

Decision of the European Ombudsman on complaint 3110/2004/GG against the European Commission

Decision

Case 3110/2004/GG - Opened on 25/10/2004 - Decision on 05/04/2005

The project "Saneamiento Líquido y Sólido en Diudades Intermedias en Honduras", which was financed by the EU in the framework of the Regional Programme for the Reconstruction of Central America, had the purpose of repairing and improving the infrastructure of towns in Central America that had been hit by the hurricane "Mitch". A German national, who worked for a German consultancy firm, was the director of the project until he was replaced by another person at the request of the Commission's Delegation in Managua.

In his complaint to the Ombudsman, he alleged that the preparation of the project had been deficient and that there had been unnecessary delays. He also alleged that the Commission had acted discriminatorily, for example in only examining the problem of the use of service cars in his project. The private use of service cars had always been tolerated in other projects. Furthermore, the complainant took the view that the Commission had acted wrongly when it had asked his company to replace him.

The Commission rejected the allegation that the project had been badly prepared. It submitted that the delays from which the project had suffered from its very beginning had been caused both by the complainant's excessive zeal for perfection and by his non-respect of the Commission's tender procedure and instructions in several instances. This had resulted in the annulment of several tenders and had made it necessary to restart the procedure.

Concerning the use of service cars for private purposes, the Commission pointed out that the relevant rules clearly stated that the vehicles were only to be used for work purposes. Despite repeated instructions by the Delegation, this had not been respected in the present case.

The Ombudsman noted that the Community courts had made it clear that no person may rely, in support of a claim that the principle of equal treatment had been infringed, on an unlawful act committed in favour of another person. He considered that the fact that other persons may illegally have used service cars for private purposes without being stopped by the Commission did not prevent the Commission from acting as it did towards the complainant. However, in a further remark, the Ombudsman added that he would find it most useful and in keeping with principles of good administration if the Commission could consider re-examining this issue in so far as the other contracts in the same programme were concerned.



Concerning the allegedly unjustified request to replace the complainant, the Commission submitted that the complainant's performance had not been up to the expected standard. The Delegation had observed that the tense relationship between the complainant and his subordinate had had serious implications for the functioning of the project. According to the Commission, its decision to ask for the replacement of the complainant had been justified for the sake of good financial management. The complainant submitted that his subordinate had been unable to fulfil his duties and that he had asked, without success, for him to be replaced.

The Ombudsman considered that the complainant's observations would appear to lend credibility to the Commission's argument that there had been a tense relationship between the complainant and his subordinate and that this had had serious implications on the functioning of the project. He took the view that the fact that the complainant had, on several occasions, failed to comply with provisions and instructions regarding tender procedures would as such be sufficient to justify the Commission's decision.

Having found that the complainant had not established any of his allegations, the Ombudsman closed the case with a finding of no maladministration.

The Commission subsequently reacted to the Ombudsman's further remark by stating that there were clear rules that stipulated that service cars are to be used exclusively for work purposes. These rules also foresee that a strict control on the use of vehicles is kept by the administration by means of an updated logbook.

The Commission further informed the Ombudsman that following his observation and for fairness purposes, it had decided to carry out additional verifications on five projects being implemented in Honduras.

Strasbourg, 5 April 2005

Dear Dr. H.,

On 12 October 2004, you made a complaint against the European Commission to the European Ombudsman concerning a project (PRRAC/H/SE/01/045) in Central America (Honduras).

On 25 October 2004, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 31 January 2005. I forwarded it to you on 2 February 2005 with an invitation to make observations, which you sent on 7 February 2005.

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

THE COMPLAINT

Background

The present complaint concerns a project (PRRAC/H/SE/01/045) in Central America (Honduras) for which the complainant, a German national who worked for a German consultancy firm, was



responsible. The project, which was financed by the EU, appears to have had the purpose of repairing and improving the infrastructure of towns in Central America that had been hit by the hurricane 'Mitch'. More particularly, waste-water treatment systems and facilities for the orderly disposal of rubbish were to be built in a number of cities that had been selected.

It appears that the project was fraught with various problems. In November 2003, the Commission asked the German consultancy firm to replace the complainant by another person.

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On 22 February 2004, the complainant turned to the Ombudsman.

