

Decision of the European Ombudsman on complaint 1581/2004/TN against the European Commission

Decision

Case 1581/2004/TN - Opened on 14/06/2004 - Decision on 23/03/2005

Strasbourg, 23 March 2005

Dear Mr X.,

On 18 May 2004, you made a complaint to the European Ombudsman against the European Commission concerning the conclusion of a Leonardo da Vinci Project.

On 14 June 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 26 August 2004. I forwarded it to you with an invitation to make observations, which you sent on 15 October 2004.

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

THE COMPLAINT

In May 2004, a complaint was made to the Ombudsman against the European Commission concerning the conclusion of a Leonardo da Vinci Project.

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

In January 2002, the complainant contacted the Commission on behalf of the project leader requesting an extension of the deadline for submitting the final report in the project. The complainant explained that the request for an extension was based on the fact that he had been seriously ill and therefore had not worked for almost a year. As he did not receive a satisfactory reply, he wrote to the Commission again in May 2002, requesting certain clarifications. However, the work of the project had been completed at the end of year 2000 and it was only the final report that remained to be written and submitted. He heard nothing from the Commission until January 2004, when he received a request for a refund of EUR 37 488.85. He had assumed that since he was unable to complete the final report, he had forfeited only the third and last part of the funding due from the Commission, which had never, in fact, been paid.

According to the complainant, the Commission asserts that it wrote to the project leader on 7



May 2002 and 21 May 2002, but the complainant never received these letters. The project leader moved and changed address in 2002, but the forwarding of mail was arranged for. However, the complainant acknowledges that certain mail was never received following the move.

The complainant alleges that the Commission is guilty of:

1. Avoidable delay by not contacting him from May 2002 until January 2004 concerning a project that ended in 2000; and

1. Unfairness by not acknowledging his severe illness as an explanation for the delay in submitting the final report.

The complainant claims that the Commission should drop its demand for a refund of money received under the project.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission makes, in summary, the following comments:

The contract in question was signed between the contractor, represented by the complainant, and the European Commission to cover the period 1 December 1998 to 5 May 2001. The final evaluation of the project was completed on 12 May 2002. Since the final report had not been submitted, the Commission closed the project on the basis of the information available, namely the interim report.

The Commission lists its correspondence with the complainant, relevant to his allegations, as follows:

20 November 2000: Information letter from the Commission to the complainant pointing out, among other things, the need for promoters of Leonardo da Vinci projects to adhere to the deadlines laid down in the contract (the complainant's contract was due to expire on 5 May 2001);

30 November 2001: Since the deadline for submitting the final report had passed without the report having been submitted, the complainant was sent a reminder in which he was given a new deadline of 4 January 2002 for submitting the report;

8 January 2002: The Commission received a letter from the complainant requesting an extension of the deadline for submitting the final report because of a long period of illness;

18 January 2002: The Commission replies to the complainant, extending the deadline for submitting the final report to 15 February 2002;



22 April 2002: Having heard no more from the contractor, the Commission closed the file on 11 April 2002, on the basis of the interim report. By letter of 22 April 2002, the Commission informed the complainant about the closure, but gave him the opportunity to respond within 20 calendar days and to enclose any supporting documentation;

7 May 2002: The complainant replied, requesting a further extension of the deadline for finalising the report;

14 July 2003, 17 September 2003, 24 November 2003 and 6 January 2004: Debit note and reminders were sent to the complainant;

16 January 2004: Acknowledgement of receipt by the complainant of the Commission's demand for a refund;

28 January 2004: Reply from the Commission to the complainant with a final demand for payment;

1 April 2004: Acknowledgement of receipt of the final demand by the complainant, informing the Commission that the project leader had ceased operating;

21 April 2004: Conciliatory reply from the Commission's DG Budget to the complainant's latest letter;

6 May 2004: The Commission sent a final closing letter to the complainant, explaining the reasons why the project had had to be closed.

