

Decision of the European Ombudsman on complaint 1232/2004/GG against the European Commission

Decision

Case 1232/2004/GG - Opened on 04/05/2004 - Decision on 14/10/2004

Strasbourg, 14 October 2004

Dear Professor K.,

In a letter dated 19 April 2004 (which I received on 29 April 2004), you submitted, acting on behalf of Technische Universität Berlin, a complaint against the European Commission concerning the duty to pay interest on amounts not used for Leonardo da Vinci projects.

On 4 May 2004, I forwarded the complaint to the President of the European Commission.

On 10 June 2004, Ms von Matuschka forwarded to me a copy of your most recent correspondence with the Commission. I forwarded a copy of this correspondence to the Commission on 14 June 2004.

The Commission sent its opinion on 4 August 2004 and I forwarded it to you on 16 August 2004 with an invitation to make observations.

On the occasion of a telephone conversation on 21 September 2004, Ms von Matuschka informed my services that the complaint could be considered as having been settled and thanked me for my intervention.

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

THE COMPLAINT

The present complaint concerned three Leonardo da Vinci projects carried out by the "Career Service" of the complainant, the Technische Universität Berlin:

Project D/99/2/07354/PL/II.1.2a/FPI

By letter of 9 December 2002, the Commission informed the complainant that part of the sums that had already been paid to the latter under the contract needed to be repaid. The relevant sum amounted to EUR 88 483, 80. The Commission asked the complainant to repay this sum plus interest amounting to EUR 7 654, 45 (making a total of EUR 96 138, 25) by 31 March



2003.

On 20 December 2002, the complainant objected to the Commission's demand that interest should be paid. The complainant submitted that it was in principle impossible for it to place sums of money with a view to earning interest.

In January 2003, the complainant repaid the amount of EUR 88 483, 80 to the Commission.

By letter of 20 January 2003, the Commission informed the complainant that it would deal with its complaint shortly.

On 19 February 2003, the Commission's Accounting Officer wrote to the complainant to point out that an amount of EUR 7 654, 45 was still outstanding. In its reply of 6 March 2003, the complainant pointed out that it had objected to the Commission's demand to pay this sum on account of interest and that in the absence of a reply to this complaint, it was not in a position to pay the relevant sum.

In a further letter of 27 March 2003, the Commission's Accounting Officer again referred to the amount of EUR 7 654, 45 that was still due and informed the complainant that part of that amount (EUR 4 950, 54) would be recovered, pursuant to Article 73 (1), second sub-paragraph of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 no. L 248, p. 1), by offsetting it against a request for payment made by the complainant under another project. In its reply of 17 April 2003, the complainant referred to its complaint against the Commission's demand for payment of interest and asked the relevant service of the Commission to check the issue with the Commission's financial department.

In an e-mail sent on 8 December 2003, the Commission referred to the complaint against the demand for payment of interest and pointed out that it intended to finalise its position regarding this point in the near future. The Commission therefore asked the complainant to submit, by 18 December 2003, documentary evidence in order to prove that it was unable to place money on an account with a view to earning interest. On 15 January 2004, the complainant sent further information regarding this point to the Commission.

Project D/99/2/07355/ PL/II.1.2a/FPC

Also by letter of 9 December 2002, the Commission informed the complainant that part of the sums that had already been paid to the latter under this contract needed to be repaid. The relevant sum amounted to EUR 31 743, 70. The Commission asked the complainant to repay this sum plus interest amounting to EUR 2 829, 90 (making a total of EUR 34 573, 60) by 31 March 2003.

On 20 December 2002, the complainant submitted that the recovery should be reduced by EUR 229. The complainant also objected to the Commission's demand that interest should be paid.

In January 2003, the complainant repaid the undisputed amount of EUR 31 514, 70 to the Commission.



By letter of 20 January 2003, the Commission informed the complainant that it would deal with its complaint shortly. The Commission added that the deadline for repaying the relevant sums under the present contract had been suspended.

On 21 May 2003, the Commission informed the complainant that its objection regarding the disputed item (i.e., the sum of EUR 229) had been accepted. The Commission further informed the complainant that the issue of interest would be dealt with separately by the “competent service”.

By letter dated 28 May 2003, the Commission’s Accounting Officer referred to three different amounts (including a sum of EUR 3 058, 90) that in his view were still due and informed the complainant that these amounts would be recovered, pursuant to Article 73 (1), second sub-paragraph of the Financial Regulation, by offsetting them against a request for payment made by the complainant under another project.

In an e-mail sent on 8 December 2003, the Commission referred to the complaint against the demand for payment of interest and pointed out that it intended to finalise its position regarding this point in the near future. The Commission therefore asked the complainant to submit, by 18 December 2003, documentary evidence in order to prove that it was unable to place money on an account with a view to earning interest. On 15 January 2004, the complainant sent further information regarding this point to the Commission.

In a further letter sent the same day, the complainant informed the Commission that it also objected to the offsetting of the amount of EUR 3 058, 90 against other claims. The complainant noted that it had only been able to discover that this amount included the interest claimed by the Commission (EUR 2 829, 90) and the amount that the Commission had in the meantime acknowledged as not being due (EUR 229) when it had received a letter dated 14 January 2004 in which the Commission had provided information regarding another project. Given that the sum of EUR 229 had in any event been deducted without reason and that the issue of the duty to pay interest was not yet resolved, the complainant asked the Commission to reimburse the amount of EUR 3 058, 90.