According to the complainant, the choice of cities was arbitrary and not based on any criteria. For reaching such a conclusion, he gave the example of the city of Talanga. According to the complainant, only two of these cities had infrastructure that had been affected by the hurricane. As a result of the problems that ensued, the project had to be reviewed and a new concept for its implementation had been submitted to and approved by the Commission.

According to the complainant, however, no written approval had ever been given. The complainant also submitted that certain authorisations had been granted belatedly and that there had been delays as regards payments by the Commission.

According to the complainant, the Commission's agent in charge of the project had interviewed the local staff in the absence of himself and a further person involved. The complainant considered this to be discriminatory and inadmissible. He also submitted that the Commission had examined the problem of the use of service cars only in his project. It appears that the complainant had used a service car also for private purposes. In the complainant's view, doing so had been necessary for security reasons.

According to the complainant, his written complaints had been dealt with belatedly or not at all.

The complainant further took the view that the Commission had acted wrongly when it had asked his company to replace him.

On the basis of the above, the complainant made the following allegations:

- (1) The preparation of the project had been absolutely deficient and insufficient;
- (2) There had been administrative irregularities;
- (3) There had been discrimination and misuse of powers;
- (4) There had been unnecessary delays in handling the project; and
- (5) The "Solicitud de Reemplazo del Director del Proyecto" of 7 November 2003 had been unjustified and unfounded.



The complainant submitted the following claims:

- (1) He should be rehabilitated and receive compensation;
- (2) Similar projects and a similar waste of taxpayers' money should be avoided in the future;
and
- (3) The relevant project should be continued in a reasonable way.

On the basis of the information that had been provided by the complainant, the Ombudsman found it very difficult to establish the relevant facts. It was also impossible to ascertain whether the appropriate administrative approaches had been made.

In the light of the above, the Ombudsman informed the complainant on 19 March 2004 that there were insufficient grounds for an inquiry.

The letter of 18 April 2004

On 18 April 2004, the complainant provided certain clarifications. However, it was still not possible to ascertain whether the appropriate prior approaches had been made. The Ombudsman informed the complainant accordingly on 6 May 2004.

The letter of 20 May 2004

In a further letter of 20 May 2004, the complainant referred to certain oral contacts that he had made with the Commission. In his reply of 23 June 2004, the Ombudsman pointed out that he considered a more formal approach to be appropriate.

The letter of 12 August 2004

On 12 August 2004, the complainant wrote to the Commission (with a copy to the Ombudsman).

The present complaint

On 12 October 2004, the complainant informed the Ombudsman that he had received no reply from the Commission. Since the complainant asked the Ombudsman to intervene, this letter was registered as a new complaint (complaint 3110/2004/GG).

THE INQUIRY

The Commission's opinion

In its opinion submitted in January 2005, the Commission made the following comments:

Background information

In the framework of the Regional Programme for the Reconstruction of Central America "PRRAC"), the project "Saneamiento Líquido y Sólido en Ciudades Intermedias en Honduras" (project PRRAC/H/SE/01/045) was intended to contribute to the rehabilitation and extension of infrastructure, equipment and management of sewage services in several Honduran cities, thus supporting change towards a more sustainable development model. As to the city of Talanga, the project foresaw the implementation of a pilot project for the collection of waste.

The co-ordination of the project's activities was carried out by the Project Management Unit ("PMU") under the responsibility of the European Technical Assistance. The PMU consisted, on the one hand, of the European Technical Assistance and, on the other hand, of the Local



Technical Assistance.

The European Technical Assistance contract had been awarded to the Beller consortium. This 34-month contract had been signed by the Commission and by Beller Consult GmbH (on behalf of the consortium) on 26 November 2001 and had commenced on 15 March 2002. According to the contract's Technical and Administrative Provisions ("TAPs"), the team consisted mainly of a Director and an Administrator.

The complainant, an employee of Beller Consult GmbH, worked as the project's Director from the commencement of the contract until the date on which he was replaced at the request of the Commission's Delegation in Managua ("the Delegation").

As regards the complainant's allegations

1) Allegedly deficient and insufficient preparation of the project

The complainant alleged that the choice of cities had been arbitrary and not based on any criteria. For reaching such a conclusion, he gave the example of the city of Talanga. According to the complainant, the fact that this town lacked a primary sanitary sewer collection system was not consistent with the Talanga project's alleged objective to provide secondary sanitary sewer networks.

The complainant's argument had an erroneous foundation, since - as stated in Article 1.3 of the TAPs - the project's objective was to contribute to the rehabilitation, improvement and enlargement of the sewerage system, the sewage treatment plant and the collecting and disposal systems for household solid waste.

On the other hand, the diagnosis made by the Technical Assistance Unit responsible for preparing the PRRAC projects had acknowledged that the town of Talanga had neither a sanitary sewer collection system nor a waste-water treatment plant. This document had also recommended that the final definition of both sewerage and treatment plant systems should be done by the PMU.

Furthermore, it was not the Technical Assistance's role to question the choice of cities. In the consortium's proposal, it had been stated that the consultant considered both the project's planning and preparation documents and the quality of the tender documents as a good basis for beginning to implement the project.

2) Alleged administrative irregularities

The complainant alleged that the Commission had failed to approve both the Global Operational Plan ("GOP") and the Annual Work Plan 1 ("AWP-1"). It should be noted that the GOP was an indicative document on the overall planning of activities and the distribution of the budget throughout the project's lifecycle. The AWP-1 represented the contractual basis for making payments, and included a detailed action and financing plan based on the general planning of the GOP.



The PMU had sent the GOP to the Delegation at the beginning of October 2002. The Delegation had then requested corrections to be made to both the GOP and the AWP-1. The latest versions of these documents had been sent to the Delegation on 22 November 2002. The Delegation informed the PMU on 4 December 2002 by telephone that the documents had been approved. Since the proposed changes requested amendments to the TAPs, it had been necessary to adopt an addendum to the contract before formalising the approval of both the GOP and the AWP-1. The GOP and the AWP-1 had been formally approved on 17 January 2003. This fact did not stop the execution of activities, since both plans had already been approved.

As regards the Task Manager's request to transfer the complainant's power of attorney to the local engineer, Article 6.1 of the TAPs and Article 3.3 of the Terms of Reference for the technical assistance contract stipulated the principle of co-signature of tender documents. The Delegation had requested that a delegation of signature be made in order to guarantee financial management in cases of a prolonged absence of the expert who was authorised to sign.

3) Alleged discrimination and misuse of powers

The complainant alleged that the local staff had been questioned twice in private, without either his or the Administrator's presence. Having observed that there were internal problems in the team, it had been the Commission's obligation to maintain close contact with the staff for the purpose of analysing and remedying specific problems encountered in the implementation of the project.

As regards the use of vehicles, point C.3 of the above-mentioned Terms of Reference clearly stated that vehicles were only intended for work purposes. Despite repeated instructions by the Delegation, this provision had not been respected and vehicles had been used for private purposes. The argument of security reasons due to the situation in Honduras and the fact that service cars of other PRRAC projects had also been used for personal purposes did not justify the infringement of the above-mentioned provision.

4) Allegedly unnecessary delays in handling the project

The complainant alleged that delays both in answering his request for the extension of the project and in the Task Manager's visiting the project had caused prejudice to the project.

Without obtaining prior authorisation from the Delegation, the complainant had publicly announced to the national authorities the possible extension of the project, disregarding opinions expressed by the Delegation's representatives. Article 3.5 of the above-mentioned Terms of Reference stated that the European experts were to abstain from promoting the project's enlargement or extension by their own initiative and/or from inducing other bodies to submit such proposals. After having expressed its reluctance to extend the project's duration on several occasions, the Commission informed the complainant by letter of 1 October 2003 that there was no justified reason for such an extension.



The fact that the Delegation did not authorise the extension of the project's duration had not delayed the implementation of the project. On the contrary, it had contributed to respect for the schedule. Indeed, from the very beginning the project had suffered from delays. At the beginning of 2003, the Delegation had received the tender dossiers. The Delegation had then observed that there were problems with tenders exceeding EUR 30 000, since the Community's existing legislation had not been observed. In spite of the Delegation's efforts to be flexible on condition that these rules were observed, the repeated omissions provoked delays in the project's implementation of approximately one year.

The delays had been caused both by the complainant's excessive zeal for perfection and the non-respect of the Commission's tender procedure and instructions.

