



Decision of the European Ombudsman on complaint 100/2004/GG against the European Commission

Decision

Case 100/2004/GG - Opened on 23/01/2004 - Decision on 05/10/2004

Strasbourg, 5 October 2004

Dear Professor D.,

On 16 December 2003, you submitted, acting on behalf of the Institut für Umweltmedizin und Krankenhaushygiene of the Universitätsklinikum Freiburg, a complaint against the European Commission. This complaint concerns project LIFE 99 ENV/D/000455. On 19 January 2004, and at my services' request, you submitted copies of further supporting documents to me.

On 23 January 2004, I forwarded the complaint to the President of the European Commission.

On 18 February 2004, you sent me a copy of a letter you had addressed to a minister of the Land Baden-Württemberg referring to your case. I forwarded a copy of this letter to the Commission on 10 March 2004.

On 9 March 2004, you sent me a copy, for my information, of a letter you had addressed to a minister of the federal government in Berlin that day. On 16 March 2004, you sent me, also for information, a copy of a letter you had received from a German MEP.

The Commission sent its opinion on 7 April 2004. I forwarded it to you on 13 April 2004 with an invitation to make observations, which you sent on 7 May 2004.

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

THE COMPLAINT

The complainant, a department of the university clinic of Freiburg (Germany), had asked the European Commission for a Community grant in respect of a project relating to water and waste water management in hospitals ('Substance flow related water/sewage management in European hospitals - strategies for water saving potentials and pollution control of sewage' - LIFE 99 ENV/D/000455). The application was made under Council Regulation (EEC) No 1973/92 of 21 May 1992 establishing a financial instrument for the environment (LIFE) as



amended by Council Regulation (EC) No 1404/96 of 15 July 1996.

By decision of 28 July 1999, the Commission decided to grant a maximum amount of EUR 751 792,36 (50 %) towards the expenses of the project that were set at EUR 1 503 584,73. According to the decision, the project, which comprised five working packages, was to be carried out within a period of 36 months. The payments foreseen included an advance payment, an interim payment and a final payment by the Commission.

On 1 February 2002, the complainant asked for a short extension of the project, pointing out that this would not cause any additional costs. According to the complainant, this application was lost by the Commission which only became aware of this fact on 11 June 2002 (1). The application was rejected in August 2002. According to the complainant, the Commission official dealing with the case at the time had informed the complainant that it had become very difficult and cumbersome to make the Commission accept changes to a project.

The complainant submitted that some letters and requests had only been dealt with after months. For example, the technical interim report that according to the complainant had been submitted on 20 November 2001 was only evaluated by the Commission in May 2002. According to the complainant, the handling of the request for the interim payment took more than a year and the interim payment was in the end transferred by the Commission without any reference, which resulted in its ending up in the wrong place and in further delay. The complainant further submitted that the monitoring team of the Commission had changed three times during the time when the project was carried out and that information on the difficulties experienced with the project that was provided to the monitoring teams had not been passed on to the Commission's Directorate-General (DG) Environment. According to the complainant, even officials of DG Environment were frustrated with the Commission's mismanagement.

The complainant submitted that the Commission had made numerous requests for information regarding working packages 4 and 5. In a letter dated 28 May 2003, the Commission informed the complainant that it had concluded from the information available to it that it had not been possible to establish a sufficient database for carrying out an analysis of the stream of matter ('Stoffstromanalyse') in the hospitals under examination. According to the Commission, it had to be assumed that it had become impossible to carry out working packages 4 and 5, given that these working packages depended on a sufficient database. The Commission concluded that the amount foreseen for working packages 4 and 5 (EUR 518 342,55) had to be deducted from the total allowable expenditure for the project. This reduction resulted in a corresponding reduction of the maximum amount of the Community grant to EUR 492 621,09. The Commission noted that an amount of EUR 601 433,74 had already been paid to the complainant, and that an amount of EUR 108 812,65 would thus have to be claimed back. The Commission invited the complainant to submit observations by 15 June 2003 at the latest.

On 25 July 2003, the Commission requested the complainant to pay back the amount of EUR 108 812,65 by 7 September 2003.

