

## **Decision of the European Ombudsman on complaint 2569/2006/WP against the European Commission**

Decision

**Case 2569/2006/WP - Opened on 25/09/2006 - Decision on 19/07/2007**

Strasbourg, 19 July 2007

Dear Mr N.,

On 22 July 2006, you made a complaint to the European Ombudsman concerning late payment for your work as an expert evaluator for the Commission's Directorate-General for Research ("DG Research"). On 11 and 15 August and on 12 and 18 September 2006, you sent me further information relating to your complaint.

On 25 September 2006, I forwarded the complaint to the President of the Commission. The Commission sent the English version of its opinion on 22 December 2006 and a translation of it into German on 12 January 2007. I forwarded it to you on 19 January 2007. However, I informed you that I had noted that the Commission had not commented on two of your allegations and that I had therefore asked it for a supplementary opinion on these allegations, to be sent by 28 February 2007.

On 2 March 2007, the Commission asked for an extension of this deadline until 31 March 2007. I granted the requested extension. The Commission sent the English version of its supplementary opinion on 26 March 2007 and a translation of it into German on 29 March 2007. On 17 April 2007, I forwarded it to you with an invitation to make observations, which you sent on 25 May 2007.

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

### **THE COMPLAINT**

#### *Background*

The complainant worked as an independent expert for the European Commission's Directorate-General for Research ("DG Research"), evaluating replies to calls for proposals published under the Sixth Framework Programme.

On 4 July 2006, he wrote to the European Ombudsman, alleging that the Commission had failed to make a payment of nearly EUR 4000 to him, which would have been due on 3 July



2006 (complaint 2267/2006/AE). The complainant submitted further information on 8, 19 and 20 July 2006. However, given that it appeared that the Commission had indicated that it would make the payment in the near future (mid-August) and since the Ombudsman did not see any reason to doubt that this deadline would be respected, he considered that there were insufficient grounds to open an inquiry.

In another letter of 22 July 2006, the complainant referred to two further cases in which the Commission had allegedly failed to pay him in a timely fashion. Given that this letter contained new allegations, it was registered as a new complaint (complaint 2569/2006/WP).

On 11 August 2006, the complainant sent a further e-mail in which he provided details concerning the three cases. He specified and extended his allegations and claims. The complainant recalled that, in relation to an earlier complaint he had submitted to the Ombudsman (complaint 1266/2005/MF), which had also concerned late payments, the Commission had stated: "*[i]n May 2005, the Commission took measures summarised in an action plan to accelerate the payment to experts. As a result of these measures, the Commission has now reduced significantly the time taken to pay the experts participating in proposals evaluation.*" The Ombudsman had therefore concluded that the Commission had taken steps to settle the matter and he closed the case. However, the complainant considered that it now appeared that the Commission had seriously misled both him and the Ombudsman because its punctuality in making payments had not improved since that time. In order further to support this view, the complainant enumerated a number of other complaints to the Ombudsman concerning late payment by the Commission, in which the Ombudsman had come to the conclusion that the Commission had taken steps to settle the matter (1) .

In an e-mail of 15 August 2006, the complainant pointed out that the Commission had not respected the deadline it had set itself for payment in relation to the matter at issue in complaint 2267/2006/AE, so that he had still not received the amount that would have been due on 3 July 2006.

On 12 September 2006, the complainant informed the Ombudsman that, on 29 August 2007, he had finally received the payment due on 3 July 2006, 57 days after the relevant deadline. Furthermore, the Commission had failed to pay him interest for late payment. The complainant also informed the Ombudsman that, in relation to the second case he had referred to in his letter of 22 July 2006, he had been told that the payment would "*hopefully arrive within the next weeks*". In the third case, in which payment was also still outstanding, he had been asked to indicate which of his bank accounts the payment should be made to, although he had previously clarified this point. The complainant claimed that, given the time and additional costs he had had to invest in the matter, he should not only be paid interest on late payment, but also an additional full daily allowance of EUR 450 for each of the two outstanding payments.

In a further e-mail of 18 September 2006, the complainant informed the Ombudsman that, on 15 September 2006, the Commission had asked him for written confirmation of his banking details. However, he had replied that this confirmation was in the Commission's files and that it had been double-checked in May and in August 2006. Furthermore, the Commission had used an



outdated postal address, whereas all other Commission correspondence had been sent to his correct address.

