

Decision of the European Ombudsman on complaint 1471/2007/(CC)RT against the European Commission

Decision

Case 1471/2007/(CC)RT - Opened on 23/07/2007 - Decision on 05/12/2007

In 2004, a French consulting firm participated in an Information Society Technologies (IST) programme supported by the European Commission. The project included EU-Chinese co-operation on the *Digital Olympics Programme*, which aims at ensuring the successful organisation of the 2008 Beijing Olympic Games, as well as long-term EU-Chinese co-operation in the field of IST. The Commission agreed to pay EUR 178 415.10 for the complainant's participation in the project.

In July 2005, the complainant asked for the reimbursement of a first amount of EUR 90 379.00 which was paid by the Commission. In a second cost statement, the complainant applied for the remaining amount of EUR 88 036.10. One year later, the Commission sent the final financial statement which did not include the outstanding sum. As the Commission did not provide a satisfactory explanation for its failure to pay the amount requested, the complainant turned to the Ombudsman.

In its opinion, the Commission stated that it had reached agreement with the complainant in direct contacts and had reimbursed the complainant the remaining amount of EUR 88 036.10. The complainant stated that he was entirely satisfied with the way in which his problem had been solved. He thanked the Ombudsman for his intervention.

The Ombudsman closed the case since the Commission had settled the matter to the satisfaction of the complainant.

Strasbourg, 5 December 2007

Dear Mr T.,

On 29 May 2007, you submitted a complaint to the European Ombudsman against the European Commission concerning the project ECOSPLAN IST - contract number 001970.

On 23 July 2007, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 6 November 2007.

On 12 November 2007, my services contacted you by e-mail in order to ascertain whether you



were satisfied with the Commission's reply. You informed my services that this was the case.

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

THE COMPLAINT

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

ECOSPLAN was an "IST" (Information Society Technologies) project supported by the European Commission's Directorate- General for Information Society and Media ("the Project"). The main objectives of the Project were to carry out joint EU-China strategic planning of the Digital Olympics Programme in order to ensure the successful organisation of the 2008 Beijing Olympic Games and long-term EU-China co-operation in the IST field.

The Project was launched in January 2004 for a period of 18 months with a budget of EUR 969 537 and it was to be carried out by a Consortium ("the Consortium"). The Consortium signed contract no. 001970 with the Commission. PDG Sigma Consultants ("the complainant") was part of the Consortium.

The complainant's project costs amounted to EUR 178 415.10. The Commission accepted this amount.

The complainant considered that it was entitled to receive the first part of the reimbursement by the Commission, which was up to 70% of total eligible costs. Therefore, in the *first costs statement* submitted to the Commission, the complainant requested only EUR 90 379.00 (that is, less than 70%).

Afterward, the Commission's "project officer" contacted the complainant. In the context of this communication, the complainant became aware that it was entitled to receive more funding from the Commission at this stage of the project's evolution. However, in order not to delay the payment that it had already requested, the complainant and the "project officer" agreed that an adjustment should be made by the Commission at the end of the project.

In light of the above, in the *second costs statement* , the complainant applied for the remaining amount of EUR 88 036.10.

On 1 February 2006, the Commission contacted the complainant in order to obtain some explanations about the *second costs statement* . The complainant replied that, since it had requested only part of the funding at the beginning of the project, the remaining amount, that is, EUR 88 036.10, should be included in the final payment as agreed with the Commission.

The Commission did not contact the complainant again on the matter.

One year later, the Commission sent the final financial statements which did not include the



remaining payment of EUR 88 036.10.

On 30 April 2007, the complainant contacted the Commission's "project officer". The "project officer" stated that he could not modify the situation.

On 3 May 2007 the complainant sent another e-mail to the Commission. Given that the reply received was not satisfactory, the complainant turned to the European Ombudsman.

The complainant alleged that the Commission acted unfairly by failing to pay the complainant its entire eligible costs.