The Commission subsequently informed the university clinic Freiburg that it would set off the



disputed amount against a claim for payment of EUR 237 022,03 that the university clinic appears to have against the Commission under a separate contract.

On 30 October 2003, three German MEPs wrote to the Member of the Commission in charge of Directorate-General Environment (Mrs Wallström) in order to ask the Commission to review its position. The complainant itself wrote to Mrs Wallström on 3 November 2003, setting out all the facts that it considered to be relevant. It objected in particular to the fact that the Commission had, after evaluating the final report, constantly asked for further information regarding working packages 4 and 5 and then refused to accept those very working packages. The complainant expressed the view that for two years the project had not, or had hardly, been taken care of, but that it had then towards the end been seriously impeded by the Commission through extensive correspondence and requests resulting therefrom.

The allegations made by the complainant in its complaint to the Ombudsman may be summarised as follows:

- (1) The Commission was wrong to disregard the whole of the expenses made in respect of working packages 4 and 5 and to ask for the repayment of EUR 108 812,65;
- (2) The Commission was wrong to set off the amount it wished to recover against another claim of the university clinic Freiburg;
- (3) The Commission failed to make the final instalment of EUR 78 627,97 due under the project; and
- (4) The Commission failed to handle the project properly.

The complainant claimed that working packages 4 and 5 should be recognised, that the recovery order should be annulled and that the final instalment amounting to EUR 78 627,97 should be paid to it.

The complainant's letter to Mr Palmer of 18 February 2004

On 18 February 2004, the complainant forwarded to the Ombudsman, for his information, a copy of a letter it had addressed to Mr Palmer, the minister of the government of the Land Baden-Württemberg in charge of European affairs. In this letter, the complainant expressed the view that the bureaucratic procedures concerning EU grants for research projects needed to be simplified urgently and massively. The complainant referred to the problems it had experienced with regard to project LIFE 99 ENV/D/000455 and another project in order to illustrate this view.

Further correspondence

On 9 March 2004, the complainant submitted to the Ombudsman, again for information, a copy of a letter it had addressed to a minister of the federal government in Berlin that day and which was similar to the letter sent to Mr Palmer. On 16 March 2004, the complainant submitted, also for information, a copy of a letter it had received from a German MEP regarding EU research funding.



THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

As regards working packages 4 and 5 and the request to repay EUR 108 812, 65

The main object of project LIFE 99 ENV/D/000455 was a "substance flow analysis", i.e. a computerised analytical model that aimed at determining the weak points in terms of wastewater management for different European hospitals involved in the project.

The project proposal was based on a logical step-by-step approach, where the working packages numbered 2 to 5 were building on each other, each working package being dependent on the success of all previous working packages. For example, if working package number 3 failed to deliver the data that were required for implementing the next project steps 4 and 5, it would thus no longer make sense to carry out these actions. Unfortunately, this was exactly what had happened during the implementation of this project.

As the complainant had admitted in a publication after the end of the project, the substance flow approach, which was being developed in working packages 4 and 5, had turned out to be totally unfeasible because the data required for starting such an analysis could not be collected. The unfeasibility of sufficient data collection referred both to the quantitative water use itself and to hospital-specific wastewater pollutants. The reasons for this failure had been explained by the complainant itself in the final technical report and in various articles published after the project had ended.

If one or several working packages of a LIFE project were not carried out, the Commission could envisage reducing the eligible budget of a project. However, the failure of a project to deliver good results was not a reason, per se, for reducing the eligible project budget. At least one of the two following criteria had to be fulfilled in addition: (1) Because of poor management, the beneficiary clearly did not undertake the necessary efforts that were required for a successful project implementation; (2) before starting an action and spending money on it, the beneficiary knew that this action was not linked to the project objectives or would not lead towards achieving the project results. As regards the present project, the second of these conditions was fulfilled. Since the data required for implementing working packages 4 and 5 had not been available, the complainant must have been perfectly aware that a continuation of the project beyond working package number 3 would not deliver any concrete project results.

