

## **Decision of the European Ombudsman on complaint 457/2001/OV against the European Commission**

Decision

**Case 457/2001/OV - Opened on 04/04/2001 - Decision on 20/11/2001**

Strasbourg, 20 November 2001

Dear Mr V.,

On 21 February 2001, you made a complaint to the office of Mr van den Bos MEP on behalf of the municipality of Zutphen, concerning complications in a project in Tartu (Estonia) financed by the European Commission in the framework of the Phare/ECOS-Ouverture programme. This complaint was transmitted to me on 27 March 2001.

On 4 April 2001, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 9 July 2001. I forwarded it to you with an invitation to make observations, which you sent on 12 September 2001.

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

### **THE COMPLAINT**

According to the complainant, the relevant facts were as follows:

The complainant, the municipality of Zutphen in the Netherlands, complains about the developments of a project in Tartu, Estonia, which is financed by the European Commission in the framework of the Phare/ECOS-Ouverture Programme. The project was approved in December 1995. A lot of delays have complicated the project. In June 1997, the complainant had already lodged a complaint with the European Ombudsman alleging maladministration in the project (592/97/PD) (1) .

The present complaint concerns the payments which should be made by the Commission to the ECOS Ouverture Programme. It is the latter which subsequently pays the municipality of Zutphen, the leading partner of the project in question.

On 1 December 2000, the complainant received a letter from the Director of the ECOS-Ouverture programme according to which the Commission would not pay the last section



of the funding (a total amount of  $\approx$  2,749). The reasons were that, it appeared from an audit report requested by the Commission that the complainant had changed the project's objective and had not respected the timing of the project.

The complainant did not agree with this refusal and therefore wrote to the Commission (DG Regional Policy, Directorate F) on 19 February 2001. In its letter, the complainant observes that the project met with the short term goals of the project proposal. No reply to the letter was received.

The complainant therefore lodged the present complaint, claiming that the Commission should pay the final section of the project, namely an amount of  $\approx$  2,749 in accordance with the complainant's letter to the Commission dated 19 February 2001.

## THE INQUIRY

In its opinion, the Commission first described the background of the case. The complaint relates to a project entitled Tartu which is carried out within the ECOS-Ouverture Energy Programme (Energy II contract) and is co-financed by the European Regional Development Fund (ERDF). It concerns a co-operation project between the cities of Zutphen, Deventer, Dronten (in the Netherlands), Uppsala (Sweden) and Tartu (Estonia). The complainant is the project promoter under this programme. The Energy II contract was concluded in 1998 between the Commission and the Council of European Municipalities and Regions (CEMR) and the Glasgow City Council (GCC) (the management organisations) who in turn had a contract with the Tartu project, also concluded in 1998.

The Commission points out that this complaint is the second one lodged about the project Tartu with a view to a contract concluded in 1995 between the same parties as above. In the first complaint, the Commission was accused of maladministration. The Ombudsman however considered that there was no maladministration.

Following the contract concluded in 1995, the Commission granted an extension to certain Energy projects that wished to continue (i.e. the Energy II contract). Tartu was one of the projects for which an extension was requested.

In this (second) complaint, the complainant argues that the European Commission has failed to pay the final section of the project, for an amount of  $\approx$  2,749. Further to its request, the Commission already informed the complainant in detail about the reasons for the non payment. The key elements indicated in the Commission's letter of 3 April 2001 are the following:

As already indicated above, the contract of the Commission with regard to the ECOS-Ouverture Energy II Programme has been concluded with CEMR and GCC. These bodies manage the programme according to the contractual rules. Payments from the Commission are made directly to these bodies and not to the individual promoters of projects. It is the task of CEMR and GCC to make the payments including the final one, if justified by incurred eligible



expenditure, to project promoters.

It follows from there that the complainant cannot claim any payment directly from the Commission, but must claim payment from the management bodies.

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

The complainant first observed that its first complaint to the Ombudsman was duly substantiated, because two Commissioners wrote letters of apology.

The complainant indicated that the project objectives had been maintained, but that the execution required a change in order to obtain good results. The Commission's letter of 3 April 2001 concerned the authorised modification of the title of the project, but not the objectives or results. The complainant also pointed out that the project was a success and that there was an excellent collaboration between the local authorities and the population.

The complainant indicated having received the information from Glasgow that the last section would finally be paid.

As regards the Commission's argument that the management of the project lay with CEMR and GCC and that the complainant must claim payment from them and not from the Commission, the complainant observed that this was not in line with the reality: both CEMR and GCC had indicated that they could not pay because "Brussels" had not provided the necessary means. The complainant referred more particularly to a letter of 11 April 2001 received from ECOS-Ouverture, according to which the non payment was due to a  $\approx$  2 million savings carried out by the Commission on the ECOS-Ouverture contracts. This was in contradiction with the statements of the Commission in its letter of 3 April 2001. Both CEMR and GCC have complained about the situation to the Commission. A German contractor even withdrew from the project because it was not possible to work with the Commission.

In a telephone conversation with the Ombudsman services on 26 October 2001, the complainant indicated that the amount of  $\approx$  2,749 had finally been paid on 24 October 2001. The complainant was satisfied with this concrete result. However he insisted on the fact that he was very dissatisfied in general with the delays and the whole organisation of the programme by the responsible Commission services. He therefore indicated that the Ombudsman should investigate the way the programme is led by the Commission.

## **THE DECISION**

### **1 The claim for the payment of the final section of the project**

1.1 The complainant claims that the Commission should pay the final section of the project, namely an amount of  $\approx$  2,749 in accordance with the complainant's letter to the Commission dated 19 February 2001.

1.2 The Commission stated that the contract with regard to the ECOS-Ouverture Energy II Programme had been concluded with EMR and GCC and that it is these bodies that manage the programme and should make the payments to the complainant. The complainant cannot



claim any direct payment from the Commission itself.

1.3 The Ombudsman notes that in the framework of the ECOS-Ouverture Programmes, the financial contributions are first paid by the Commission to the bodies with whom the Commission concluded a contract further to the call for proposals. It is subsequently that these bodies  $\approx$  who in fact constitute the financial intermediaries  $\approx$  transfer the amounts to the final beneficiaries of the project. In the present case, the Commission had thus to pay the contributions to the Council of European Municipalities and Regions (CEMR) and the Glasgow City Council (GCC) who in turn had to pay the sums to the complainant.

1.4 From the complainant's observations and the telephone conversation with the office of the European Ombudsman, it appears that the complainant has finally obtained, on 24 October 2001, the payment of the outstanding amount of  $\approx$  2,749. The complainant indicated that he was satisfied with this concrete result. It appears therefore that this claim has been settled to the satisfaction of the complainant.

## **2 Conclusion**

It appears from the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

## **FURTHER REMARK**

With regard to the complainant's allegation, raised in his observations, that he was very dissatisfied in general with the delays and the whole organisation of the ECOS-Ouverture programme by the responsible Commission services, the Ombudsman transfers the observations to the Commission for its information and consideration of possible further action.

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

Yours sincerely,

Jacob SÖDERMAN

(1) The case was closed on 16 April 1999 by decision 005686. No maladministration was found by the Ombudsman, because the Commission had admitted the malfunctioning of the project and had apologised for it. The Commission had equally indicated that further measures had been taken to improve the smooth working of the project. The decision can be consulted on the Ombudsman's Website <http://www.ombudsman.europa.eu> [Link].