The complainant claimed that the Commission should pay the remaining amount of EUR 88 036.10.

THE INQUIRY

The Commission's opinion

The Commission's opinion can be summarised as follows:

The complainant participated in several projects in the context of the EU's Fifth Framework Programme for Research and Technological Development. ECOSPLAN was a project under the said Sixth Framework Programme, which was carried out by the Consortium . The contract (number 001970) between the Commission and the Consortium was signed on 19 December 2003 and was scheduled to last for a period of 18 months. The complainant was part of the Consortium.

On 8 July 2005, the complainant submitted its first cost statement, in which it asked that the Commission reimburse it only up to 70% of its total eligible costs. On 28 July 2005, the Commission asked the complainant for a confirmation of that request given that, in the original contract, there was no ceiling limiting the payment. On 16 August 2007, the complainant confirmed its first cost statement.

In the Commission's view, the complainant mistakenly considered that the rules governing the EU's Fifth Framework Programme for Research and Technological Development were also applicable to the project in question. The complainant continued to consider that an adjustment would be made by the Commission at the end of the project.

The Commission pointed out that the final payment was made on the basis of the costs declared by the complainant. Subsequently, the complainant became aware that it was entitled to receive more funding from the Commission. Therefore, the complainant asked the Commission to reopen the payment file of the ECOSPLAN project. In parallel, the complainant submitted a complaint to the Ombudsman.

On 5 July 2007, the Commission informed the co-ordinator of the project and the complainant that the payment file of the project had been reopened. Following a meeting between the



complainant and the Commission on 12 September 2007, an agreement was reached. On 19 September 2007, the Commission proceeded with the relevant payment. Therefore, in the Commission's view, the complainant's claim was settled.

The complainant's correspondence of 12 and 19 November 2007

In an e-mail dated 12 November 2007, the complainant stated that he had reached an agreement with the Commission concerning his complaint.

The complainant took the view that the Commission had taken the necessary steps to deal with his complaint.

On two occasions, on 12 and 19 November 2007, the complainant thanked the Ombudsman for his efforts to achieve a satisfactory outcome. He stated that, without the Ombudsman's intervention, the situation would probably not have been resolved. The complainant also thanked the Ombudsman for ensuring that Commission officials do not exceed their authority and for the service he provided to the European citizens (1) .

THE DECISION

1 The complainant's allegation and claim

1.1 The complainant was part of the Consortium carrying out the Project ECOSPLAN. The complainant alleged that the Commission acted unfairly by failing to pay it its entire eligible costs. The complainant claimed that the Commission should pay the remaining amount of EUR 88 036.10.

1.2 In its opinion, the Commission argued that, given the complainant's participation in several different projects under the EU's Fifth and Sixth Framework Programmes for Research and Technological Development, the complainant mistakenly considered that the same rules were applicable as regards the existence of a contractual ceiling to limit the payment in the Project. Therefore, the complainant initially asked to be reimbursed by the Commission up to 70% of its total eligible costs and was convinced that an adjustment would be made by the Commission at the end of the project.

That mistake was considered by the Commission and the complainant, in their direct contacts, and an agreement was reached. The Commission has, in the meantime, proceeded to reimburse the complainant the remaining amount, that is, EUR 88 036.

1.3 The complainant stated that he was entirely satisfied with the way in which his problem had been solved. He thanked the Ombudsman for his intervention.

1.4 In view of the above, the Ombudsman considers that the Commission appears to have taken adequate steps to settle the matter and has thereby satisfied the complainant.

2 Conclusion

It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) In French: "*Je souhaite remercier chaleureusement le Médiateur européen grâce à qui une solution a vu le jour : sans son intervention la situation n'aurait probablement pas évolué. Merci encore de veiller à ce que certains fonctionnaires de la Commission n'outrepassent pas leur droit. Je ne peux que me réjouir qu'une telle instance que celle que vous dirigez existe aujourd'hui et soit au service des citoyens.*"