Based on this conclusion, the technical evaluation had led to the recommendation to reduce the maximum budget foreseen by the amount for working packages 4 and 5 (EUR 518 342,55). Consequently, the total eligible budget had been reduced from EUR 1 503 584,73 to EUR 985 242,18 and the maximum EU financial contribution (50 % of the eligible costs) had been reduced from EUR 751 792,88 to EUR 492 621,09.

The conclusions of the final technical evaluation and its financial consequences had been communicated to the beneficiary on 28 May 2003. In the subsequent correspondence, the complainant had disagreed with the Commission's conclusions, but failed to provide any information that might have allowed the Commission to reconsider its conclusions.



In its complaint to the Ombudsman, the complainant submitted that it was totally unacceptable that the Commission, after having evaluated the final report, had asked for additional documents regarding the implementation of working packages 4 and 5. The intention of these requests had been to give the complainant additional opportunities to provide data or results that would possibly have allowed the Commission to reconsider its preliminary negative conclusions. The information provided after the final report had been carefully evaluated, both by an external expert and by the Commission's services. Both had concluded that the additional information did not provide any elements that would have allowed the case to be reconsidered.

As regards the setting-off against other claims

On the basis of the above-mentioned conclusions, the maximum EU contribution had to be reduced to EUR 492 621,09. Since EUR 601 433,74 had already been paid to the complainant, a recovery order for the amount of EUR 108 812,65 had thus become necessary. The recovery procedure had been carried out according to Article 73 of the Financial Regulation (Council Regulation no 1605/2002) and Article 83 of its implementing rules (Commission Regulation no 2342/2002). The offsetting had automatically been carried out by Directorate-General Budget.

As regards the final instalment due under the project

The above-mentioned conclusions explained why the final instalment had not been paid.

As regards the handling of the project

The allegation of mismanagement was rejected. However, there had been an administrative delay of approximately three months as regards the treatment of the interim payment request. On 18 January 2002, the complainant had submitted the interim report to the external team in charge of the first evaluation. As the deadline for payment after receipt of the formally completed request is 60 days, payment should have been made by 18 March 2002. However, the file had only been considered ready for payment on 14 June 2002. An additional delay had been caused because the complainant had provided contradictory information on the bank account holder. It was only after this contradiction had been cleared that the actual payment had been made on 10 July 2002.

It should be noted that an earlier request for interim payment that had been received on 23 July 2001 had been refused on financial grounds. The interim report had only covered the period until 30 September 2000, and the expenditure incurred until then did not reach the 40 % threshold that was required for an interim payment. The complainant had been informed about this in a letter sent on 24 August 2001.

The treatment of the request for prolongation had also taken longer than usual, basically because the complainant had failed to provide arguments that would have allowed the Commission to consider the case for a prolongation. The complainant had been informed on 13 August 2002 that the request had been rejected. The lengthy treatment had thus not been the result of mismanagement or bad will on the part of the Commission's services, but a consequence of the inconsistency of the information provided by the complainant.

Overall, the mission reports and technical project evaluations indicated that the complainant had not honestly and openly explained how serious the extent of the difficulties with data collection had been. The Commission's services had not ignored the problems of the project nor had they



failed to warn the complainant about the potential financial consequences of continuing the project without the necessary data.

Overall conclusion

Once it had been clear that the project would not be able to deliver any concrete results, the complainant had continued carrying on spending money, but omitted to inform the Commission's services that this spending was useless in terms of achieving the project aims. Until the end of the project, the complainant had deliberately left the Commission's services unaware of the real extent of the technical problems encountered with data collection for the "substance flow model". Once the full extent of the project failure had become clear, the Commission's services had immediately (2) taken the decision not to accept costs related to the implementation of working packages 4 and 5. All other project expenditure had, however, been accepted because there had not been sufficient proof that the complainant had already been aware of the gravity of the technical problems at an earlier project stage. The delays that had occurred in relation to the interim payment and the request for a project prolongation could not be considered as having caused the technical failure of the project.

The Commission submitted a full set of copies of its correspondence with the complainant after the evaluation of the final report. It also provided copies of the evaluations prepared by the external expert and by its own services.

