

Decision of the European Ombudsman on complaint 732/2004/ELB against the European Commission

Decision

Case 732/2004/ELB - Opened on 07/04/2004 - Decision on 21/03/2005

Strasbourg, 21 March 2005

Dear Mr I.,

On 9 March 2004, you made a complaint to the European Ombudsman against the European Commission concerning the management of European Regional Development Funds (ERDF), and in particular those granted in the framework of Community initiative Interreg III B for the Western Mediterranean. You are the director of a Centre, which was selected for a project called "Internum".

On 7 April 2004, I forwarded the complaint to the President of the Commission. You sent me further information concerning your complaint on 19 April 2004. The Commission sent its opinion on 22 June 2004 and I forwarded it to you with an invitation to make observations, if you so wished by 31 August 2004. I also asked you to forward to me copies of documents to which you had referred in your complaint. No reply appears 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

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

The complainant is the director of a Centre, which was selected for a project called "Internum", planned for autumn 2002, in the framework of the Interreg III B Community initiative for the Western Mediterranean (MEDOC) (1) . The management of the relevant Community funds has been assigned to Italy. The complainant sent four documented expense claims to the Italian managing authority, but received no payment. The normal delay for payment mentioned in the contract is 60 days; however, in one case, the delay for payment already exceeds six months, which poses serious problems for the complainant.

Neither the Italian managing authority, nor the Italian authorities, pay any attention to the complainant's requests. The complainant also contacted the Commission, but there was no



result. The Commissioner in charge of the Regional Policy indicated that the problem seemed to have been solved, which was not the case. According to the complainant, the Commission does not maintain control over Community funds allocated in the framework of ERDF and shows no interest in non-compliance with contracts.

In summary, the complainant alleges that the Commission is failing to ensure the proper management of ERDF funds.

The complainant claims that the Commission should intercede with the Italian authorities which manage Interreg III B funds in order to:

- request payment of the expenses incurred by the complainant for several months,
- oblige them to comply with the contract and to pay interest for late payments to the complainant,
- possibly sanction Italy for its management of Interreg III B funds.

On 19 April 2004, the complainant informed the Ombudsman that the expenses that he incurred had been paid on 15 April 2004. He also stated that he maintained the other points of his complaint. He indicated that he requested from the Italian managing authority a proof of the mistakes alleged to have been made in the bank data. According to the complainant, the Commission called the Italian managing authority but never wrote officially to it.

THE INQUIRY

The Commission's opinion

The Commission's opinion can be summarised as follows:

The Commission recalls that, according to Article 9 (n) of Council Regulation No 1260/99 (2) , the managing authority is *"a public or private authority or body at national, regional or local level designated by the Member State, or the Member State when it is itself carrying out this function, to manage assistance for the purposes of this Regulation."*

Article 9 (o) of the same Regulation defines the term "paying authority" as meaning *"one or more national, regional or local authorities or bodies designated by the Member States for the purposes of drawing up and submitting payment applications and receiving payments from the Commission."* The same provision continues: *"(t)he Member State shall determine all the modalities of its relationship with the paying authority and of the latter's relationship with the Commission."*

Member States are responsible for designating the managing and the paying authorities of a Structural Funds programme. As regards Interreg programmes in which several Member States are involved, participating Member States jointly designate these authorities. Relationships between partners and the modalities of functioning of each programme are defined by the



agreements signed between participating Member States.

As regards the complainant's allegation of late payment, the payment orders for the "Internum" project were signed on 16 December 2003 and transferred for execution on 17 December 2003. On 21 January 2004, the bank sent them back to the paying authority because the bank data of the beneficiary were incomplete. On 27 January 2004, the paying authority sent new bank data. On 10 March 2004, the bank informed the paying authority of the same problem. On 12 March 2004, supplementary information was requested from the beneficiary. The paying authority received the information on 15 March 2004 and sent it to the bank on 18 March 2004. On 14 April 2004, the paying authority informed the Commission that the beneficiary had been paid.

Contracts signed between the managing authorities and project leaders are drafted by each participating Member State. Deadlines for repayment vary according to the programme. Matters relating to compliance with the deadlines and the appeal procedures are provided for in the relevant provisions of the above-mentioned contracts.