The alleged delay in contacting the complainant

The Commission argues that the complainant was kept informed of the developments in the file. This is borne out by the numerous requests for additional information that were sent to the complainant regarding the final report. The allegation that the Commission made no further contact with the contractor from May 2002 to January 2004 is not entirely true. On 14 July 2003, the Commission sent the complainant a debit note following the closure of the project. The Commission accepts that this communication was late and apologises for it. The reason for the lateness is that the Commission services prioritised paying project promoters who were due payment rather than recovering debts. The letter of 14 July 2003 was followed by two reminder letters dated 17 September 2003 and 24 November 2003. It was only through the return of these letters, marked "not delivered", that the Commission became aware of the complainant having changed address. The Commission then had to make enquiries to find out the complainant's new address. The Commission cannot, therefore, be held responsible for the complainant not having received the letters, given that he never informed the Commission of his change of address.

The alleged failure to acknowledge the complainant's illness

The Commission was informed about the complainant's illness after having sent its reminder letter of 30 November 2001, in which it pointed out that the contractual deadline for submitting the final report had expired. The Commission had already warned the complainant by letter of 20 November 2000, in which it had pointed out that the contractual deadline had to be adhered



to. The Commission took into account the complainant's illness by extending the deadline for submitting the final report to 15 February 2002, i.e. 10 months beyond the deadline set out in the contract. In the absence of a reply from the complainant, the Commission decided to close the project as it stood. The Commission sent the complainant a letter informing him of the closure on 22 April 2002. This letter was accompanied by explanatory financial details and gave the complainant the opportunity to respond and to submit missing documents within 20 working days. The complainant replied to this letter, expressing his disagreement with the financial details and renewing his request for an extension of the deadline to submit the final report. However, he did not enclose any of the documents requested by the Commission and the Commission therefore took the view that the complainant had not provided any new information to cast light on his situation. It therefore closed the project on the basis of the information available.

Following a telephone conversation with the complainant on 19 April 2004, the Commission's DG Budget asked DG Education and Culture to re-open the file. Following the re-examination of the file, a letter explaining the reasons for the Commission's closure of the project was sent to the complainant on 6 May 2004.

The complainant's observations

In his observations the complainant makes the following remark, relevant for the ongoing inquiry:

When the project leader moved in the spring of 2002, steps were taken to redirect mail. The letterhead of the complainant's letter of 7 May 2002 to the Commission states the new address.

THE DECISION

1 Preliminary remark

1.1 In the complaint, which concerns the conclusion of a Leonardo da Vinci Project, the complainant made a number of allegations of maladministration against the Commission. Part of these allegations concerned maladministration relating to the initial phase of the project in 1998-99.

1.2 The Ombudsman recalls that according to Article 2.4 of the Statute of the European Ombudsman, a complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint (1) . On the basis of this provision, the Ombudsman is not entitled to deal with the allegations concerning maladministration in 1998-99.

1.3 The scope of the Ombudsman's inquiry has therefore been limited to the allegations and the claim listed in the Ombudsman's letters of 14 June 2004 informing the Commission and the complainant of the opening of an inquiry.

2 The alleged failure to acknowledge the complainant's illness

2.1 The complainant argues that he contacted the Commission on behalf of the project leader in January 2002, requesting an extension of the deadline for submitting the final report in the project concerned, which had ended in 2000. The complainant explained that the request for an



extension was based on the fact that he had been seriously ill and therefore had not worked for almost a year. As he did not receive a satisfactory reply, he wrote to the Commission again in May 2002, requesting certain clarifications. However, he then heard nothing from the Commission until January 2004, when he received a request for a refund of EUR 37 488.85. The complainant alleges that the Commission is guilty of unfairness by not acknowledging his severe illness as an explanation for the delay in submitting the final report.

2.2 The Commission argues that in its letter of 18 January 2002, it took into account the complainant's illness by extending the deadline for submitting the final report to 15 February 2002. In the absence of a reply from the complainant, the Commission decided to close the project as it stood. On 22 April 2002, the Commission sent the complainant a letter informing him of the closure, giving explanatory financial details and allowing him 20 working days to respond and to submit missing documents. The complainant replied, expressing his disagreement with the financial details and renewing his request for an extension of the deadline to submit the final report. However, since he did not enclose any of the documents requested, the Commission took the view that he had not provided any new information to cast light on his situation and it therefore closed the project on the basis of the information available to it. Following a telephone conversation with the complainant on 19 April 2004, the Commission's DG Budget asked DG Education and Culture to re-open the file. Following the re-examination of the file, a letter explaining the reasons for the Commission's closure of the project was sent to the complainant on 6 May 2004.