The complainant's observations

In its observations, the complainant maintained its complaint and made the following further comments:

Contrary to what the Commission said, the project concerned not only a substance flow analysis, but also the minimisation of water consumption and of the pollution of waste water, resolving conflicts between hygiene and the protection of the environment and the preparation of a guide and of teaching materials. The components of the project thus built upon each other only to a limited extent. In particular, the task of preparing a guide and teaching materials had been carried out.

The Commission was wrong to assume that no data had been collected at all. A considerable amount of data had been collected and fed into the software.

The Commission alleged that the complainant had already known after working package 3 (i.e., in the spring of 2001) that the data necessary for working packages 4 and 5 was not available. However, the Commission's official dealing with the case at the time had proposed June 2002 as the earliest date when such knowledge was obtained (3) . The external expert had mentioned the spring of 2002 (4) .

As regards the Commission's demand for further documents relating to working packages 4 and 5, the Commission failed to deal with the central objection. In its letter of 22 January 2003, the Commission had informed the complainant that financial assistance could only be granted if these further documents were sent. Subsequently, however, the Commission decided to disallow all expenditure for these working packages. It would have been possible to do so without asking for further documents, the preparation of which had taken two months.



The Commission's claim that it had immediately taken the decision not to accept costs related to the implementation of working packages 4 and 5 once the full extent of the project failure had become clear, was wrong. According to the Commission, it had obtained this conclusion from the final report that had been submitted in November 2002. However, the decision to reject working packages 4 and 5 had only been taken on 28 May 2003, i.e. six months later.

The Commission had failed to deal with the central issue of the complaint, that is to say the reproach that for two years the project had not, or had hardly, been taken care of but that it had then towards the end been seriously impeded by the Commission through extensive correspondence and requests resulting therefrom. The fact that the application for a prolongation of the project had been lost by the Commission had also not been dealt with in the opinion. The same applied to the fact that, according to the Commission official dealing with the case at the time, it had become very difficult and cumbersome to make the Commission accept changes to a project.

The reproach that information about the serious extent of the technical problems had been withheld from the Commission had to be rejected.

The complainant concluded by saying that it would agree to the proposal of the Commission's external expert that "a compromise could be to grant no final payment and on the other hand not to reclaim parts of the already carried out payments". The Commission would then have to annul its recovery order for the amount of EUR 108 812,65. The complainant asked the Ombudsman to decide in this sense.

THE DECISION

1 Introductory remarks

1.1 The present complaint was lodged by a department of the university clinic of Freiburg (Germany) which had obtained a Community grant from the European Commission in respect of a project relating to water and waste water management in hospitals ('Substance flow related water/sewage management in European hospitals - strategies for water saving potentials and pollution control of sewage' - LIFE 99 ENV/D/000455). The complaint, lodged on 16 December 2003, concerned the Commission's handling of this project.

1.2 After the complaint had been sent to the Commission for an opinion, the complainant submitted to the Ombudsman copies of letters it had addressed to ministers in Germany on 18 February and 9 March 2004. These letters refer to the problems the complainant had experienced with regard to the above-mentioned project and also to problems encountered in another project. Given that these letters had been only sent for the Ombudsman's information and that no further allegations have been submitted on the basis of the contents of these letters, particularly as regards the other project mentioned in these letters, the present decision will only cover the allegations made in the complaint of 16 December 2003. The complainant is however free to submit a further complaint to the Ombudsman regarding its other problems or its problems with the other project.



1.3 In his letter of 23 January 2004, the Ombudsman asked the Commission to provide an opinion on four allegations and two claims. The first of these allegations concerns the Commission's decision to disregard the whole of the expenses made in respect of working packages 4 and 5 and to ask for the repayment of EUR 108 812,65; the third allegation concerns the Commission's failure to make the final instalment of EUR 78 627,97 due under the project. In its claims, the complainant demands that working packages 4 and 5 should be accepted, that the recovery order should be annulled and that the final instalment amounting to EUR 78 627,97 should be paid to it. All these allegations and claims thus concern the substance of the Commission's decision in this case. The Ombudsman therefore considers that it is appropriate to deal with them together (see 2 below) before examining the allegations relating to procedural aspects (3 and 4).