As regards European Community rules, Article 32, paragraph 1 (5) of Regulation 1230/99 states that *"the paying authority shall ensure that final beneficiaries receive payment of their contribution from the Funds as quickly as possible and in full."* Within its powers of control and follow-up, the Commission ensures that this principle is complied with.

Further to the complainant's letters, the Commission requested information from the paying authorities, which was sent on 23 March 2004. From this reply, it can be concluded that the complainant is responsible for some of the delays. The Commission notes that some delays might be due to the verification by the paying authority of the accuracy of the documentation.

As regards the way the complainant's case was treated by the Commission, numerous exchanges of letters took place between the Commission, the managing authority and the complainant. On 9 February 2004, the Commissioner in charge of the Regional Policy replied to a first letter from the President of the Centre, of which the complainant is the director. On 19 February 2004, Directorate General for Regional Policy (DG REGIO) wrote to the managing authority to request information on the financial arrangements of the programme and to request that this issue be put on the agenda of the next meeting of the monitoring committee. On 25 March 2004, DG REGIO sent a new letter to the Centre giving the latest information received. On the Commission's initiative, the issue of late payment of the beneficiaries of the programme was put on the agenda of the monitoring committee of 2 April 2004. It was decided to analyse the appropriateness of the financial arrangements chosen by the paying authority and to take measures to reduce the deadlines. As regards the "Internum" project, the paying authority committed itself to reduce the time taken to complete the steps prior to the payment of funds.

Initiatives taken by the Commission show the rigour and the speed with which the issue was dealt with, though the Commission is not directly involved in the financial management of Structural Funds. In accordance with the subsidiarity principle and the applicable regulation, Member States are directly responsible for the management of the programmes.



The Commission is not in a position to impose sanctions or take measures against the paying authority. Moreover, this does not seem to be justified in view of the behaviour of the paying authority.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Alleged failure to manage properly ERDF funds and related claims

1.1 The complainant, the director of a Centre, which was selected for a project called "Internum", alleges that the Commission is failing to ensure the proper management of ERDF funds. The complainant claims that the Commission should intercede with the Italian authorities which manage Interreg III B funds in order to request payment of the expenses incurred by the complainant for several months, oblige them to comply with the contract and to pay interest for late payment to the complainant, and possibly sanction Italy for its management of Interreg III B funds.

The complainant subsequently informed the Ombudsman that the expenses had been paid. However, he maintained the other points of his complaint.

1.2 According to the Commission, Member States are responsible for the management of the Structural Funds programmes and for designating the managing and the paying authorities. Article 32, (1) (5) of Regulation 1260/99 states that *"the paying authority shall ensure that final beneficiaries receive payment of their contribution from the Funds as quickly as possible and in full."* Within its powers of control and follow-up, the Commission ensures that this principle is complied with.

After being contacted by the complainant, the Commission requested information from the Italian authorities, which was sent on 23 March 2004. From this reply, it can be concluded, according to the Commission, that the complainant is responsible for some delays, as his bank data were incomplete, and some delays might also have been due to the need for the paying authority to verify the accuracy of the documentation. On 14 April 2004, the paying authority informed the Commission that the beneficiary had been paid.

Numerous exchanges of letters took place between the Commission, the managing authority and the complainant. On 9 February 2004, the Commissioner in charge of the Regional Policy replied to a first letter from the President of the Centre, of which the complainant is the director. On 19 February 2004, Directorate General for Regional Policy wrote to the managing authority to request information on the financial arrangements of the programme and to request that this issue be put on the agenda of the next meeting of the monitoring committee. On 25 March 2004, DG REGIO sent a new letter to the Centre giving the latest information received. Moreover, on the Commission's initiative, the issue of late payment of the beneficiaries was put on the agenda of a monitoring committee meeting which decided to analyse the appropriateness of the financial arrangements chosen by the paying authority and to take measures to reduce the deadlines. As regards "Internum", the paying authority committed itself



to reduce the time taken to complete the steps prior to the payment of funds.

