

## **Decision of the European Ombudsman on complaint 1340/2000/BB against the European Commission**

Decision

**Case 1340/2000/BB - Opened on 28/11/2000 - Decision on 04/12/2001**

Strasbourg, 4 December 2001

Dear Mr E.,

On 21 October 2000 you made a complaint to the European Ombudsman on behalf of EeC Ab Education concerning the handling of the Leonardo da Vinci programme PL/99/1004/I.1.2.b/FPC by the European Commission.

On 28 November 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 12 March 2001. I forwarded it to you with an invitation to make observations, which you sent on 21 April 2001. On 30 May 2001, I requested additional information from the Commission. On 3 September 2001, you made a further submission. On 26 September 2001, I forwarded to you the additional information from the Commission with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

### **THE COMPLAINT**

In his complaint the complainant explains that EeC Ab Education is a partner in the Leonardo da Vinci Programme. According to the complainant EeC Ab Education has not received the payment of 200.000 SEK from their partner POPON in Poland. Eec Ab Education has contacted both the Polish partner POPON and the European Commission. The Commission has explained that it has only limited powers to control the actions of the partners and that it can merely proceed to an audit. As a result the Commission has carried out an audit not of the Polish partner concerned, but of the National Co-ordination Unit (NCU) in Warsaw. The complainant is of the view that the audit should have been carried out within the Polish partner POPON.

The complainant claims that the Commission should control the proper management of the programme funds and supervise the payment of the invoices due to Eec Ab Education.



## THE INQUIRY

### The Commission's opinion

In its opinion the Commission made the following remarks:

The complaint concerns the Leonardo da Vinci project PL/99/10004/I.1.2.b/FPC, selected in the framework of the first phase of the Leonardo da Vinci programme.

The objective of the Leonardo da Vinci programme is to implement a Community vocational training policy which supports and supplements national initiatives and actions in the field of vocational training. The programme is open to the Member States, the EFTA countries, the countries of Central and Eastern Europe and Cyprus. Projects can be submitted under a number of different measures, regrouped in four Strands. In each country one or more co-ordination structures are established by the national authorities in order to ensure implementation of the programme at national level, including administration of transnational placements and exchanges within Strand I mobility - the so called "National Co-ordination Units" (NCY).

In practical terms, the implementation of Strand I mobility is based on a global grant attributed yearly by the Commission to each country on the basis of an "operational management plan". A contract is hence established every year between the Commission and the NCUs of the relevant country. The NCU becomes this way fully responsible for the administration and management of the funds for the implementation of the measure; this includes evaluation of submitted project proposals, selection, contracting and actual administration and follow-up of the projects (including payments, reporting, etc.).

The Leonardo da Vinci project PL/99/10004/I.1.2.b/FPC was submitted to and selected by the Polish National Co-ordination Unit in 1999, in the framework of Strand I mobility. The project was aimed at organising working placements in Sweden for 30 days for a group of Polish disabled people. Promoter of the project, and the contractor to the Polish NCU was the Polish organisation POPON (Polska Organizacja Proacodawcow Osob Niepełnosprawnych, Polish Organisation of Disabled People's Employers). The host organisation in Sweden was Eec Ab Education. According to the existing rules, the NCU established a contract with the promoter organisation, using the model provided by the Commission. In turn, under the terms of this contract POPON was obliged to make the necessary arrangements regarding the agreements to be concluded with the partners and host organisations. POPON and Eec Ab Education concluded an agreement on 17 May 1999.

On 4 January 2000 the Education and Culture Directorate-General (DG EAC) unit responsible for the implementation of the Leonardo da Vinci Programme received a note from the complainant complaining about the difficulties encountered in the implementation of the project.

The note explained that owing to a number of problems and disagreements which had occurred during the implementation of the placements, the co-operation between POPON and Eec Ab Education had been terminated before the agreed contractual deadlines, and that another



Swedish organisation, EET-consulting, had taken over. Problems having lead to this early termination included the fact that POPON had sent to Sweden people whose disabilities and language skills differ from those agreed upon, thus making it impossible for EeC Ab Education to conduct the educational programme as originally planned.

According to the complainant after the interruption of the co-operation an agreement would have been reached between POPON and EeC Ab Education about reimbursement of expenditures incurred by the latter during the placements. The complainant claimed that despite this fact some invoices had not been reimbursed.

DG EAC services made immediately informal contacts with the complainant to get additional information on the case. Since the project in question pertained to an entirely decentralised measure, the complainant was reminded that full supervision of the project could only be ensured by the Polish NCU. Nevertheless, DG EAC undertook to follow the matter as closely as possible in order to facilitate a solution.

Between January and February 2000 intense contacts were made by DG EAC services with the Polish NCU. The NCU informed DG EAC services that they had been trying to act as mediator between the two parties, without much success. The NCU also explained that POPON did not intend to reimburse some invoices since these allegedly referred either to services that were not delivered or to expenses occurred outside the contractual period, and that POPON was determined to defend their case and to bring it to court if necessary. The Polish NCU also informed DG EAC services that they had decided to dismiss an employee, since evidence had been collected that the person had been co-operating with POPON. This co-operation, however, had only started after the project had been selected.

An official reply was sent to the complainant on 3 March 2000 reiterating explanations already provided and informing him of the steps undertaken.

At the beginning of April 2000, DG EAC carried out an audit of the Polish NCU: no irregularities as regard the management of the Community funds were found. In addition, POPON premises were also informally visited, but no official audit of the project was carried out.

