



## Decision of the European Ombudsman on complaint 2238/2003/(AJ)(OV)ELB against the European Commission

Decision

**Case 2238/2003/(AJ)(OV)ELB - Opened on 08/01/2004 - Decision on 18/11/2004**

Strasbourg, 18 November 2004

Dear Mr X.,

On 2 October 2003, you lodged a complaint (1882/2003/ELB) against the Commission concerning the cancellation of an operating grant convention. The complaint was declared inadmissible because its object was not sufficiently identified. The letter of inadmissibility informed you of the possibility to renew the complaint.

On 6 November 2003, you made a new complaint to the European Ombudsman against the Commission concerning the cancellation of an operating grant convention, which contained additional information that enabled me to identify its object.

On 8 January 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 2 April 2004. I forwarded it to you with an invitation to make observations, which you sent on 29 May 2004 and 26 July 2004.

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

### THE COMPLAINT

According to the complainant, the facts can be summarised as follows:

The complainant is the President of an organisation.

On 28 April 2003, the Commission signed an operating grant convention with the complainant for an amount of EUR 50 000. The aim of the grant was to subsidise the achievement of the work programme of the organisation, in particular, as stated in the convention, a seminar, five television programmes and the running costs of a review. A first payment was made when the convention was signed, a second payment was planned to be made after 70 % of the first payment had been used. The balance was to be paid once the activity report, the financial report and an external audit report had been approved by the Commission.

On 22 August 2003, the organisation requested the second payment. On 29 August 2003, officials of the Commission carried out an on-the-spot inspection of the accounts and of the



balance sheet of the organisation.

On the same day, the Commission informed the complainant, by letter, of the cancellation of the convention because of lack of proper bookkeeping and an inaccurate balance sheet. The cancellation became effective one day after the date of the complainant's receipt of the letter.

On 2 and 3 September 2003, the complainant wrote to the Commission and requested reconsideration of its decision. The request for the final payment was attached to the letter dated 2 September 2003.

On 18 September 2003, the complainant informed the Commission that the request for final payment was not definitive.

The complainant argues that:

- the decision to cancel the grant was taken hastily, without taking into account the supporting evidence that he provided;
- it was disproportionate, because the organisation had no fraudulent intention;
- it had adverse consequences on the work of the organisation.

According to the complainant, the Commission official in charge abused his power by intimidating and accusing the complainant and behaved unfairly because he used confidential internal documents. He was also arrogant, slow when he should have been quick and quick when he should have taken time to think.

In summary, the complainant alleges that the cancellation of the convention was unfair and that the responsible official of the Commission abused his position of power. He claims that the Commission should compensate the organisation for damages and reinstate its rights as regards the use of funds of the operating grant.

#### **THE INQUIRY The Commission's opinion**

In its opinion, the Commission made in summary the following points:

##### **Background**

Until 2003, the section "Commission" of the budget contained a chapter called "A-30 Community subsidies" and a budget line A-3021 "Grants to European think tanks and organisations advancing the idea of Europe". In 2002 and 2003, the budgetary authority gave a list of the organisations which should receive subsidies. In the budget for 2003, an amount of EUR 50 000 was earmarked for a grant to the organisation chaired by the complainant.

On 25 October 2002, at the time of the first reading of the budget, the Commission wrote to the organisation, gave information on the regulatory situation and sent a request for subsidy form. The complainant was invited to send it back with supporting evidence before 31 December 2002. This invitation was renewed on 25 November 2002.



The complainant's request for subsidy was received by the Commission and, on 13 February 2002, was examined by the Evaluation Committee in accordance with Article 116 of the Financial Regulation. The Committee invited the complainant to provide further supporting evidence. On 14 February 2003, the Commission invited the complainant to provide the Committee with a final budget, indicating the other sources of financing (amounting to at least 20 % of the EU funds granted), and a new financial viability certificate. At the second meeting of the Evaluation Committee, no information had been received from the complainant and the invitation was renewed with a deadline set at 28 March 2003. On 5 March 2003, the Commission informed the complainant accordingly and on 26 March 2003 sent an e-mail reminding the complainant of the deadline. Documents were made available by the complainant on 28 March 2003.