2.3 The Ombudsman notes that the following factual circumstances appear to be undisputed in the case: Following the passing of the original deadline for submitting the final report, the Commission gave the complainant a new deadline to submit the final report, namely 4 January 2002. In reply, the complainant wrote to the Commission on 8 January 2002, requesting an extension of the deadline. In his letter, the complainant explained that he had been seriously ill and therefore had not been working for almost a year.

2.4 The Ombudsman notes from the documents submitted during the course of the inquiry that by letter of 18 January 2002, the Commission appears to have replied to the complainant's letter of 8 January 2002. The Commission's letter reads as follows:

*"Thank you for your fax dated of 08/01/2002. We inform you that unfortunately we cannot approve your request, due to the ending of the programme **Leonardo da Vinci I**. We remind you that the original deadline for the submission of the final report was on 05/06/2001, and we also confirm our registered mail dated of 30 November 2001, in which we fixed the 4th January 2002 as last deadline for receiving the Final Report. Given this situation, the Commission is now obliged to close your file based on information available to us, such as the Interim Report and any information that we will eventually receive by the **15 February 2002**. We remind you that **any activities undertaken, and any expenditure incurred outside of the contractual period (from 1/12/1998 to 5/04/2001) will therefore be considered ineligible**. The form for the Final Report can be found on the Internet site below: /.../ We would be grateful if you could send the completed report to the following address: /.../ I would like to thank you in advance for aiming to ensure that your Final Report is sent to us within the time limit."*



2.5 The Ombudsman also notes the following from the submitted documents. The complainant does not appear to have reacted to the Commission's letter of 18 January 2002. The Commission therefore closed the project on the basis of available information. By letter of 22 April 2002, it informed the complainant about the closure, explaining the financial details of the project and giving him 20 working days to submit missing documents. On 7 May 2002, the complainant replied, making express reference to the Commission's letter of 22 April 2002, and explaining that he disagreed with certain financial details of the project. The complainant also considered it to be obvious that the Commission had not acknowledged the content of his letter of 8 January 2002 and he therefore restated his request for an extension for the completion of the final report.

2.6 In the Ombudsman's view, the Commission's letter of 18 January 2002 could have been formulated in a better way. The Ombudsman considers, however, that the letter makes clear, particularly on the basis of its last sentence, that the complainant was being provided with extra time, i.e. until 15 February 2002, to submit the final report. The Ombudsman notes that the complainant does not appear to have reacted to the Commission's letter. Nor does he appear to dispute having received the letter in question. The Ombudsman therefore considers that if the complainant found the extended deadline too short, he could have contacted the Commission regarding the matter. Instead, he reacted only in May 2002, following the information that the project had been closed.

2.7 In view of the above, the Ombudsman considers that the Commission appears to have acknowledged the complainant's illness by granting him an extended deadline for submitting the final report. Given the complainant's lack of reaction within the extended deadline, the Commission appears to have acted reasonably by proceeding to close the project. The Ombudsman therefore finds no maladministration by the Commission as regards this aspect of the complaint.

3 The alleged delay in contacting the complainant

3.1 The complainant asserts that, following his letter to the Commission of 7 May 2002, in which he restated his request for an extension of the deadline for submitting the final report, he heard nothing from the Commission until January 2004, when he received a request for a refund. The project leader moved and changed address in 2002, but the forwarding of mail was arranged for. The complainant acknowledges, however, that certain mail was never received following the move. The letterhead of the complainant's letter of 7 May 2002 states the new address. The complainant alleges that the Commission is guilty of avoidable delay by not contacting him from May 2002 until January 2004 concerning a project that ended in 2000.