On 22 July 2000 the DG EAC services received a new note from the complainant claiming that his dispute with POPON was still unsolved and urging the Commission to take action. In the reply of 4 September 2000 it was stressed that because of decentralisation of the measure in question, the Commission has no power to intervene directly in this contractual dispute. Attention was drawn to the provisions on dispute settling set out by the contract.

DG EAC services were reconsidering the need for an audit of the project.

The Commission considers that it has done what was under its responsibility. No contractual relationship exists between the Commission and the project promoters, and it can in no way intervene directly in disputes linked to the implementation of the contract. The supervision of the project falls under the responsibility of the Polish NCU. If no amicable solution can be reached,



the dispute should be resolved by a competent court at the promoter's registered seat.

The Commission has an overall responsibility to control the way the Programme is being implemented. This includes both a more "content-related" monitoring action to ascertain whether activities and procedures carried out at national level by the NCU comply with the Leonardo da Vinci principles and criteria, and the power to control both the NCU and the individual projects in order to verify whether Community funds have been used in compliance with the rules. These responsibilities have been fully exercised in the case put forward in the complaint. DG EAC has intervened from the beginning with the Polish NCU in order to seek clarification and to facilitate the role of the NCU as a mediator in the dispute between EeC Ab Education and POPON. The explanations and information received from the Polish NCU have appeared so far to be satisfactory.

As regards the possibility to carry out audit controls, the audit of the Polish NCU has shown no irregularities. The informal visit at POPON has shown no special problems. However, a formal audit of the project is being considered by DG EAC services.

#### **The complainant's observations**

The complainant indicated that he had understood that the dispute between the Polish partner POPON and EeC Ab Education had to be solved before a competent court. The complainant understood that the Ombudsman could not intervene in a court case in Poland. However, the complainant demanded that the Commission and DG EAC proceed with an audit of the Polish partner POPON.

#### **Further inquiries**

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman requested a complementary opinion from the Commission on whether DG EAC services have initiated an audit of the project in question as mentioned in the Commission's opinion.

#### **The Commission's complementary opinion**

In April 2001 the financial services of DG EAC have agreed to launch an ad hoc audit of the project. In the absence of sufficient internal resources, the audit will be carried out by an external company. The procedure for selecting and contracting the external company was started in May 2001, and should be concluded during Summer 2001. The audit is expected to take place in Autumn 2001.

The objective of the audit is to verify that Community funds have been used by the project according to the applicable rules. According to the terms of reference, the audit will include verification of the eligibility costs, especially in relation to expenses made by the partners and verification of their conformity with the provisions of the relevant agreements. The work will include audit of the Polish project PL/99/10004/I.1.2.b/FPCat the promotor's premises in Poland (POPON), and if necessary also a visit at the partner's premises in Sweden (EeC Ab Education).

#### **The complainant's complementary observations**

The complainant appears not to have sent his complementary observations.



## THE DECISION

### **1 Alleged irregularities in the handling of the Leonardo da Vinci programme PL/99/1004/I.1.2.b/FPC by the European Commission**

1.1 According to the complainant EeC Ab Education has not received the payment of 200.000 SEK from their partner POPON in Poland. Eec Ab Education has contacted both the Polish partner POPON and the European Commission. The complainant claims that the Commission should control the proper management of the programme funds and supervise the payment of the invoices due to Eec Ab Education. The complainant is of the view that the audit should have been made within the Polish partner POPON.

1.2 In its opinion the Commission stated that it has an overall responsibility to control the way the Programme is being implemented. This includes both a more "content-related" monitoring action to ascertain whether activities and procedures carried out at national level by the NCU comply with the Leonardo da Vinci principles and criteria, and the power to control both the NCU and the individual projects in order to verify whether Community funds have been used in compliance with the rules. According to the Commission, these responsibilities have been fully exercised in the case put forward in the complaint. DG EAC has intervened from the beginning with the Polish NCU in order to seek clarification and to facilitate the role of the NCU as a mediator in the dispute between EeC Ab Education and POPON. The explanations and information received from the Polish NCU have appeared so far to be satisfactory. As regards the possibility to carry out audit controls, the audit of the Polish NCU has shown no irregularities. The informal visit at POPON has shown no special problems. However, a formal audit of the project is being considered by DG EAC services.

1.3 In his observations the complainant indicated that he understood that the dispute between Polish partner POPON and EeC Ab Education had to be solved before a competent court. However, the complainant demanded that the Commission DG EAC proceed with an audit of the Polish partner POPON.

1.4 The Ombudsman requested complementary information from the Commission on whether DG EAC services have initiated an audit of the project in question as mentioned in the Commission's opinion.

1.5 In its complementary opinion, the Commission indicated that in April 2001 the financial services of DG EAC have agreed to launch an *ad hoc* audit of the project. The objective of the audit is to verify that Community funds have been used by the project according to the applicable rules. The audit is expected to take place in Autumn 2001. According to the terms of reference, the audit will include verification of the eligibility costs, especially in relation to expenses made by the partners and verification of their conformity with the provisions of the relevant agreements. The work will include audit of the Polish project PL/99/10004/I.1.2.b/FPC at the promotor's premises in Poland (POPON), and if necessary also a visit at the partner's premises in Sweden (EeC Ab Education).

1.6 On the basis of the Ombudsman's inquiries it appears that the Commission has exercised its responsibilities and carried out an audit in the National Co-ordination Unit (NCU) in



Warsaw. Furthermore, it appears that the Commission has agreed to launch an *ad hoc* audit of the project which includes an audit of the Polish project. The Commission has thus acted within the limits of its legal authority and there appears to have been no maladministration.

## **2 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.

Yours sincerely,

Jacob SÖDERMAN