2 The substance of the Commission's decision

2.1 By decision of 28 July 1999, the Commission decided to grant a maximum amount of EUR 751 792,36 (50 % of eligible costs) towards the costs of the project, which comprised a number of working packages numbered 2 to 5. In a letter dated 28 May 2003, the Commission informed the complainant that it had decided that the amount foreseen for working packages 4 and 5 (EUR 518 342,55) should be deducted from the total allowable expenditure for the project. This reduction resulted in a corresponding reduction of the maximum amount of the Community grant to EUR 492 621,09. The Commission noted that an amount of EUR 601 433,74 had already been paid to the complainant, and that an amount of EUR 108 812,65 would thus have to be claimed back. On 25 July 2003, the Commission issued a recovery order for this amount.

2.2 In its first and third allegations submitted to the Ombudsman in the context of the present complaint, the complainant basically took the view that the above-mentioned decision was incorrect. In its claims, the complainant demanded that working packages 4 and 5 should be recognised, that the recovery order should be annulled and that the final instalment amounting to EUR 78 627,97 should be paid to it.

2.3 In its opinion, the Commission submitted that the main object of project LIFE 99 ENV/D/000455 was a "substance flow analysis", i.e. a computerised analytical model that aimed at determining the weak points in terms of wastewater management for different European hospitals involved in the project. The Commission pointed out that the project proposal was based on a logical step-by-step approach, where the working packages numbered 2 to 5 were building on each other, each working package being dependent on the success of all previous working packages. According to the Commission, the complainant had admitted in a publication after the end of the project that the substance flow approach, which was being developed in working packages 4 and 5, had turned out to be totally unfeasible because the data required for starting such an analysis could not be collected. The Commission submitted that since the data required for implementing working packages 4 and 5 had not been available, the complainant must have been perfectly aware that a continuation of the project beyond working package number 3 would not deliver any concrete results. According to the Commission, the complainant had omitted to inform the Commission's services that this spending had been useless in terms of achieving the project aims. The Commission submitted that once the full extent of the project failure had become clear, its services had decided not to accept costs related to the



implementation of working packages 4 and 5. All other project expenditure had, however, been accepted because there had not been sufficient proof that the complainant had already been aware of the gravity of the technical problems at an earlier project stage.

2.4 In its observations, the complainant took the view that the project did not only concern a substance flow analysis, but also the minimisation of water consumption and of the pollution of waste water, resolving conflicts between hygiene and the protection of the environment and the preparation of a guide and of teaching materials. The components of the project thus built upon each other only to a limited extent. In particular, the task of preparing a guide and teaching materials had been carried out. The complainant further submitted that the Commission was wrong to assume that no data had been collected at all. A considerable amount of data had indeed been collected and fed into the software.

2.5 The allegations and claims to be considered here concern the obligations arising under a contract concluded between the Commission and the complainant.

2.6 According to Article 195 of the EC Treaty, the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Community institutions or bodies". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle binding upon it (5) . Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by the institutions or bodies of the Communities is concerned.

2.7 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. In particular, the Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

2.8 The Ombudsman therefore takes the view that in cases concerning contractual disputes it is justified to limit his inquiry to examining whether the Community institution or body has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

2.9 In the present case, the Ombudsman considers that the Commission has put forward a coherent and reasonable account of the reasons for which it believes that the amount foreseen for working packages 4 and 5 should be deducted from the total allowable expenditure for the project. The Ombudsman notes that the complainant does not appear to deny the Commission's main argument, i.e. that the substance flow analysis did not work. He considers that the complainant has not shown why the Commission should in these circumstances still be obliged to remunerate it for certain aspects of the project (e. g., the preparation of a guide and of



teaching materials) services that according to the complainant have been carried out nevertheless.

2.10 In these circumstances, there appears to be no maladministration on the part of the Commission in so far as the first and third allegations and the complainant's claims are concerned.

3 Offsetting amount to be recovered against another claim

3.1 The complainant took the view that the Commission had been wrong to set off the amount it wished to recover against another claim of the university clinic Freiburg.