In summary, the complainant made the following allegations:

(1) The Commission failed to make payments in good time in relation to the following appointments:

(a) CT-EX2002B010783-105 ("Science shops");

(b) CT-EX2002B010783-106 ("Science weeks"); and

(c) CT-EX2002B010783-107 ("Descartes prize for science communication").

(2) The Commission failed properly to reply to his enquiries concerning the payments.

(3) The Commission needlessly asked him for confirmation of his banking details and worked with outdated personal data.

The complainant made the following claims:

- The Commission should immediately make the two outstanding payments.
- The Commission should pay interest for late payment in relation to all three appointments.
- In order to compensate the complainant for the time and cost he had to invest in the matter, the Commission should pay him an additional full daily allowance for expert evaluators (EUR 450) for each of the two outstanding payments.
- The Commission should explain why it made wrong statements in its opinion on his complaint 1266/2005/MF as regards the measures it had taken to solve the problem of late payments.
- At certain times, the Commission was carrying out a particularly large number of evaluations. It should explain why it did not take any measures in these periods to guarantee timely payments to the evaluators according to the relevant rules. Such measures could indicatively include not allowing staff to take holidays in these periods or employing more staff.
- The Commission should provide evaluators with pre-paid travel tickets.
- The Commission should book and pay the hotel rooms for evaluators directly.
- The Commission's Directorate-General for Budget should immediately take measures to solve the problem of late payments.

## THE INQUIRY

### The Ombudsman's approach

The complainant did not appear to have raised his fifth claim in his direct contacts with the Commission. Given that this claim had therefore not been preceded by appropriate prior administrative approaches to the institution concerned, as required under Article 2(4) of the Ombudsman's Statute, the Ombudsman considered that he could not include it in his inquiry.

The Ombudsman noted that the complainant had raised his sixth, seventh and eighth claims in



his complaint 1266/2005/MF. However, at the time, they had not been taken up by the Ombudsman because the complainant had not made the appropriate prior administrative approaches. Given that there was nothing to show that he had made such approaches in the meantime, the Ombudsman considered that he could not deal with these allegations, either.

The Ombudsman therefore asked the Commission for an opinion on the complainant's allegations and on his claims numbered (1) to (4).

#### **The Commission's opinion**

In its opinion, the Commission explained that the independent experts who were invited to assist the Commission in evaluating proposals, in response to calls published under the Sixth Framework Programme, received a standard "appointment letter", which was annexed to the *Guidelines on proposal evaluation and selection procedures* (2). The financial conditions offered to such experts with respect to travel and subsistence costs, as well as to the fees for the services provided, were clearly defined in the appointment letter and its annexes. The appointment letter did not specify the time-limit for making payments to experts or the conditions for the payment of interest. By default, Article 106 of the Implementing Rules of the Financial Regulation (3) applied to these payments, which provided as follows:

*" Payment time limits and default interest*

*1. Sums due shall be paid within no more than forty-five calendar days from the date on which an admissible payment request is registered by the authorised department of the authorising officer responsible (...).*

*(...)*

*5. On expiry of the time limits laid down in paragraphs 1 and 2, the creditor may, within two months of receiving late payment, demand interest (...). "*

The Commission stated that, therefore, it did not automatically pay interest on late payments, but only upon request by the creditor.

#### *Concerning the complainant's first claim*

The Commission pointed out that the payment in relation to the "Science shops" appointment had reached the complainant's bank account on 29 August 2006.

In relation to the "Science weeks" appointment, the complainant had provided the required documents on 16 June 2006. However, during the summer vacation, the Commission had had to deal with a heavy workload, while payment had been further delayed due to a redistribution of budgetary lines following a reorganisation of DG Research that had come into effect on 1 October 2006. In practical terms, this had meant that these lines were not technically available for financial operations. The payment had been made on 25 October 2006, so that the 45-day deadline had been exceeded by 86 days.

In relation to the "Descartes prize" appointment, the Commission stated that the complainant had provided the required documents on 8 July 2006. The payment had been made on 4



October 2006. The 45-day deadline had been exceeded by 52 days.

*Concerning the complainant's second claim*

As to the complainant's claim that he should be paid interest, the Commission acknowledged that the complainant was entitled to receive interest. However, payment of interest for the complainant's three appointments had been delayed following the reorganisation of DG Research and the redistribution of budgetary lines. In all three cases, interest had been paid on 25 October 2006 (4) .