As regards the excessive zeal for perfection, the complainant had insisted - against the opinion of the PMU's team - on the need for launching tenders for remaking designs, since he had considered the designs of the FHIS (the Honduran Social Investment Fund) not to be good enough.

In several tender dossiers, the complainant had applied his own criteria, disregarding the Commission's instructions, resulting in the tenders being delayed. The non-respect of certain provisions had resulted in the annulment of several tenders (1) and made it necessary to restart the procedure.

As to the delays in the visits of the Task Manager to the project, these delays had been justified since the Task Manager had been needed at the Delegation headquarters. Furthermore, the Task Manager's role was not to assist the Project Director, but to check and monitor the latter's performance in executing the project.

5) Allegedly unjustified and unfounded request to replace the project's Director

In monitoring the project, the Commission had observed that the team leader's performance was not up to the expected standard and that the project's implementation was affected by some serious problems. The co-signature of tender documents by both the Director and the Administrator had repeatedly been disregarded by the complainant, thus limiting the Administrator's participation in management tasks. Furthermore, the Delegation had observed that the tense relationship between the Director and the Administrator had serious implications for the functioning of the PMU.

The Commission's decision to ask for the replacement of the complainant as project Director in accordance with Article 15.3 of the contract was justified for the sake of good financial management and the Commission's obligation to ensure that the funds of the EU were spent in accordance with existing provisions.

As regards the complainant's claims

1) Rehabilitation and compensation

The Commission had acted with a view to securing the future development of the project. It had



not intended to call into question the complainant's expertise. Article 12 of the contract provided that the Commission did not bear any responsibility as regards claims for damages deriving from the implementation of the project. As regards non-contractual liability, the Commission had acted reasonably and committed no fault that would allow the complainant to claim compensation.

2) Avoidance of similar projects and of a similar waste of taxpayers' money in the future

The Commission did not share the complainant's view regarding the unsuitability of the project. It should be noted that this EUR 11 million project would benefit 37 000 inhabitants in six Honduran villages.

3) Continuation of project in a reasonable way

Once the new Director had taken office, the PMU, together with the external assistance experts and local staff, had revised and improved the existing designs and prepared the financing contracts with the villages. That had allowed the project partially to recover the wasted time. In less than three months, the tender dossiers had been ready to be handed over to the municipalities.

Conclusion

The Commission concluded by saying that its services had acted properly and that therefore no maladministration had occurred in its view.

The complainant's observations

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

Background information

It was not correct to say that the project foresaw the implementation of a pilot project for the collection of waste in Talanga. This pilot project had only been conceived by the Technical Assistance Unit after a revision and detailed analysis of the relevant documents. It had been suggested to the Delegation in a report dated 7 August 2002 and approved by the Delegation by letter of 26 August 2002.

As regards the allegations

1) Allegedly deficient and insufficient preparation of the project

The fact that the preparation of the project had been deficient and inadequate was shown in detail in the above-mentioned report of 7 August 2002.

The remark in the consortium's proposal that both the project's planning and preparation documents and the quality of the tender documents were considered by the consultant as a good basis for beginning to implement the project only concerned the documents that had been known until the tender. A document called "Diagnostico y Perfil detallado del Proyecto de Saneamiento líquido y sólido de la Ciudad Honduras" was only handed over to the complainant in March 2002.

2) Alleged administrative irregularities



It was not usual to approve important documents such as the GOP and the AWP-1 by telephone, particularly given that the complainant had been expressly told by the Head of the Delegation that no obligations could be derived from e-mails or telephone calls. The Head of the Delegation had been alerted to the problems at a meeting, on the occasion of which a note of 12 February 2003 setting out the problems had been handed over.

Given that official payments had been impossible due to the absence of the approvals, the project had been financed by an interim loan and by resources provided by the consortium. This had been approved by the Head of the Delegation on 12 February 2003.

3) Alleged discrimination and misuse of powers

It was unclear how so-called internal problems (e. g. the duty of staff to be present, the prohibition to download pornographic content from the internet) had come to the attention of the Commission.

As regards the use of vehicles, a partially private use of service cars for trips from the home to the office had been tolerated in all other PRRAC projects until the time of the complainant's departure in February 2004.