The Commission is not in a position to impose sanctions or take measures against the paying authority. Moreover, this does not seem to be justified in view of the behaviour of the paying authority.

1.3 The Ombudsman first notes that the present complaint deals with European Regional Development Funds, which are governed by, among other Community legislation, Regulation 1260/1999 (3) and Regulation 438/2001 (4). The Ombudsman notes the following points from these Regulations:

(a) Article 32 of Regulation 1260/1999 requires the Commission to pay the contribution from the Funds to the paying authority within no more than two months of receipt of an acceptable payment application. The same provision requires the paying authority to ensure that final beneficiaries receive payment of their contribution from the Funds as quickly as possible and in full.

(b) Regulation 438/2001 requires, among other things, Member States to ensure that managing and paying authorities receive adequate guidance on the provision of management and control systems (Article 2 (1)) and to inform the Commission of the organisation of the managing and paying authorities, of the management and control systems in place in these authorities and bodies and of improvements planned pursuant to the guidance referred to in Article 2 (1) (Article 5).

(c) According to Article 6 of the same Regulation:

"The Commission shall, in cooperation with the Member State, satisfy itself that the management and control systems presented under Article 5 meet the standards required by Regulation (EC) No 1260/1999 and by this Regulation, and shall make known any obstacles which they present to the transparency of checks on the operation of the Funds and to the Commission's discharge of its responsibilities under Article 274 of the Treaty. Reviews of the operation of the systems shall be undertaken on a regular basis."

On the basis of these provisions, the Ombudsman considers that, although the paying authorities designated by the Member States are responsible for the prompt payment of ERDF funds to final beneficiaries, such as the Centre of which the complainant is a director, the Commission's responsibilities as regards the proper management of ERDF funds include, among other things, satisfying itself that the management and control systems communicated to it by Member States are appropriate and adequate to ensure that paying authorities comply with their obligation of prompt payment.

1.4 As regards the complainant's allegation that the Commission is failing to ensure the proper management of ERDF funds, the Ombudsman notes that the Commission requested information on the financial arrangements of the programme and that, on its initiative, the issue of late payment was discussed by the monitoring committee. He also notes that the Italian



paying authority committed itself to reduce the time taken to complete the steps prior to the payment of funds. The Ombudsman takes the view that the Commission thereby appears to have taken appropriate and adequate steps to discharge its own responsibilities for the proper management of ERDF funds. He concludes therefore that there is no maladministration.

1.5 As regards the complainant's claim that the Commission should intercede with the Italian authorities in order to request payment of the expenses incurred by the complainant and oblige them to comply with the contract, the Ombudsman notes that the Commission contacted the Italian authorities about the complainant's case. The complainant subsequently informed the Ombudsman that the expenses that he incurred had been paid. The Ombudsman therefore takes the view that the Commission appears to have taken appropriate action to satisfy the claim.

1.6 As regards the complainant's claim for interest for late payment, the Ombudsman first points out that the responsibility for paying interest, if interest were due, would fall on the Italian paying authority. The Ombudsman notes in this context that the complainant has not contested the Commission's explanation in its opinion of the possible reasons for the delay by the responsible Italian paying authority in making the payment. The Ombudsman therefore concludes that the Commission's response to this claim reveals no maladministration by the Commission. Naturally, the complainant remains free to address his claim directly to the Italian paying authority.

1.7 As regards the complainant's claim that Italy should be sanctioned, the Ombudsman considers that the Commission's explanations as regards this aspect of the complaint appear reasonable and concludes that the complainant's claim cannot be sustained.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Interreg III is a Community initiative which aims to stimulate interregional co-operation in the EU between 2000-06 and is financed under the European Regional Development Fund. The Interreg III B programme for the Western Mediterranean concerns the development of cross-border co-operation between Italy, France, Spain, Portugal and Gibraltar.

(2) OJ L 161 of 26.6.1999.

(3) Council Regulation No 1260/1999 of 21 June 1999 laying down general provisions on the



Structural Funds, OJ L 161, 26.6.1999.

(4) Commission Regulation No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds, OJ L 63, 3.3.2001.