*Concerning the complainant's third claim*

As regards the complainant's claim that he should be compensated for the time and cost he had to invest in the matter, the Commission submitted that appointment letters for experts did not foresee any compensation for late payment other than the payment of interest.

*Concerning the complainant's fourth claim*

The Commission categorically refuted the complainant's submission that it had made false statements in an opinion on an earlier Ombudsman case as regards the measures it had taken to solve the problem of late payments.

It pointed out that, due to its specific mission, DG Research had extensive recourse to experts for project evaluations and processed approximately 22,000 payments to experts with appointment letters each year. In doing so, its task was twofold: (i) to make the best possible use of material and human resources in order to honour its contractual commitments in a timely manner, and in line with the provisions of the Financial Regulation; and (ii) to examine scrupulously all financial data, without sparing time and effort, in order to ensure the sound management of the European taxpayers' money.

The Commission submitted that the measures put in place pursuant to the action plan adopted in May 2005 had effectively resulted in the acceleration of payments to experts. However, the Commission's undertaking to overcome possible structural shortcomings that could generate delays in payments was a continuous one. This was why DG Research had decided to launch, in early October 2006, an internal audit of its administrative and financial procedures called "Time to pay". One of the areas on which the audit was focusing was precisely payments to experts with appointment letters. According to the Commission, the objective of the audit was critically to review current processes concerning payments made under the Fifth and Sixth Framework Programmes and to evaluate the regularity and effectiveness of the payment process, with a view to further reducing the time taken to pay expert evaluators. The first results of the audit were expected by the end of the year (5) .

The Commission stated that it was committed to the consistent and sincere efforts that should result in reducing the time to pay experts. In pursuit of the same objective, DG Budget had steadily reduced the backlog it had encountered during the summer of 2006 in validating experts' bank data. These were now created and validated within less than two weeks.

In conclusion, the Commission stated that, in this individual case, payment deadlines had been exceeded for a number of interrelated reasons, which by no means gave it grounds to dismiss the complainant's discontent. It acknowledged that, despite the efforts deployed in order to accelerate payments to experts, it had not, in the complainant's case, been able to respect the



time-limits. It stated that it sincerely regretted the delays and added that there was no compensation foreseen in case of late payment other than the payment of interest. However, the complainant had now received all outstanding payments and interest.

#### **The Ombudsman's request for a supplementary opinion**

Having received the Commission's opinion, the Ombudsman noted that the Commission had not commented on the complainant's second and third allegations. He therefore asked it to submit a supplementary opinion on these allegations.

#### **The Commission's supplementary opinion**

In reply to the complainant's allegation that the Commission had failed properly to reply to his enquiries concerning the payments, the Commission submitted that its services had replied to the complainant's e-mails, apart from the first two ones, in a timely manner. The fact that, as regards his first e-mails, the time-limit laid down in the Commission's Code of Good Administrative Behaviour had been exceeded by some days had been due to sickness and the absence of the official concerned during the summer vacation. However, the Commission had replied to the five e-mails received from the complainant between 2 August and 25 September 2006 in a timely manner. It enclosed a chronological list of the relevant communications.

The complainant had alleged that the Commission had needlessly asked him for confirmation of his banking details and had worked with outdated personal data. In this regard, the Commission recalled that, as stated in its opinion, it considered itself obliged to examine scrupulously all financial data, without sparing time and effort, in order to ensure the sound management of the European taxpayers' money. Whenever the system showed more than one bank account for a contract expert, the Commission officials asked the expert, in the interests of prudence, to confirm the account to which he or she wished to receive reimbursement. The Commission stated that this practice could indeed occasionally lead to delays in paying experts. However, its services had to give precedence to the security and the integrity of financial transactions over speed in carrying out payments.

The Commission restated that it sincerely regretted the delays that had occurred in the present case. It added that, in implementing the Seventh Framework Programme, it was committed to reducing the time for paying experts who were involved in the programme.

#### **The complainant's observations**

In his observations, the complainant thanked the Ombudsman for his efforts. However, he regretted that the complaints procedure had taken nine months so far and that, at the point when he was waiting for the payments, it had not been very useful for him.

The complainant stated that, since he had now received all outstanding payments and taken note of the Commission's opinions, he considered his complaint as having been dealt with.

However, the complainant stressed that he wished the Ombudsman to note in his decision closing the case that the complainant did not trust the Commission's undertaking, in its supplementary opinion, that it would accelerate payments. He pointed out that the Commission had repeatedly made this undertaking since the 1990s, without ever complying with it. He recalled that the Ombudsman had already made this issue the subject of an own-initiative inquiry, concluding, however, that the Commission had taken steps to tackle the problem that



appeared to be satisfactory (6) . The complainant argued that the steps the Ombudsman had referred to had not led to any sustained change in the Commission's punctuality in making payments. He also stressed that the Ombudsman had noted himself, in a press release of 3 May 2007 (7) , that late payments continued to be a problem. He recalled that guidelines for the timely handling of payments had been in place since 2000, but were not being adhered to. On the basis of the above, the complainant submitted that he failed to understand how the Ombudsman, in his decisions on complaints relating to late payment, continued to trust the Commission's promises.

## THE DECISION

### 1 Late payment and related issues

1.1 The complainant worked as an independent expert for the European Commission's Directorate-General for Research ("DG Research"), evaluating replies to calls for proposals published under the Sixth Framework Programme. In his complaint to the European Ombudsman, the complainant alleged that, in three cases, the Commission had failed to pay him for his services and to reimburse him in a timely fashion for the costs he had incurred. He pointed out that, in reply to an earlier complaint he had submitted to the Ombudsman (1266/2005/MF) and which had also concerned late payment, the Commission had stated that it had taken measures in order to accelerate payments to experts. Therefore, the Ombudsman had closed the case. However, according to the complainant, it now appeared that the Commission had seriously misled both him and the Ombudsman because its punctuality in making payments had not improved since that time. In his complaint, the complainant also raised a number of issues in relation to organisational and financial arrangements for experts working for the Commission, which could however not be included in the Ombudsman's inquiry because the complainant had not, with respect to these issues, made the prior administrative approaches, as required by Article 2(4) of the Ombudsman's Statute. The allegations on which the Ombudsman asked the Commission for an opinion were the following:

(1) The Commission failed to make payments in good time in relation to the following appointments:

(a) CT-EX2002B010783-105 ("Science shops");

(b) CT-EX2002B010783-106 ("Science weeks"); and

(c) CT-EX2002B010783-107 ("Descartes prize for science communication").

(2) The Commission failed properly to reply to his enquiries concerning the payments.

(3) The Commission needlessly asked him for confirmation of his banking details and worked with outdated personal data.

The following claims were taken up in the Ombudsman's inquiry:

- The Commission should immediately make the two outstanding payments.





- The Commission should pay interest for late payment in relation to all three appointments.
- In order to compensate the complainant for the time and cost he had to invest in the matter, the Commission should pay him an additional full daily allowance for expert evaluators (EUR 450) for each of the two outstanding payments.
- The Commission should explain why it made wrong statements in its opinion on his complaint 1266/2005/MF as regards the measures it had taken to solve the problem of late payments.

1.2 In its opinion, the Commission acknowledged that, in relation to the three appointments that the complainant had referred to in his complaint, payment had been delayed by 52, 59 and 86 calendar days respectively. As far as the "Science weeks" appointment was concerned, the Commission added that, during the summer vacation, it had had to deal with a heavy workload, while payment had been further delayed due to a redistribution of budgetary lines, following a reorganisation of DG Research that had come into effect on 1 October 2006. In practical terms, this had meant that these lines were not technically available for financial operations. As to the complainant's claim that he should be paid interest, the Commission acknowledged that he was entitled to receive interest. However, payment of interest for the three appointments had been delayed following the reorganisation of DG Research and the redistribution of budgetary lines. In all cases, interest had been paid on 25 October 2006.

As regards the complainant's claim for compensation, the Commission submitted that appointment letters for experts did not foresee any compensation for late payment other than the payment of interest.

The Commission stated that it sincerely regretted the delays, which had occurred for a number of interrelated reasons and despite its efforts to accelerate payments to experts. However, the complainant had now received all outstanding payments and interest. In its supplementary opinion, the Commission added that, in implementing the Seventh Framework Programme, it was committed to reducing the time for paying experts who were involved in the programme.