4) Allegedly unnecessary delays in handling the project

The speech in which the complainant had publicly announced a possible extension of the project had previously been submitted to and checked with the Delegation.

The fact that the Delegation had taken more than five months to reject, by note of 3 June 2003, a tender that had been proposed on 29 January 2003, would appear to have contributed to the delay. There had been no excessive zeal for perfection. The relevant planning documents had not matched minimum requirements and it would have been irresponsible to base a tender on them.

5) Allegedly unjustified and unfounded request to replace the project's Director

In principle, all documents had been signed by the Director and the Administrator. After the Administrator had committed horrendous mistakes and after he had called the complainant "Hitler", the complainant had asked the consortium to replace the Administrator. This request had not been accepted, which resulted in extra work for the Director. The Administrator had been unable to fulfil his duties.

THE DECISION

1 Allegedly deficient and insufficient preparation of the project

1.1 The present complaint concerns the project "Saneamiento Líquido y Sólido en Ciudades Intermedias en Honduras" (project PRRAC/H/SE/01/045). This project was intended, in the



framework of the Regional Programme for the Reconstruction of Central America "PRRAC"), to benefit several Honduran cities. The co-ordination of the project's activities was carried out by the Project Management Unit ("PMU") under the responsibility of the European Technical Assistance. The PMU consisted, on the one hand, of the European Technical Assistance and, on the other hand, of the Local Technical Assistance. The European Technical Assistance contract had been awarded to a consortium. This 34-month contract had been signed by the Commission and the consortium on 26 November 2001 and had commenced on 15 March 2002. According to the contract's Technical and Administrative Provisions ("TAPs"), the team consisted mainly of a Director and an Administrator. The complainant, a German consultant, worked as the project's Director from the commencement of the contract until the date on which he was replaced at the request of the Commission's Delegation in Managua ("the Delegation").

1.2 In his complaint to the Ombudsman, the complainant alleged that the preparation of the project had been deficient and insufficient. He submitted that the choice of cities had been arbitrary and not based on any criteria. For reaching such a conclusion, he gave the example of the city of Talanga. According to the complainant, the fact that this town lacked a primary sanitary sewer collection system was not consistent with the project's objective to provide secondary sanitary sewer networks.

1.3 In its opinion, the Commission submitted that the complainant's argument had an erroneous foundation, since the project's objective had been to contribute to the rehabilitation, improvement and enlargement of the sewerage system, the sewage treatment plant and the collecting and disposal systems for household solid waste. As to Talanga, the project had foreseen the implementation of a pilot project for the collection of waste. The Commission further pointed out that in the consortium's proposal, it had been stated that the consultant considered both the project's planning and preparation documents and the quality of the tender documents as a good basis for beginning to implement the project.

1.4 In his observations, the complainant stressed that it was not correct to say that the project foresaw the implementation of a pilot project for the collection of waste in Talanga. According to the complainant, this pilot project had only been conceived by the Technical Assistance Unit and had been suggested to the Delegation in a report dated 7 August 2002. The Delegation had approved it by letter of 26 August 2002.

1.5 The Ombudsman notes that the complainant does not dispute that the project comprised (at least from 26 August 2002 onwards) the construction of a pilot project for the collection of waste in Talanga. In these circumstances, the fact that this town may have lacked a primary sanitary sewer collection system does not show that the project had been inadequately prepared.

1.6 In his observations, the complainant stressed that the remark in the consortium's proposal that both the project's planning and preparation documents and the quality of the tender documents were considered by the consultant as a good basis for beginning to implement the project had only concerned the documents that had been known until the tender.

1.7 The Ombudsman notes that the complainant does not appear to dispute that the statement



in the consortium's proposal quoted by the Commission contradicts his view that the project had been inadequately prepared. It is true that this statement can only have referred to documents that were known to the consortium at the relevant time. In his observations, the complainant submitted that the document called "Diagnostico y Perfil detallado del Proyecto de Saneamiento líquido y sólido de la Ciudad Honduras" had only been handed over to him at a later date. However, the Ombudsman considers that the complainant has not shown how this document could support his view that the project had been inadequately prepared.

1.8 In these circumstances, the Ombudsman takes the view that the complainant has not substantiated his first allegation.