Project D/98/2/05733/PL/II.1.2a/FPI

By letter of 8 November 2002, the Commission informed the complainant that part of the sums that had already been paid to the latter under this contract needed to be repaid. According to the Commission, the relevant sum amounted to EUR 34 247, 35.

On 27 November 2002, the complainant objected to this recovery and requested a detailed evaluation. The complainant noted that the Commission’s letter did not enable it to identify which amounts had been accepted and which had not.

In a fax sent on 6 December 2002, the Commission sent the complainant a table setting out the relevant amounts. According to this table, the sum to be repaid amounted to EUR 31 849, 90. In its reply of 10 December 2002, the complainant objected to certain aspects of the calculation.



On 17 January 2003, the Commission informed the complainant that it would deal with its complaint shortly. The Commission added that the deadline for repaying the relevant sums under the present contract had been suspended.

In a letter of 8 April 2003, the Commission informed the complainant that it had accepted all its demands (i.e., a sum of EUR 378) and that the sum to be repaid amounted to EUR 31 471, 90.

On 14 January 2004, the Commission informed the complainant that a further amount of EUR 2 397, 15 had to be paid on account of interest due to the fact that in its letter of 17 (in reality, 10) December 2002, the complainant had not objected to the demand for the payment of interest.

On 21 January 2004, the complainant replied that it had only learnt about the demand for the payment of interest through the Commission's letter of 14 January 2004. The complainant explained that it did not agree with this demand and requested that the issue should be clarified as quickly as possible.

The present complaint

In its complaint to the Ombudsman, the complainant in substance alleged that the Commission had acted wrongly (1) by demanding the payment of interest on amounts that had to be repaid to the Commission under Leonardo da Vinci projects D/99/2/07354, D/99/2/07355 and D/98/2/5733) and (2) by offsetting these and other amounts against other claims. The complainant claimed that the Commission should repay the sums that had been claimed by its services and offset against other claims of the complainant, that is to say, 1) EUR 7 654, 45 interest from project D/99/2/7354, (2) EUR 2 829, 00 interest plus the amount of EUR 229 from project D/99/2/7355 and (3) EUR 2 397, 45 interest plus the amount of EUR 378 from project D/98/2/5733.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

Article 4 (7) of the grant agreements concluded between the Commission and recipient of the grant provided as follows: "Amounts paid to the contracting party or to a partner that are not used within 45 days have to be invested so as to yield interest. The interest thus gained has to be indicated in the financial account and transferred to the recipient of the grant who has to pay it into an account in the name of the Commission."

On the basis of this article, the Commission had asked the complainant to pay interest on the amounts that it had received but not used within 45 days.

The complainant had claimed that under German law it was unable to invest amounts that it had received so as to earn interest. However, the information provided by the complainant in its appeals and in its letter of 15 January 2004 had not been sufficient to prove this.

By letter of 9 June 2004, the complainant had provided additional information to the



Commission. It had also submitted a copy of a letter from the Senate of Berlin according to which the complainant was not allowed to place money on accounts producing interest.

On the basis of this information, the Commission was now able to accept the complainant's arguments. The amount of interest that had already been recovered or set off would be reimbursed to the complainant. The latter had been informed accordingly by letters of 21 June 2004.

The set-off had been based on Article 4 (2), fifth sub-paragraph of the grant agreements, in accordance with Article 73 (1), second sub-paragraph of Council Regulation (EC, Euratom) No 1605/2002. However, given that the Commission had accepted the complainant's arguments as regards the duty to pay interest, the relevant amounts would (as mentioned above) be reimbursed to the complainant.

The complainant's position

On the occasion of a telephone conversation on 21 September 2004, the complainant informed the Ombudsman's services that the complaint could be considered as having been settled and thanked the Ombudsman for his intervention.

THE DECISION

1 Allegedly incorrect claim for interest and set-off

1.1 The present complaint concerned Leonardo da Vinci projects carried out by the complainant, the Technische Universität Berlin. Certain amounts that had been provided by the Commission were not used and duly repaid by the complainant. The Commission asked the complainant to pay interest on these sums amounting to around EUR 13 000 and set off part of this claim against other claims that the complainant had against the Commission. The complainant alleged that the Commission had acted wrongly by claiming interest and by setting off part of its claim against other claims. It took the view that the Commission should repay the relevant amounts.

1.2 In its opinion, the Commission explained that the grant agreement provided for the payment of interest on amounts that were not used. The Commission pointed out that the complainant had claimed that under German law it was unable to invest amounts that it had received so as to earn interest. According to the Commission, however, the information provided by the complainant in its appeals against the Commission's decisions and in a letter of 15 January 2004 had not been sufficient to prove this. The Commission noted that by letter of 9 June 2004, the complainant had provided additional information, including a copy of a letter from the Senate of Berlin according to which the complainant was not allowed to place money on accounts producing interest. On the basis of this information, the Commission was now able to accept the complainant's arguments. The amount of interest that had already been recovered or set off would be reimbursed to the complainant. According to the Commission, the latter had been informed accordingly by letters of 21 June 2004.

1.3 On the occasion of a telephone conversation on 21 September 2004, the complainant informed the Ombudsman's services that the complaint could be considered as having been



settled and thanked the Ombudsman for his intervention.

2 Conclusion

It appears from the Commission's comments and 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.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS