

## **Draft recommendation to the European Commission in complaint 2111/2002/(BB)MF**

Recommendation

**Case 2111/2002/(BB)MF - Opened on 31/12/2002 - Recommendation on 20/09/2004 - Decision on 06/01/2005**

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1) )

### **THE COMPLAINT**

The complainant is a journalist of French nationality who set up a communication company called "X".

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

In February 2001, the complainant submitted to the Commission Representation in France a project on communication strategies of the European Commission in relation to the enlargement of the Union. The project comprised three press visits: two visits of 12 French journalists to Poland and the Czech Republic and a visit of 24 journalists from the 10 candidate countries to France.

On 16 November 2001 (2) , the Commission made a financial commitment to co-finance her project amounting to EUR 94 854 for the three press visits.

Financial support was granted by the Commission for the first part of the project concerning the two press visits of French journalists to Poland and the Czech Republic. However, in 22 February 2002, i.e. four weeks before the final part of the project concerning the press visit of 24 journalists from the 10 candidate countries to France, the Commission Representation in France decided to cancel the corresponding financial commitment.

The complainant considered that this decision had been taken so late that he was not able to cancel the preparations. Instead, he continued with his project, financing it partly from his own resources. The complainant had provided material to indicate that the press visit to France was completed.

On 18 November 2002, the complainant wrote to the Director of Directorate General Press and Communication of the Commission in order to request reimbursement of the expenses he had



to pay for the last part of the project and which amounted to EUR 20 702. He further claimed damages.

On 13 December 2002, the complainant lodged a complaint with the European Ombudsman. He alleged that the Commission Representation in France was liable because it had decided to cancel its financial commitment corresponding to the last press visit four weeks before the final part of the project. The complainant claimed reimbursement of the costs and compensation for the damage caused.

## **THE INQUIRY**

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

The opinion of the European Commission on the complaint was in summary as follows:

By letter of 22 February 2002, the Commission Representation in France informed the complainant of its decision not to cover the expenses relating to the press visit to France of journalists from the candidate countries foreseen for the month of April 2002.

This decision did not in any way constitute a unilateral termination of a contractual obligation, as the complainant appeared to indicate. According to the Commission, there was no legal obligation on its part towards the complainant in this framework. In this respect, the complainant appeared clearly to confuse a budgetary commitment - a purely internal mechanism within an Institution in the framework of budgetary execution - and a contractual obligation in a larger sense between two parties.

The Commission recognised that the letter of 22 February 2002 could have appeared belated, taking into account the time necessarily involved in organising such a press visit. However, in the absence of any contract, the complainant could not consider that the Commission was bound by a formal obligation.

The Commission also underlined that, before sending the letter of 22 February 2002, the Head of the Commission Representation in France had tried to find a satisfactory administrative solution which would be financially compatible with the complainant's demands. However, no solution which would have been in conformity with the administrative and budgetary regulations was found.

The Commission considered that the Representation in France had to free itself from the operation in order to guarantee strict respect for the financial regulations. In the absence of any legal obligation to the complainant, there appeared to be no question of any damage suffered.

Finally, as explained in a letter of 7 January 2003 from the Director of Directorate General Press and Communication to the complainant, this decision in no way hindered the complainant's possibilities to participate in future calls for proposals of the Commission.

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

In his observations on the Commission's opinion, the complainant maintained his complaint and



made the following further comments:

The complainant contested the argument put forward by the Commission that there was no legal relationship between the Commission and the complainant. According to him, the e-mail of 16 November 2001 from DG Enlargement was proof of the Commission's commitment to his project. In addition, the financial contribution of the Commission for the press visit in Poland - first stage of the project financed by the Commission - which took place from 12 until 16 December 2001 was the beginning of the financial commitment of the Commission. The complainant referred to an e-mail of 30 November 2001 from the Commission Representation in France to him and DG Enlargement (3) .

The complainant underlined that he had followed all the requirements set by the Representation regarding the changes in the financing procedure. He also contested the argument put forward by the Commission that no solution could be found. According to e-mails sent on 21 November 2001 and 30 November 2001, the Representation was prepared to pay directly the travel expenses of the journalists and to pay an advance of 80% of the hotel expenses.

The complainant claimed reimbursement of EUR 20 702 corresponding to the expenses he occurred and compensation of EUR 35 000 for interest and damage caused.

## **THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION**

After careful consideration of the opinion and the observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's allegations.

### **The proposal for a friendly solution**

Article 3 (5) of the Statute of the Ombudsman directs the Ombudsman to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complaint.

The Ombudsman therefore made the following proposal for a friendly solution to the Commission:

The Commission could take measures to ensure that the complainant, as far as possible, was put in the same position as he would have been in if the maladministration had not occurred. This could include a reasonable offer of financial compensation.

This proposal was based on the Ombudsman's preliminary conclusion that, by cancelling the financial contribution to the complainant's project, the Commission failed to respect the reasonable expectations of the complainant.

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

In its opinion submitted on 16 March 2004, the Commission made the following comments:

"Following the letter of the European Ombudsman dated 4 February 2003 proposing a friendly



solution, it has been decided to accept his proposal. The Commission's services will contact the complainant in order to seek a fair settlement that would include an offer of a reasonable compensation."

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

In his observations sent on 18 April 2004, the complainant noted that he had not yet been contacted by the Commission.

According to him, the Commission Representation in France continued to have a behaviour affecting him negatively concerning a project launched in May 2004 and comprising a press visit in France for journalists from the new Member States. The complainant put forward that on 5 April 2004, he had been informally informed by the Parliament Representation in France that the Commission Representation had warned it against his project because he had lodged a complaint with the European Ombudsman. The Parliament Representation in France firstly refused to support the complainant's project. The complainant however succeeded in changing afterwards the position of the Parliament Representation.

#### **Further inquiries** *The request for further information*

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The European Ombudsman therefore asked the Commission to inform him on the following points:

"Has the Commission given a follow-up to its letter dated 23 March 2004 in which it had accepted the proposal of a friendly solution made by the Ombudsman and in which it had committed itself to contacting the complainant to make to him an offer of a reasonable compensation?"

The Ombudsman also forwarded a copy of the complainant's observations to the Commission.

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

In its further opinion submitted on 15 June 2004, the Commission made in summary the following statements:

The Commission sought the most appropriate way to offer to the complainant a reasonable compensation. Several services of the Commission had been contacted in order to check whether funds were available on the budget item foreseen for this kind of expenses. The complainant would be contacted afterwards and offered a financial settlement.

As to the allegation concerning the complainant's project of May 2004, the Representation Commission in France did not intervene into the decision of the European Parliament to finance or not the complainant's project.

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

In his observations, the complainant argued that, following the Commission's opinion submitted on 16 March 2004, he should have been contacted four months ago. The length of time taken by the Commission to contact him in order to offer him a compensation was unacceptable.

## **THE DECISION**



## **1 The scope of the Ombudsman's inquiry**

1.1 The original complaint concerned the decision of the Commission Representation in France to cancel the financial commitment allegedly made on 16 November 2001 and relating to the complainant's project on communication strategies of the Commission in relation to the enlargement of the Union.

1.2 In his observations on the Commission's opinion, the complainant alleged that the Commission Representation in France continued to have a behaviour affecting him negatively concerning a project launched in May 2004 and comprising a press visit in France for journalists from the new Member States. The complainant put forward that on 5 April 2004, he had been informally informed by the Parliament Representation in France that the Commission Representation had warned it against his project because he had lodged a complaint with the European Ombudsman.

1.3 Pursuant to Article 195 of the Treaty establishing the European Community, *"the European Ombudsman shall conduct inquiries for which he finds grounds"*. The European Ombudsman considers that the complainant has not supplied enough supporting evidence concerning his further allegation. Therefore, the European Ombudsman does not consider it appropriate to extend his inquiry so as to cover this further allegation. The complainant could however submit a new complaint related to this further allegation if he so wishes.

## **2 Decision to cancel the financial commitment**

2.1 In February 2001, the complainant submitted to the Commission Representation in France a project on communication strategies of the European Commission in relation to the enlargement of the Union. The project comprised three press visits: two visits of 12 French journalists to Poland and the Czech Republic and a visit of 24 journalists from the 10 candidate countries to France. In an e-mail dated 16 November 2001, the Commission made, according to the complainant, a financial commitment to co-finance his project amounting to EUR 94 854 for the three press visits.

Financial support was granted by the Commission for the first part of the project concerning the two press visits of French journalists to Poland and the Czech Republic.

By letter of 22 February 2002, the Commission Representation in France informed the complainant of its decision not to cover the expenses relating to the press visit to France of journalists from the candidate countries foreseen for the month of April 2002.

The complainant alleged that the Commission Representation in France was liable because it had decided to cancel its financial commitment corresponding to the last press visit four weeks before the final part of the project. The complainant claimed reimbursement of the costs and compensation for the damage caused.

2.2 The Commission argued that the decision in question did not constitute a unilateral termination of a contractual obligation. According to the Commission, there was no legal obligation on its part towards the complainant. The Commission considered that the Representation in France had to free itself from the operation in order to guarantee strict



respect for the financial regulations. The Commission recognised that the letter of 22 February 2002 could appear belated, taking into account the time necessarily involved in organising such a press visit. However, the Commission maintained that, in the absence of a contract, the complainant could not consider that the Commission was bound by a formal obligation. In the absence of any legal obligation to the complainant, there appeared to be no question of any damage suffered.

2.3 After careful consideration of the opinion and the observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's allegations. By letter dated 4 February 2003, the European Ombudsman therefore submitted the following proposal for a friendly solution to the Commission:

"The Commission could take measures to ensure that the complainant, as far as possible, was put in the same position as he would have been in if the maladministration had not occurred. This could include a reasonable offer of financial compensation."

In its opinion submitted on 16 March 2004, the Commission informed the Ombudsman that it had decided to accept his proposal and that its services would contact the complainant to offer him a financial settlement.

In his observations sent on 18 April 2004, the complainant noted that he had not yet been contacted by the Commission.

2.4 The Ombudsman recalls that Article 10 of the European Code of Good Administrative Behaviour provides as follows:

*"The official shall respect the legitimate and reasonable expectations that members of the public have in the light of how the Institution has acted in the past."*

2.5 The Ombudsman observes that both DG Enlargement and the Commission Representation in France sent e-mails respectively on 16 and 21 November 2001 to the complainant informing him that the project had been approved and that the identified costs would be covered. He further notes that the Commission made a financial contribution to the press visit in Poland organised by the complainant which constituted the first stage of the project. In these circumstances, the Ombudsman considers that the complainant could reasonably expect that the Commission would make a financial contribution to the press visit which gave rise to the complaint.

The Ombudsman also notes that the Commission did not argue that the complainant acted unreasonably in incurring costs on the basis of her expectation of Commission funding and that it appeared to accept that its final decision had come too late for the complainant to avoid these costs.

2.6 In the light of the above, the Ombudsman's conclusion is that, by cancelling the financial contribution to the complainant's project, the Commission failed to respect the reasonable



expectations of the complainant. This is an instance of maladministration.

### **3 Conclusion**

The Ombudsman therefore makes the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

#### **The draft recommendation**

In view of the length of time which had elapsed between the Commission's opinion submitted on 16 March 2003 and the complainant's further observations dated 30 June 2004, the European Commission should contact the complainant without delay in order to seek a fair settlement that would include an offer of a reasonable compensation.

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3 (6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion by 30 November 2004. The detailed opinion could consist of the acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 20 September 2004

P. Nikiforos DIAMANDOUROS

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

(2) In an e-mail addressed to the complainant on 16 November 2001 DG Enlargement stated the following: "*me revoici comme promis, j'ai le plaisir de vous annoncer que le projet a été visé, les frais identifiés seront couverts, je suppose que vous avez vu avec M. M. comment faire pour la transmission des factures. Tous mes vœux de succès, et tenez-nous au courant s'il vous plaît du bon déroulement de ce projet qui a si bien "retenu toute notre attention"*".

In an e-mail addressed to the complainant on 21 November 2001 the Commission Representation in France stated the following: "*Faisant suite à mon email de hier et étant donné de l'accord final que nous avons reçu le vendredi soir 16/11 je vous prie de bien vouloir me transmettre les informations suivantes (...) Je vous remercie encore une fois de votre patience et j'espère que dès la réception de la liste et des dates de votre prochaine voyage nous serons en mesure de commencer cette opération. Par ailleurs, veuillez noter que cette procédure sera identique également pour le voyage de presse en République Tchèque ainsi que le voyage de journalistes de pays candidats en France...*"

(3) "*Les billets d'avion: Comme déjà mentionné dans mon email du 21/11, les billets pour la totalité de participants seront achetés par nous et payés directement,... Frais d'hôtel: Nous sommes disposés à payer une avance à hauteur de 80% de frais d'hôtel...*"



*"Enfin, vu les dates proches du voyage en Pologne et en considérant la liste de participants, que vous venez de nous transmettre, comme définitive, je demanderai cet après-midi à notre agence de voyage la réservation de billets pour tout le monde..."*