

## **Decision of the European Ombudsman on complaint 1758/2003/JMA against the European Commission**

Decision

**Case 1758/2003/JMA - Opened on 27/10/2003 - Decision on 07/04/2004**

Strasbourg, 7 April 2004

Dear Mr S.,

On 15 September 2003, you lodged a complaint with the European Ombudsman against the European Commission, on behalf of Origin Motion Pictures Ltd. Your complaint concerns the Commission's handling of a contract signed with your firm (ref.: 0072DE10427UK) in the framework of the MEDIA programme, in particular the institution's failure to consider properly your request for an extension of the period for the repayment of a loan contributed through the MEDIA programme.

On 27 October 2003, I forwarded the complaint to the President of the European Commission. I received the Commission's opinion on 11 December 2003, and forwarded it to you with an invitation to make observations. I received your observations on 26 February 2004.

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

### **THE COMPLAINT**

According to the complainant, the facts of the case are, in summary, as follows:

The complainant is the Managing Director of Origin Motion Pictures Ltd, a film production company based in Guildford (England). The company and the European Commission signed a contract on 20 June 2000 for the support and the development of a theatrical feature film through the MEDIA programme. The MEDIA programme contributed to the project through a soft loan of 30,000 €.

The contract stipulated that 25% of the sum was due to be repaid 24 months after the date of the signature. The remainder was only payable when the project reached the stage of production. Due to a much longer period of development for the project and to financial strains on the company, the complainant contacted the responsible services of the MEDIA programme to request an extension of the period for repaying the 25 %. Even though the request had been



made before the foreseen end of the project in May 2002, no reply was even received.

The complainant was informed several months later that the MEDIA programme had contracted a new consultant to manage its contracts, namely D&S MEDIA Services, to which the complainant addressed his request for an extension. He was informally told that the request would be accepted. Having received a standard form for the extension of the contract, the complainant filled it out, and returned it duly signed to D&S MEDIA Services.

On 18 February 2003, however, the complainant received a debit note from the Commission for repayment of 25% of the loan. Despite the complainant's efforts to explain the situation to the responsible Commission services, it appears that the debit note was not withdrawn.

The complainant argued that the MEDIA programme was inefficient by not having informed him that its consultants responsible for the external management of contracts had been changed. As a result, his firm's original request, which had been submitted on time, was never replied to. The result was that he could only contact the new responsible consultant once the deadline (August, 2002) had already passed.

He noted that his firm had reached a verbal agreement from D&S MEDIA to his request for extension of the payment term. This agreement seemed also to be reflected in the documents sent to the complainant thereafter. The complainant expressed his concern for his firm's standing with the MEDIA programme, since the firm's attitude could be seen to show lack of cooperation or willingness to comply, which might affect future possibilities of obtaining support.

The complainant alleges, in summary, that the Commission,

(i) never replied in writing to his requests for an extension of the deadline for the repayment of 25% of the soft-loan granted by the MEDIA programme;

(ii) was inefficient in not informing Origin Motion Pictures Ltd that its services had changed the consultants responsible for the management of the contracts from MEDIA Assistance to D&S MEDIA;

(iii) failed to honour the oral agreement he had reached with D&S MEDIA to have the deadline for the repayment of the assistance extended.

## **THE INQUIRY**

### **The European Commission's opinion**

In its opinion of 11 December 2003, the Commission explained first the factual background of the case.

The institution noted that following the call for proposals published under the 1996-2000 Media II programme for the development and distribution of European audiovisual works, financial assistance was granted to New Screen Elite Ltd, represented by the complainant. Under the



contract (ref. 0072DE10427UK) signed on 20 June 2000 for a period of three years, the Commission granted the beneficiary the amount of 630 000 € to develop an audiovisual work of fiction entitled "Canyonlands".

For the purposes of implementing the programme, the Commission was supported by the technical assistance office "Media Assistance".

The Commission undertook to pay 50% of the amount on signature of the contract and the balance on receipt and acceptance of a project report to be submitted by the beneficiary within nine months of the contract being signed. The beneficiary undertook to repay 25% of the support granted within 24 months of the date of the first payment by the Commission. If the project went into production before the expiry of the contract, the total amount of support was to be repaid. If the project did not go into production within three years of the contract being signed, the beneficiary was obliged to submit a final report on the project; a one-year extension to the contract could then be considered by the Commission.