3.2 The Commission submitted that it had acted in conformity with the rules applicable.

3.3 The Ombudsman considers that the complainant has not established why the Commission's decision to offset the amount to be recovered against another claim of the university clinic Freiburg should have been wrong. It should be noted that Article 73 of the Financial Regulation (6) and Article 83 of the Commission's implementing provisions for the Financial Regulation (7) expressly foresees the possibility of offsetting amounts receivable by the EU against claims that the debtor has against the EU.

3.4 In these circumstances, there appears to be no maladministration on the part of the Commission in so far as this allegation is concerned.

4 Failure to handle project properly

4.1 The complainant alleged that the Commission had failed to handle the project properly. In this context, the complainant made the following statements: (1) The request for an extension of the project that had been made on 1 February 2002 had been lost by the Commission and had only been rejected in August 2002; (2) the handling of the request for the interim payment had taken more than a year and the interim payment had in the end been transferred by the Commission without any reference, which had resulted in its ending up in the wrong place and in further delay; and (3) for two years, the project had not, or had hardly been taken care of but then towards the end had been seriously impeded by the Commission through extensive correspondence and requests resulting therefrom. In its letter of 22 January 2003, the Commission had informed the complainant that financial assistance could only be granted as regards working packages 4 and 5 if further documents were sent. Subsequently, however, the Commission decided to disallow all expenditure for these working packages. It would have been possible to do so without asking for further documents, the preparation of which had taken two months.

4.2 The complainant also made the following more general statements: the Commission official dealing with the case at the time had informed the complainant that it had become very difficult and cumbersome to make the Commission accept changes to a project; the monitoring team of the Commission had changed three times during the time when the project was carried out and information on the difficulties experienced with the project that was provided to the monitoring teams had not been passed on to the Commission's Directorate-General (DG) Environment. The Ombudsman considers that these statements are too broad in scope to allow a useful examination. He also notes that no concrete allegations appear to have been made by the



complainant as regards these issues, and that no supporting evidence has been presented. The present decision will therefore not deal with these matters.

4.3 In its opinion, the Commission submitted that the treatment of the request for prolongation had taken longer than usual because the complainant had failed to provide arguments that would have allowed the Commission to consider the case for a prolongation. The complainant had been informed on 13 August 2002 that the request had been rejected.

4.4 It is good administrative practice to deal with requests made by citizens without undue delay. As regards the present case, the Ombudsman notes that in its letter to Commissioner Wallström of 30 November 2003, a copy of which was annexed to the complaint, the complainant alleged that the Commission had lost or mislaid its request for a prolongation of the project and had only noticed this on 11 June 2002. This allegation was accompanied by what appears to be a literal quote from a message the complainant received from the Commission official in charge and which confirms the complainant's account. In view of the fact that the Commission has not submitted any evidence to refute this precise submission, the Ombudsman concludes that the Commission did indeed lose or mislay the request and only became aware of it more than four months after it had been submitted. This constitutes an instance of maladministration. A critical remark will be made in this regard.

4.5 As regards the second issue, the Commission accepted that there had been an administrative delay as regards the treatment of the interim payment request. It submitted, however, that a request for interim payment received on 23 July 2001 had been refused on financial grounds, that the interim report had only been submitted on 18 January 2002 and that payment should have been made by 18 March 2002, given that the relevant deadline is 60 days. According to the Commission, the file had only been considered ready for payment on 14 June 2002, thus resulting in an administrative delay of approximately three months. An additional delay had been caused, according to the Commission, because the complainant had provided contradictory information on the bank account holder. It was only after this contradiction had been clarified that the actual payment had been made on 10 July 2002.