2 Alleged administrative irregularities

2.1 The complainant alleged that the Commission's failure properly to approve both the Global Operational Plan ("GOP") and the Annual Work Plan 1 ("AWP-1") and the Task Manager's request to give a power of attorney to the local engineer constituted administrative irregularities.

2.2 In its opinion, the Commission pointed out that the PMU had sent the GOP to the Delegation at the beginning of October 2002. The Delegation had then requested corrections to be made to both the GOP and the AWP-1. According to the Commission, the latest versions of these documents had been sent to the Delegation on 22 November 2002. The Delegation had informed the PMU on 4 December 2002 by telephone that the documents had been approved. Since the proposed changes requested amendments to the TAPs, it had been necessary to adopt an addendum to the contract before formalising the approval of both the GOP and the AWP-1. According to the Commission, the GOP and the AWP-1 had been formally approved on 17 January 2003.

2.3 The Ombudsman considers that the Commission has put forward what appears to be a reasonable explanation for the fact that the relevant plans had first been approved by telephone and that the formal approval took place only subsequently.

2.4 In its opinion, the Commission submitted that the fact that the plans had only been approved by telephone at first had not stopped the execution of activities. In his observations, the complainant appeared to dispute this statement by stressing that official payments had been impossible due to the absence of the (formal) approval. The Ombudsman notes, however, that the complainant also pointed out that, in the absence of the formal approval, the project had been financed by an interim loan and by resources provided by the consortium and that this had been approved by the Delegation on 12 February 2003. In these circumstances, the Ombudsman takes the view that the complainant has not shown that any possible delay in approving the relevant plans had negative consequences for the project.

2.5 As regards the Task Manager's request that the complainant should give power of attorney to the local engineer, the Commission explained that Article 6.1 of the TAPs and Article 3.3 of the Terms of Reference for the technical assistance contract stipulated the principle of co-signature of tender documents. According to the Commission, the Delegation had requested that a delegation of signature be made in order to guarantee financial management in cases of a prolonged absence of the expert who was authorised to sign.



2.6 The Ombudsman considers that the Commission has provided a reasonable explanation for its request that a delegation of signature be made.

2.7 In these circumstances, the Ombudsman takes the view that the complainant has not established his second allegation.

3 Alleged discrimination and misuse of powers

3.1 The complainant alleged that the Commission was guilty of discrimination and of a misuse of powers. In this context, he referred to the fact that the local staff had been questioned twice in his absence. He also noted that he had been criticised for having used his service car for private purposes whereas a partially private use of service cars had been tolerated in all other PRRAC projects until the time of the complainant's departure in February 2004.

3.2 In its opinion, the Commission took the view that having observed that there were internal problems in the team, it had been its obligation to maintain close contact with the staff for the purpose of analysing and remedying specific problems encountered in the implementation of the project.

3.3 The Ombudsman considers that this explanation appears to be reasonable and that the complainant has thus not established his view that the Commission's approach constituted a misuse of powers.

3.4 As regards the use of service cars, the Commission submitted that point C.3 of the above-mentioned Terms of Reference clearly stated that vehicles were only intended to be used for work purposes. According to the Commission, and despite repeated instructions by the Delegation, this provision had not been respected in the present case.

3.5 The Ombudsman considers that it follows from his observations that the complainant does not dispute the Commission's view that he was not allowed to use service cars for private purposes. He further notes that the Community courts have made it clear that no person may rely, in support of his claim that the principle of equal treatment has been infringed, on an unlawful act committed in favour of another person (2) . The fact that other persons may illegally have used service cars for private purposes without being stopped by the Commission thus did not prevent the Commission from acting as it did towards the complainant.

3.6 In these circumstances, the Ombudsman takes the view that the complainant has not established his third allegation. However, a further remark will be made as regards the use of service cars for private purposes.

4 Allegedly unnecessary delays in handling the project

4.1 The complainant alleged that there had been unnecessary delays on the part of the Commission, as regards both the contract as such and the Task Manager's visits to the project.