On 1 April 2003, the Evaluation Committee made a recommendation to grant a subsidy to the organisation and, having some doubts about its activities, also to request a guarantee. On 4 April 2003, the Commission decided to grant a subsidy to the complainant and the funds were committed on 9 April 2003.

On 28 April 2004, the operating grant convention was signed between the Commission and the organisation. After several exchanges of letters between the Commission and the complainant, the Commission received, on 16 July 2003, the letter of guarantee, which was written in acceptable terms. A first amount of EUR 20 000 was paid on the same date.

On 28 July 2003, the complainant requested a second payment for an amount of EUR 20 000. This request was accompanied by a balance sheet concerning expenditure from January to July 2003 for a total amount of EUR 27 070. On 31 July 2003, the Commission invited the complainant to send a statement of progress made with the work programme and copies of supporting evidence, notably for the rent.

The complainant sent some documents on 22 August 2003. On 28 August 2003, the Commission informed the complainant that these documents gave rise to questions and requested a meeting with the complainant at his premises in order to inspect the originals of the documents sent.

The meeting took place on 29 August 2003. The following findings were made by the Commission officials:

- no mailbox at the address of the organisation bears the organisation's name;
- the ground floor is rented by the complainant to the organisation for a monthly rent of EUR 1 500 and consists of one living room and one dining room. The complainant could not provide originals confirming that the rent had been paid;
- it was obvious that the organisation had no bookkeeping and no documents for checking the payment of the rent;
- other documents showed that only 6 monthly rents had been paid and not 8, as declared to



the Commission;

- these rents were paid after the first payment from the Commission had been received and not on the dates stated in the receipts sent as supporting evidence to the Commission;
- the organisation's budget for the first quarter of 2003 showed only sums to be paid.

Bank statements were subsequently faxed to the Commission, confirming that some documents sent to the Commission on 22 August 2003 were false.

On 29 August 2003, in accordance with Article II.9.2 of the convention, the Commission put an end to the convention because some documents relating to the payment of the rent were false. On 2 September 2003, the Commission cancelled the operating grant convention.

On 2 October 2003, the President of the organisation complained to the Commission about the official in charge of the convention. Commission officials examined the supplementary information sent by the organisation and made an on-the-spot visit.

In January 2004, the file was sent to OLAF, which opened an inquiry.

#### Observations

As regards the alleged unfair and disproportionate cancellation of the grant, the Commission explains that the organisation should have proved that it had used EUR 14 000 of the first payment. On 28 July 2003, the organisation said that it had paid EUR 10 500 for rent. However, at this time no payment had been made. This is why the convention was cancelled in accordance with the provisions of the convention signed by the complainant (Article II.9.2).

The protection of the financial interests of the Community required a quick decision.

As regards the alleged abuse of power, the Commission dealt with this file rapidly. Any delays are on the side of the complainant. Furthermore, all internal documents were given to the Commission with the agreement of the organisation.

The organisation complains about the Commission's letter of 20 June 2003 concerning the guarantee. The Commission explains that beneficiaries should obtain a guarantee from their bank. The Commission's practice is to send the beneficiary a guarantee letter which has to be signed by the bank and which cannot be modified. The organisation apparently had difficulty with its bank.

According to the Commission, the complainant's accusation about the tone of the Commission official is not supported by concrete facts.

It is not possible for the organisation to argue that the grant was necessary to ensure its financial viability. If the organisation had informed the Commission that it could not function on its own resources, it would have received no grant.

All documents requested by the Commission are provided for in the Financial Regulation,



there was no excessive request.

The Commission does not play the role of adviser when it grants a subsidy, however the complainant met the Commission officials in charge of his file on several occasions.

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

On 29 May 2004, the complainant informed the Ombudsman's services by fax that his observations on the Commission's opinion would be sent by post. However, no such letter was received. The Ombudsman's services contacted the complainant and invited him to send his observations again. They were received on 26 July 2004.

The complainant's observations can be summarised as follows:

The complainant had difficulties in obtaining the guarantee letter signed by his bank because the guarantee had to exceed the length of time of the convention. He recalls also that the Evaluation Committee recommended that such a guarantee be requested and that the Commission was not obliged to make such request. This is confirmed by Article 118 of the Financial Regulation. The complainant had to take out insurance with his bank so that the letter could be signed. The Commission finally agreed to set a deadline for the guarantee.