At the beneficiary's request, a supplementary agreement was signed by the Commission and the complainant on 22 March 2001, transferring rights to Nooshin S. Films Ltd. The name of the company was changed again on 24 December 2001, but without the beneficiary informing the Commission. On 31 July 2002, the Commission sent a fax to the beneficiary asking for information on this subject. On 8 August 2002, the beneficiary confirmed the change and asked for an extension to the contract. A second supplementary agreement was signed by the Commission and the complainant on 5 December 2002, changing the name of the company to Origin Motion Pictures Ltd and extending the contract by one year until 20 June 2004.

As regards the complainant's allegation that the Commission never replied in writing to his requests for an extension of the deadline, the institution noted that, on 3 July 2002, its services sent a debit note to the complainant, who apparently did not receive it. The complainant acknowledged, though, that he received the Commission letter of 18 February 2003 which had been dispatched to the same address as the first one, though addressed to a different company (Nooshin S. Films). The deadline for payment was 31 August 2002.

The second supplementary agreement to the contract granted the beneficiary a one-year extension to the contract, until 20 June 2004. The purpose of this extension was to give the beneficiary additional time to develop the project and submit the final report. This extension did not refer to the obligation contained in Article 2.2 (a) of the General Conditions applicable to the contract, whereby the beneficiary was required to pay 7 500 €.

The Commission's replies had always confirmed that the supplementary agreement did not grant an additional period for repayment of the amount due and that additional periods could be granted only by the Commission's accounting officer subject to certain conditions, such as the payment of interest and provision of a bank guarantee.

In relation to the complainant's allegation that the Commission was inefficient in not informing him that the consultants responsible for the management of the MEDIA Assistance had been



changed, the institution noted that the technical assistance office "Media Assistance" ceased its work on 30 June 2001, and "D&S Media" took over on 1 July 2001. The "Media Desks", information networks for professionals in the audiovisual sector, co-financed by the Commission and based in the countries participating in the programme, publicized the appointment of the new technical assistance office.

Lastly, the Commission contested the complainant's allegation that it had failed to honour the oral agreement reached with D&S MEDIA to have the deadline for the repayment of the assistance extended. The institution referred to Article 5.4 of the contract which states that any amendment to this Contract, including any Annex, shall be by supplementary written agreement, concluded on the same terms as this Contract and appended to this Contract. No additional oral agreements could have been made to modify the contract.

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

In his observations, the complainant underscored that he had decided not to pursue the matter further. He pointed out that Origin Motion Pictures Ltd has always maintained that it was going to live up to their responsibilities under the contract, which have merely been delayed by the conflict which arose out of their miscommunication. Having had the opportunity to present the case for the Ombudsman's scrutiny, the complainant was now prepared to repay the outstanding amount of 67 500 € to the MEDIA programme.

The complainant, however, made a few remarks on the Commission's opinion, although he pointed out that his comments were made merely for information.

He noted that the Commission had stated that the complainant's company changed its name on 24 December 2001, but failed to inform its services. The complainant explained that he communicated the change of the firm's name immediately by fax to Media Assistance. The Commission, by that time, and unknown to the complainant, had already changed the technical assistance office.

In the complainant's view, it was inaccurate to state that the Commission had requested clarification on the name change on 31 July 2002. The fax referred to was merely a standard form which was sent out by the technical assistance office shortly before a contract comes to its end. It was the first indication to the complainant that the Commission was operating through a new technical assistance office.

The complainant considered it was undisputed that the Commission, somehow, had not been effective in communicating the change to the contracting parties.

In the complainant's opinion, the object of his complaint had resulted from a misunderstanding in which both himself and the Commission bear some fault. He accepted that, as evidenced from the Commission's opinion, his firm might have misinterpreted some of the clauses in the contract, but also considered that the way the MEDIA programme handled the problem had not been entirely satisfactory.



## **THE DECISION**

It appears from the information supplied to the Ombudsman, that the complainant does not wish to pursue the complaint further. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS