

## Decision of the European Ombudsman on complaint 1367/2007/ELB against the European Commission

Decision

**Case 1367/2007/ELB - Opened on 04/07/2007 - Decision on 02/07/2008**

Strasbourg, 2 July 2008

Dear Mr G.,

On 11 May 2007, acting on behalf of an association called "*Association Groupe L'image*", you submitted a complaint to the European Ombudsman against the European Commission concerning project "07A005670/e-learning Imageduc 2002-5775".

On 4 July 2007, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 15 October 2007. I forwarded it to you with an invitation to make observations, which you sent on 13 December 2007.

On 8 and 10 December 2007, you wrote to me to ask for further information on the ongoing procedure. I replied to you on 21 January 2008. You sent additional documentation relating to your complaint on 25 February 2008 and 16 April 2008.

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

### THE COMPLAINT

The facts according to the complainant can be summarised as follows.

The complaint was lodged by the President of an association called "*Association Groupe L'image*". On 20 December 2002, the President, hereafter the complainant, signed a grant agreement with the Commission to carry out a project called "Imageduc". The aim of the Imageduc project was to create a teaching Internet site and to organise an international meeting on the same subject.

The Commission paid the first instalment, which corresponded to 80 % of the amount of the grant. At the end of the project, it carried out its financial analysis and noted that some expenditure was "ineligible". Therefore, the Commission decided to pay only a part of the balance of the grant, that is, EUR 14 339.14, instead of EUR 60 631, and withhold the sum of



EUR 46 291.86. Subsequently, a full audit of the project was carried out. The conclusion of the audit was that an additional amount of EUR 88 319.15 should be refunded by the complainant.

On 5 April 2006, the complainant wrote to the Commission setting out its grievances. As the complainant allegedly received no reply to his letter, he contacted the Commission by e-mail on 23 November 2006 and by normal post on 19 March 2007.

On 4 April 2007, the Commission replied to the complainant that, according to Article 6 of the agreement signed between the association and the Commission, the beneficiary of the grant should produce a report two months after the end of the eligibility period of the project. The final report was first rejected by the Commission because it did not comply with the standard set out in the agreement. On 14 July 2004, the Commission expressed concern as to the results obtained. An additional period was granted to the complainant in order to complete the website. At the end of this period, the Commission considered that the project had achieved the technical objectives. However, the financial analysis found that there were shortcomings in the accounting records. The Commission noted, in sum, that the complainant had claimed reimbursement for contributions "in kind", which were not "eligible" costs. The contributions "in kind" included the use of images, buildings, and staff. As a result, the complainant was informed that he must refund an amount of EUR 88 319.15.

The complainant did not find it acceptable that a project, which had been approved by an independent expert, applauded by the Commission, planned over a period of two years, and carried out in one year, could lead to the dissolution of the association which had carried it out. He criticised the Commission for having remained silent (in July 2004, December 2004 and February 2006).

Finally, the complainant stated that the Commission's decision did not take into account the work actually carried out. He explained that, without the contributions from partners, who sent free pictures, there would be no website. The same applied to the time spent evaluating the media in European countries. Such a practice was not forbidden in the agreement signed in 2002. The complainant asked the Ombudsman to find a solution to the situation.

In sum, the complainant alleged that the Commission's decision not to pay the complainant an amount of EUR 46 291.86 and its decision to recover an amount of EUR 88 319.15 were not justified, given the work carried out during the project.

## **THE INQUIRY**

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

The Commission's opinion can be summarised as follows:

The Commission recalled that, on 30 December 2002, it signed a grant agreement with the complainant for a total amount of EUR 303 155, that is, 60 % of the total budget of the project. On 3 March 2003, the Commission paid a first instalment of EUR 242 524, corresponding to 80 % of the amount of the grant.



The Commission rejected the first final report sent by the complainant, because the contractual model had not been complied with. The Commission requested further information as regards the second final report. The reply to this request was considered to be insufficient. In its letter of 14 July 2004 to the complainant, the Commission expressed its disappointment as to the technical results achieved with the website and informed him that he had until 31 July 2004 to complete the website. Despite some improvements, the Commission was still dissatisfied with the website and appointed an independent expert to assess the results of the project. The expert gave the website a score of 24 points out of 40.

In parallel, the financial analysis of the project was carried out. The conclusion was that the total "eligible" budget amounted to EUR 428 205.04, which implied that the final grant should be EUR 256 923.14, that is, 60 % of the total "eligible" budget. Therefore, on 7 April 2005, the balance, that is, EUR 14 399.14, was paid to the complainant while he was expecting a payment of EUR 60 631.

The financial analysis of the project resulted in the following expenditure being considered "ineligible":

- EUR 58 562.50 concerning staff costs, because of lack of supporting documents;
- EUR 2 277.07 concerning overheads, because the authorised percentage had been exceeded;
- EUR 5 741.59 concerning travel and subsistence costs, because of the abusive use of taxis, lack of supporting documents and excessive food bills;
- EUR 2 896.59 concerning copyrighted material, because it did not appear on the website;
- EUR 77.74 concerning translations, because they involved ineligible languages; and
- EUR 26 916 because of lack of supporting documents relating to production costs.

The Commission requested the missing supporting documents. In reply, the complainant provided sworn statements signed by himself.

On 17 and 18 May 2005, a full audit of the project was carried out which concluded that an amount of EUR 243 669.58 was "ineligible", mainly because of a lack of supporting documents. Specifically, the following expenditure was declared "ineligible":

- Staff costs claimed by partners (EUR 131 475.60), because they were not supported by any documents, such as invoices or salary slips. The only proof provided was a statement signed by the complainant.
- Staff costs (EUR 3 564.08) incurred outside the eligibility period.
- Overheads (EUR 10 121.49), because they were not supported by any documents, such as invoices. The only proof provided was a statement signed by the complainant.
- Travel and subsistence costs incurred by the partners (EUR 6 031.93), because they were not supported by any documents, such as invoices. The only proof provided was a statement signed by the complainant.
- Travel and subsistence costs (EUR 313.45), which were not paid by the complainant.
- Production, dissemination and information costs incurred by the partners (EUR 92 055.03), because they were not supported by any documents, such as invoices. The only proof provided



was a statement signed by the complainant.

- Production, dissemination and information costs (EUR 108), which were booked twice.

Consequently, the total amount of the grant should have amounted to EUR 168 603.99. An amount of EUR 88 319.15 had therefore to be recovered.

On 13 February 2006, the Commission informed the complainant of its intention to recover EUR 88 319.15 and of the possibility available to him to appeal this decision within 60 days.

On 6 November 2006, having received no letter from the complainant, the Commission sent him a reminder. The complainant then contacted the Commission, indicating that he had replied to the Commission's letter. Despite the Commission's request that the complainant send a copy of this letter, nothing was received and therefore the Commission sent the debit note on 26 December 2006.

On 26 March 2007, the complainant sent a copy of his letter dated 5 April 2006, as well as copies of the grant agreement, cost statements signed by him and a list of contributions in kind, which, he argued, should be taken into account by the Commission. He renewed his request to receive the whole grant, arguing that the good quality of the project justified such a course of action.

On 4 April 2007, the Commission replied to the complainant maintaining its position. It stated that several documents attached to the complainant's letter concerned contributions in kind from partners. The Commission reminded the complainant that, according to the grant agreement, the Commission was assisting the complainant in implementing the project by paying for a part of the expenditure necessary to achieve the results. If some results were achieved with no expenditure, this should not be taken into account in calculating the amount of the grant. The Commission also referred to Article 4 of the grant agreement, according to which under no circumstances may the grant give rise to profit for the beneficiary during the period of the agreement.

The Commission explained that it never received the complainant's letter dated 5 April 2006 or his e-mail dated 23 November 2006 to which the letter of 5 April 2006 was supposed to be attached.

As regards the expenditure which was considered to be "ineligible" (notably the contributions in kind), the Commission recalled that the provisions of the call for proposals "Preparatory and innovative actions 2002/b - e-Learning" (1) , notably paragraphs 9.1 and 9.2, and paragraph 9.4 of Annex II of the grant agreement, dealt with contributions in kind. They stated that such contributions were considered to be ineligible.

The Commission maintained that EUR 88 319.15 should be recovered and that it would not pay the amount of EUR 46 291.86 claimed by the complainant.

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

The complainant's observations can be summarised as follows:



The complainant made a friendly solution proposal, consisting of, on the one hand, his forsaking the payment of EUR 46 291.86 and any compensation and, on the other hand, the Commission's forsaking the recovery of EUR 88 319.15.

## THE DECISION

### **1 Alleged wrongful recovery order of EUR 88 319.15 and failure to pay an amount of EUR 46 291.86**

1.1 The complaint is lodged by the President of an association called "*Association Groupe L'image*". On 20 December 2002, the President, hereinafter the complainant, signed a grant agreement with the European Commission for a maximum amount of EUR 303 155. The Commission paid a first instalment of EUR 242 524. After the financial analysis of the project and having concluded that the final grant should only amount to EUR 256 923.14, the Commission paid the balance of the grant, that is, EUR 14 399.14. After an audit of the project, the Commission considered that only a sum of EUR 168 603.99 should be paid. The Commission noted, in sum, that the complainant had claimed reimbursement for contributions "in kind", which were not "eligible" costs.

The complainant alleged that the Commission's decision not to pay him an amount of EUR 46 291.86 and its decision to recover an amount of EUR 88 319.15 were not justified, given the work carried out during the project.

1.2 In its opinion, the Commission explained that the call for proposals "Preparatory and innovative actions 2002/b - e-Learning", notably paragraphs 9.1 and 9.2, and paragraph 9.4 of Annex II of the grant agreement, stated that contributions in kind were "ineligible". Further, some of the claimed expenditure was not justified by supporting documents, and was therefore "ineligible".

The Commission maintained that EUR 88 319.15 should be recovered and that it would not pay the amount of EUR 46 291.86 claimed by the complainant.

1.3 In relation to the above allegation, the Ombudsman makes the following points.

1.4 The scope of the review that the Ombudsman can carry out in cases of disputes over grant agreements is necessarily limited. In particular, the Ombudsman should not seek to determine whether there has been a breach of the grant agreement by either party, if the matter is in dispute. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant law and to evaluate conflicting evidence on any disputed issues of fact. In cases such as the present one, the Ombudsman is justified in limiting his inquiry to examining whether the Community institution or body has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its position is justified.

1.5 According to Article 4.1 of the grant agreement, the estimated total cost of the project was



up to EUR 505 258. According to Article 4.2, the Commission would provide a grant of up to EUR 303 155, which would be equivalent to 60 % of the estimated total cost. Article 5.1 provided that a first instalment equivalent to 80 % of the grant would be paid within 60 calendar days of receipt by the Commission of the agreement signed by the two parties. The balance would be paid within 60 days of the express acceptance by the Commission of the final report.

1.6 The Ombudsman notes that, according to the audit findings of an independent audit firm, part of the claimed expenditure was ineligible.

1.7 The Ombudsman also makes the following comments as regards the ineligibility of certain expended items.

*Staff costs incurred outside the eligibility period*

According to Article 9.1 of Annex II of the grant agreement, "*[eligible costs] must have been incurred during the lifetime of the operation*". In the present case, the eligibility period was from 1 December 2002 to 1 December 2003. The complainant did not provide evidence to contradict the Commission's statement that the amount of EUR 3 564.08, corresponding to staff costs, was not incurred during the eligibility period.

*Costs not supported by any documents*

According to Article 41 of the Financial Regulation (2), which was applicable at the time the grant agreement was signed, "*1. Validation of any expenditure shall be subject to the submission of supporting documents showing the creditor's claim and the service rendered or the existence of a document justifying payment.*" Further, the provisions of the call for proposals "Preparatory and innovative actions 2002/b - e-Learning" (3) and of Annex II of the grant agreement "General Terms and conditions applicable to the grant" (4) specify that eligible costs must be recorded in the beneficiary's accounts or tax documents and be identifiable and controllable.

The complainant argues that this expenditure corresponds to contributions in kind, for which he provided sworn statements signed by himself. According to Article 9.4 of Annex II of the grant agreement: "*The following costs shall not be considered eligible:(...) contributions in kind*".

*Claimed costs that were not paid by the complainant*

Article 9.1 of Annex II of the grant agreement states that eligible costs "*must have actually been incurred*". The complainant does not contest the Commission's statement that an amount of EUR 313.45 was not paid by him.

*Costs booked twice*

Article 9.1 also states that eligible costs "*must be reasonable and comply with the principles of sound financial management*". Expenditure booked twice in the accounts does not comply with this principle.

1.8 In light of the above, the Ombudsman takes the view that the Commission has put forward sufficient and coherent grounds for its position as regards the ineligibility of the costs claimed by the complainant. He therefore finds no instance of maladministration.

1.9 The complainant also argued that the Commission remained silent on numerous occasions and that he had to contact it in July 2004, December 2004 and February 2006.



The Ombudsman recalls that it is good administrative practice to deal with letters and queries from citizens quickly. After having examined the correspondence between the complainant and the Commission available in the file, the Ombudsman considers that the time taken by the Commission to reply to the complainant was not excessive.

## **2 Conclusion**

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2002 C 179, p. 14.

(2) Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1).

(3) OJ 2002 C 179, p. 14. Article 9.1 states that " [ eligible costs ] *must be entered in accounts, identifiable and controllable* ".

(4) Article 9.1 of Annex II states the following: " *Eligible costs of the operation are taken to mean costs which satisfy the following criteria: (...)*

*- they must have actually been incurred, be recorded in the beneficiary's accounts or tax documents and be identifiable and controllable.* "