1.3 In his observations, the complainant stated that, since he had received all outstanding payments and taken note of the Commission's opinions, he considered his complaint as having been dealt with. However, he stressed that he wished the Ombudsman to note in his decision closing the case that the complainant did not trust the Commission's undertaking that it would accelerate payments, given that it had repeatedly made this undertaking without ever complying with it. The complainant thanked the Ombudsman for his efforts. However, he regretted that the complaints procedure had taken a rather long time and that, at the point when he was waiting for the payments, it had not been very useful for him.

1.4 In relation to this latter point, the Ombudsman would like to recall that his procedure in dealing with complaints is a written one that requires the hearing of both sides before a decision can be taken. Thus, the procedure cannot be expected to yield immediate results. Furthermore, it has to be noted that the Ombudsman is not entitled to grant interim relief to complainants. However, the Ombudsman notes that, in the present case, the Commission made the last outstanding payments on 25 October 2006, that is, within one month of the opening of the Ombudsman's inquiry. Following the Ombudsman's initiative, the substantive problem at issue





therefore appears to have been resolved rather quickly. However, the Ombudsman is of course aware that, at that point, the complainant had already been waiting for the relevant payments for a considerable time.

1.5 Given that the complainant has indicated that he considered his complaint as having been dealt with, the Ombudsman takes the view that there is no need for him to inquire further into the complainant's allegations and claims. However, the Ombudsman notes that, as the complainant correctly pointed out, the Commission has, over the past years, repeatedly presented similar arguments in cases of late payment brought before the Ombudsman and has repeatedly announced measures to solve this problem. On this basis, the Ombudsman closed his own-initiative inquiry OI/5/1999/(IJH)GG as well as, for example, his inquiry into the complainant's former complaint 1266/2005/MF. However, on the basis of the present case, as well as on the basis of certain other cases the Ombudsman has dealt with recently, it appears that late payment by the Commission continues to be a problem which, despite repeated undertakings to improve, has still not been tackled satisfactorily.

1.6 Therefore, the Ombudsman considers it appropriate to look into the issue of late payment again on a broader basis, namely in the framework of a new own-initiative inquiry, which he will open in the near future.

1.7 It appears useful to add a few considerations regarding the complainant's submission that the Commission had made false statements in an opinion on an earlier Ombudsman case. On the basis of the information at his disposal, the Ombudsman is currently not in a position to determine which measures the Commission took pursuant to its action plan and how efficient they were. For the reasons set out above, he will not pursue his inquiries into this issue further in the present context. However, the effectiveness of the measures taken by the Commission in order to accelerate payments will certainly be examined in the framework of the Ombudsman's new own-initiative inquiry.

## **2 Conclusion**

It appears from the Commission's comments and the complainant's observations that there are insufficient grounds for the Ombudsman to continue his inquiry into the present complaint. The Ombudsman therefore closes the case.

However, the Ombudsman notes that it appears that late payment by the Commission continues to be a problem which, despite repeated undertakings to improve, has still not been tackled satisfactorily. He considers that this problem merits to be examined on a broader basis. Therefore, the Ombudsman will open a new own-initiative inquiry into this issue in the near future.

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

Yours sincerely,



P. Nikiforos DIAMANDOUROS

(1) Inter alia, the complainant mentioned complaints 171/2000/IJH, 1113/2001/PB and 700/2004/GG.

(2) The Guidelines were adopted by Commission Decision C(2003)883 of 27 March 2003.

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

(4) According to the Commission's opinion, the relevant sums and dates are the following:

Appointment letter

Amount to be paid

Payment made

Delay (days)

Interest paid

"Science shops"

EUR 3880.97

29 August 2006

59

EUR 61.67

"Science weeks"

EUR 4684.53

25 October 2006

86

EUR 108.50

"Descartes prize"



EUR 4354.12

4 October 2006

52

EUR 60.85

(5) Given that the Commission's opinion was dated 13 December 2006, it is assumed that the Commission refers to the end of the year 2006.

(6) Own-initiative inquiry OI/5/99/(IJH)GG. The decision is available on the Ombudsman's website ( <http://www.ombudsman.europa.eu/decision/en/99oi5.htm> [Link]).

(7) The press release can be consulted on the Ombudsman's website ( <http://www.ombudsman.europa.eu/release/en/2007-05-03.htm> [Link]).