4.2 In its opinion, the Commission submitted that the project had suffered from delays from the very beginning and that these delays had been caused both by the complainant's excessive zeal for perfection and by the non-respect of the Commission's tender procedure and



instructions. The Commission added that in several tender dossiers, the complainant had applied his own criteria, disregarding the Commission's instructions, something which had resulted in the tenders being delayed. The non-respect of certain provisions had resulted in the annulment of several tenders (3) and had made it necessary to restart the procedure.

4.3 In his observations, the complainant rejected the Commission's view that he had shown an excessive zeal for perfection. He also submitted that the fact that the Delegation had taken more than five months to reject, by its note of 3 June 2003, a tender that had been proposed on 29 January 2003, would appear to have contributed to the delay.

4.4 The Ombudsman notes that the complainant has not objected to the Commission's argument that he had failed to comply with provisions and instructions regarding tender procedures and that his own behaviour therefore resulted in delays. As regards the Commission's note of 3 June 2003, it should be noted that this note refers to a document dated 29 January 2003 and to another one dated 22 April 2003. In the absence of more specific information on the contents of these documents, the Ombudsman is unable to find that the Commission's decision of 3 June 2003 had been unnecessarily delayed.

4.5 In these circumstances, the Ombudsman takes the view that the complainant has not established his fourth allegation.

5 Allegedly unjustified and unfounded request to replace the project's Director

5.1 The complainant alleged that the Commission's request of 7 November 2003 to the consortium to replace him as the Director of the project had been unjustified and unfounded.

5.2 In its opinion, the Commission submitted that it had observed that the team leader's performance was not up to the expected standard and that the project's implementation was affected by some serious problems. In this context, the Commission pointed out that the Delegation had observed that the tense relationship between the Director and the Administrator had serious implications for the functioning of the PMU. According to the Commission, its decision to ask for the replacement of the complainant as project Director in accordance with Article 15.3 of the contract had been justified for the sake of good financial management and the Commission's obligation to ensure that the funds of the EU were spent in accordance with existing provisions.

5.3 In his observations, the complainant submitted that the Administrator had been unable to fulfil his duties and that he (the complainant) had asked the consortium, without success, to replace him.

5.4 The Ombudsman considers that the complainant's observations would appear to lend credibility to the Commission's argument that there had been a tense relationship between the Director and the Administrator and that this fact had serious implications for the functioning of the PMU. In any event, the Ombudsman takes the view that the fact that the complainant had, on several occasions, failed to comply with provisions and instructions regarding tender procedures (see point 4.4 above) would as such be sufficient to justify the Commission's decision.



5.5 In these circumstances, the Ombudsman takes the view that the complainant has not established his fifth allegation.

6 The complainant's claims

6.1 In his complaint, the complainant submitted the following claims: (1) He should be rehabilitated and receive compensation; (2) similar projects and a similar waste of taxpayers' money should be avoided in the future; and (3) the relevant project should be continued in a reasonable way.

6.2 Given that the Ombudsman has not found any maladministration on the part of the Commission, there are no grounds further to inquire into the complainant's claims.

6.3 It should be noted that the Ombudsman's findings are based on the information that was submitted to him by the complainant and the Commission. If the complainant should consider that there is further information that could support his view that the project concerned constituted a waste of taxpayers' money, he could consider approaching the European Court of Auditors (12, rue Alcide de Gasperi, L-1615 Luxembourg).

7 Conclusion

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

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

FURTHER REMARKS

In its opinion, the Commission observed that service cars could not be used for private purposes under the rules applicable to the project concerned by the present complaint. However, the Commission did not seem to dispute the complainant's argument that service cars of other PRRAC projects had also been used for personal purposes. In his observations, the complainant submitted that this had been tolerated by the Commission. The Ombudsman would therefore find it most useful and in keeping with principles of good administration if the Commission could consider re-examining this issue in so far as the other PRRAC contracts are concerned.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) In this context, the Commission referred to a number of notes (including one dated 3 June 2003) in which it had drawn the complainant's attention to the conditions that had to be respected and asked for the annulment of tenders. Copies of these notes were submitted to the Ombudsman.



(2) See Case 188/83 *Witte v Parliament* 1984 ECR 3465, paragraph 15.

(3) In this context, the Commission referred to a number of notes (including one dated 3 June 2003) in which it had drawn the complainant's attention to the conditions that had to be respected and asked for the annulment of tenders. Copies of these notes were submitted to the Ombudsman.