in Art. 10 (2) of the Life Regulation (1) . This provision, however, only applies to on-the-spot checks, and not to general inquiries such as the need to verify a potential double financing.



2.6 By not abiding by the relevant rules, the Commission failed to handle the case with due diligence. Accordingly, it would have been good administrative behaviour to apologise. The Ombudsman will therefore address a critical remark to the Commission concerning this aspect of the case.

3. Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remarks:

It is good administrative behaviour to reply to citizens' letters within due time, as stated in point 4 of the Commission's Code of Good Administrative Behaviour. In this case, the Commission did not reply in writing to the complainants' letters of 1 July 1999 to both DG ENV Director General, Mr Currie, as well as to the Director in charge of the LIFE programme, Ms Adinolfi.

From the evidence submitted during the inquiry, the Ombudsman notes that the requirements set out in the Commission's Decision of 17 July 1997 (point 3.4 of its Annex II) appear not to have been followed by the Commission. By not abiding by these rules, the Commission failed to handle the case with due diligence. Accordingly, it would have been good administrative behaviour to apologise.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) Art. 10 (2) of Council Regulation (EC) No 1404/96 of 15 July 1996 amending Regulation (EEC) No 1973/92 establishing a financial instrument for the environment (Life) [OJ L 181, 20/07/1996, p1] : "The Commission shall inform the beneficiary of an on-the-spot check unless there are good reasons to suspect fraud and/or improper use".