4.6 It is good administrative practice to deal with requests for payment rapidly after they have been received and within the deadline foreseen for this purpose. In the present case, the Ombudsman notes that the complainant has not submitted any evidence to show that the Commission's view, according to which the relevant date on which the deadline for dealing with the request for the interim payment started was 18 January 2002, was wrong. Nor has the complainant disputed that the relevant deadline was 60 days. The Ombudsman further notes that the complainant has not substantiated its allegation that an additional delay had been caused by the fact that the Commission had, according to the complainant, first sent the amount to the wrong bank account. In these circumstances, the Ombudsman considers that the evidence in his possession only allows him to conclude that there was a delay of approximately three months between 18 March 2002 (when the relevant deadline expired) and 14 June 2002 (when the Commission was ready to pay the relevant amount). The Commission admitted that it was responsible for this delay. This constitutes a further instance of maladministration. A critical remark will be made in this regard.



4.7 As regards the third issue, the Commission accepted that it had asked for additional documents regarding the implementation of working packages 4 and 5 after having evaluated the final report. According to the Commission, the intention of these requests had been to give the complainant additional opportunities to provide data or results that would possibly have allowed the Commission to reconsider its preliminary negative conclusions. The Commission submitted that the information provided after the final report had been carefully evaluated, both by an external expert and by the Commission's services. Both had concluded that the additional information did not provide any elements that would have allowed the case to be reconsidered.

4.8 The Ombudsman considers that the Commission is entitled to ask for further information if it considers that a project for which the Community provides financial assistance has failed to yield satisfactory results. It is true that the requests for further documents that the Commission made in its letter of 22 January 2003 would have been useless if the Commission had already decided that no financial assistance should be granted as regards working packages 4 and 5. The Ombudsman notes, however, that the Commission's decision not to allow any expenditure for working packages 4 and 5 first appears to be based on a proposal to that effect made in a report ("Technical evaluation for final payment") that was drawn up on 12 May 2003 by the Commission official then in charge of the project. In these circumstances, there appears to be no maladministration on the part of the Commission in so far as this aspect of the complaint is concerned.

5 Conclusion

5.1 On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission as regards the substance of the Commission's decision on project LIFE 99 ENV/D/000455.

5.2 In so far as the handling of the project by the Commission is concerned, it is necessary to make the following critical remarks:

It is good administrative practice to deal with requests made by citizens without undue delay. On the basis of the evidence submitted to him, the Ombudsman concludes that the Commission lost or mislaid the complainant's request of 1 February 2002 for a prolongation of the project and only became aware of it more than four months after it had been submitted. This constitutes an instance of maladministration.

It is good administrative practice to deal with requests for payment rapidly and within the deadline foreseen for this purpose. In the present case, there was a delay of approximately three months between 18 March 2002 (when the deadline for dealing with the request for the interim payment expired) and 14 June 2002 (when the Commission was ready to pay the relevant amount). This constitutes a further instance of maladministration.

5.3 The aspects of the case referred to in the critical remarks relate to specific events in the past. The Ombudsman further notes that the Commission argued that the delays that occurred in relation to the interim payment and the request for a project prolongation could not be considered as having caused the technical failure of the project. The complainant did not



contest this argument. In these circumstances, it is not appropriate to pursue a friendly settlement of the matter.

5.4 The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) In its letter to Commissioner Wallström of 30 November 2003 (see below), the complainant quoted the following statements that according to it had been made by the Commission official in charge on 11 June 2002: the request for a prolongation of the project had "disappeared...so that it did not exist for our registration ! Since I was ill as I mentioned before, I did not notice this."

(2) This word is missing in the English version of the Commission's opinion.

(3) The text quoted by the complainant reads as follows: "the date, [when] it became clear that this task was impossible to finish should be set quite late, in favour of the beneficiary, since it is practically impossible to prove it. The [Commission official dealing with the case at the time] proposes June 2002, when the complete impossibility was stated clearly for the first time in the process related to the prolongation request" ("Technical evaluation for final payment", 29 December 2002).

(4) The relevant passage reads as follows: "The beneficiary ... should have stopped the continuation of the project (...), as soon as it became clear that the necessary data would not be available. This was at the latest in spring 2002" (Additional comments on final report, submitted on 7 January 2003).

(5) See Annual Report 1997, pages 22 sequ.

(6) Council Regulation (EC, Euratom) no. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 no. L 248, p. 1).

(7) Commission Regulation (EC, Euratom) no. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) no. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 no. L 357, p. 1).