3.2 The Commission argues that it sent the complainant a debit note on 14 July 2003, following the closure of the project. The Commission accepts that this communication was late and apologises for it. The reason for the lateness is that the Commission services prioritised paying project promoters who were due payment rather than recovering debts. The Commission also argues that it sent the complainant two reminder letters, dated 17 September and 24 November 2003 and that it was only through the return of these letters, marked "not delivered", that the Commission became aware of the complainant having changed address. According to the



Commission, it then had to make enquiries to find out the complainant's new address. The Commission argues that it cannot, therefore, be held responsible for the complainant not receiving the letters, given that he never informed the Commission of his change of address.

3.3 The Ombudsman notes that the complainant does not appear to question the fact that the Commission sent him a debit note on 14 July 2003, followed by reminders in September and November the same year. The Ombudsman further notes that despite having arranged for the forwarding of mail, the complainant acknowledges that certain mail went missing following the move of the project leader in 2002. The Ombudsman considers it unfortunate that the Commission did not notice the change of address in the letterhead of the complainant's letter of 7 May 2002. He notes, however, that the complainant did not mention the change of address in the letter. The Ombudsman therefore considers that the lack of contact between the parties during the period July 2003 to January 2004 mainly appears to be due to circumstances outside the Commission's control. The Ombudsman therefore does not find the Commission to be guilty of avoidable delay by not contacting the complainant from May 2002 until January 2004. Nevertheless, the Ombudsman notes that the Commission admits to a delay in sending the debit note of 14 July 2003. The Ombudsman also notes, however, that the Commission has apologised for this delay. The Ombudsman therefore finds no reason to pursue the matter further.

3.4 In view of the above, the Ombudsman finds no maladministration by the Commission as regards this aspect of the complaint.

4 The claim that the Commission should drop its demand for a refund

4.1 The complainant argues that he assumed that since he was unable to complete the final report, he had forfeited only the third and last part of the funding due from the Commission, which he had not yet received. The complainant therefore claims that the Commission should drop its demand for a refund of money received under the project.

4.2 As regards the factual circumstances leading up to the request for a refund, the Ombudsman notes the following from the documents submitted during the course of the inquiry. By letter of 28 November 2000, the Commission informed the complainant that the interim report had been approved, but that the eligibility of expenditure would be checked during the evaluation of the final report and that the final allocation would be calculated on the basis of the two reports (interim and final). Since the Commission did not receive the final report, it made a final financial evaluation of the project on the basis of available information, i.e. the interim report. On 22 April 2002, the Commission sent the complainant a letter informing him about the financial evaluation of the project and giving him 20 calendar days to submit, inter alia, further supporting documents. The complainant was informed that missing or incomplete information meant that associated costs would be considered ineligible and that the evaluation would be definitely finalised on the basis of the available documentation. The financial evaluation was enclosed with the Commission's letter. It is clear from this evaluation that the project had received two advance payments for a total amount of EUR 98 000. However, primarily due to certain costs having been found ineligible, the project balance showed a deficit of EUR 37 488.85. The financial evaluation listed the ineligible costs and gave reasons for them having been found ineligible. The reasons given were mainly lack of certain specific information



regarding the costs in question. By letter of 7 May 2002, the complainant questioned certain details in the financial evaluation. However, he does not seem to have submitted any further supporting documents.

4.3 On the basis of the above, the Ombudsman concludes that the complainant was informed that the eligibility of expenditure would be checked during the evaluation of the final report. He was also informed that missing or incomplete information would make certain project costs ineligible and that the Commission considered there to be a deficit in the balance of the project budget. The complainant was furthermore given both time and opportunities to submit the final report and to provide further information regarding the costs that had been found ineligible. In view thereof, the Ombudsman considers that the Commission is not responsible for the complainant having mistakenly formed the view that the lack of submission of the final report would only lead to a forfeit of the part of the funding not yet received. The complainant's argument in this regard does not, therefore, provide the Ombudsman with any ground to sustain the claim that the Commission should drop its demand for a refund of money received under the project.

5 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) The Statute of the European Ombudsman is available on the Ombudsman's website:
<http://www.ombudsman.europa.eu/lbasis/en/statute.htm> [Link].