The organisation requested the payment of a second advance on the basis of the expenditure from January to July 2003, which represented a total amount of EUR 27 070. This amount greatly exceeded 70 % of the first payment (i.e. EUR 14 000 out of a payment of EUR 20 000) and showed that the organisation was entitled, in accordance with the Convention, to request the second payment. Even if the amount corresponding to the rent is deducted, the total amount of expenditure is still greater than EUR 14 000.

As regards the on-the-spot check carried out by Commission officials, the complainant explains that, on the front door of the building, there are five bells, one being for the organisation, and three mailboxes, one being for the organisation, the complainant and a third person. The organisation's premises consist of three big rooms.

The complainant states that he had misunderstood the purpose of the meeting of 29 August 2003 and thought that it was a preparatory meeting. This explains why documents were not available.

The organisation had no intention to provide reports that were not consistent with reality.

### **THE DECISION 1 Alleged unfair cancellation of a grant convention**

1.1 On 28 April 2003, the Commission signed an operating grant convention with the complainant for an amount of EUR 50 000. On 2 September 2003, the Commission cancelled the convention. The complainant alleges that the cancellation of the convention was unfair.

1.2 The Commission explains that the organisation should have proved that it had used EUR 14 000 of the first payment when it requested the second payment. On 28 July 2003, the organisation said that it had paid EUR 10 500 for rents. However at the time no payment had been made. Some supporting documents attached to the complainant's request for a second payment were false. This is why the convention was cancelled in accordance with the



provisions of the convention signed by the complainant, in particular Article II.9.2.

1.3 The Ombudsman notes that, in accordance with Article II.9.2 of the convention, *"the Commission may decide to terminate the agreement, without any indemnity on its part, in the following circumstances: (...) (f) if the beneficiary is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the agreement (...)"*. After careful consideration of the available evidence, the Ombudsman takes the view that the complainant has not succeeded in raising any real doubt about the Commission's right to apply Article II.9.2 of the convention in the circumstances of the present case. He therefore finds no maladministration as regards this aspect of the complaint. The Ombudsman recalls that, according to Article I.8 of the convention, the complainant has the possibility to bring the matter before the European Court of Justice.

## **2 Alleged abuse of power by the Commission official in charge**

2.1 The complainant alleges that the responsible official of the Commission abused his position of power. According to the complainant, the official intimidated and accused the complainant and behaved unfairly because he used confidential internal documents. He was also arrogant, slow when he should have been quick and quick when he should have taken time to think.

2.2 The Commission argues that it dealt with this file promptly and that delays are on the side of the complainant. All internal documents were given to the Commission with the agreement of the organisation. According to the Commission, the accusation concerning the tone of the Commission official is not supported by concrete facts. The Commission does not play the role of adviser when it grants a subsidy, however the complainant met on several occasions Commission officials in charge of his file.

2.3 The Ombudsman recalls that, according to Article 7 of the Code of Good Administrative Behaviour which relates to abuse of power, *"powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest."* The Ombudsman also points out that, according to Article 12 of the Code of Good Administrative Behaviour, *"the official shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked. (...)"*.

2.4 After careful examination of the available documents, the Ombudsman finds evidence that the Commission had a positive attitude towards the complainant, providing information and sending reminders about deadlines. Furthermore, numerous exchanges of letters took place between the Commission and the complainant, as well as meetings during which the Commission officials helped the complainant to prepare his request for a grant. Although it is clear that the complainant is dissatisfied with the treatment that he has received, the Ombudsman does not consider that the complainant has produced any evidence to support his allegation of abuse of power by the Commission official. Nor is there any evidence of discourteous treatment. The Ombudsman takes therefore the view that there is no instance of maladministration as regards this aspect of the complaint.



### **3 Claim for compensation and reinstatement of rights**

3.1 The complainant claims that the Commission should compensate the organisation for damages and reinstate its rights as regards the use of funds of the operating grant.

3.2 Following the conclusions arrived at in points 1 and 2 above, the Ombudsman considers that the complainant's claim cannot be sustained.

### **4 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, the Ombudsman takes the view that there is no maladministration and therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS