

## Decision of the European Ombudsman on own-initiative inquiry OI/2/2010/GG concerning the European Commission

Decision

**Case** OI/2/2010/GG - **Opened on** 01/02/2010 - **Decision on** 21/04/2010 - **Institution concerned** European Commission ( No further inquiries justified ) |

In the context of his own-initiative inquiry concerning the issue of timeliness of payments by the Commission (inquiry OI/1/2009/GG), the Ombudsman became aware of a case in which a delay of 754 days had occurred before payment was made.

At first sight, it appeared fair to assume that this case constituted an exception. The Ombudsman also noted that interest on account for late payment had been paid in this case and that no complaint seemed to have been submitted to him concerning this matter. The Ombudsman therefore took the view that it was appropriate to examine this case separately from the above-mentioned general own-initiative inquiry concerning the issue of timeliness of payments by the Commission.

On 15 March 2010, the Ombudsman's representatives inspected the Commission's file concerning the above-mentioned case.

On the occasion of the inspection, the representative of the Commission pointed out that the substantial delay that had occurred in the case at hand had been due to a serious lack of staff at the time, which itself was caused by a high turnover of staff. The Commission's representative stressed that the timeliness of payments within her Directorate had improved significantly since then.

The Ombudsman noted that the information that was provided to him during the inspection of the Commission's file appeared to confirm this statement.

In the Ombudsman's view, the present case thus appeared to constitute an extreme example of a delayed payment, but not an indication of an endemic problem. To be more precise, whereas delays in payment still posed a real problem (which will be considered in OI/1/2009/GG), there was nothing to suggest that extreme situations like the one in the present case could repeat themselves.

In any event, the Ombudsman noted that the present case and the problems to which it had



given rise (including the issue of the delay that has occurred) had already been examined by the Court of Auditors.

In view of the above, the Ombudsman considered that there were no grounds for further inquiries in this case.

Strasbourg, 21 April 2010

Mr President,

On 1 February 2010, I informed you that I had decided to open an own-initiative inquiry concerning a case in which a considerable delay occurred before the European Commission proceeded to make a payment due under a contract. I also informed you that, in order to avoid possibly unnecessary work on the part of the Commission, I considered it appropriate to begin my inquiry by inspecting the documents concerning the said case in order to ascertain whether it would be necessary to ask the Commission for a formal opinion in this case.

On 15 March 2010, my representatives inspected the Commission's file.

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

## **THE REASONS FOR THE OWN-INITIATIVE INQUIRY**

Article 228 of the Treaty on the Functioning of the European Union empowers the European Ombudsman to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of Union institutions, bodies, agencies and offices.

On 17 February 2009, the Ombudsman informed the Commission that he had decided to open an own-initiative inquiry concerning the issue of timeliness of payments by the Commission (inquiry OI/1/2009/GG).

This inquiry is still pending.

On 30 October 2009, the Commission provided the Ombudsman with certain information which he had requested in a letter dated 24 June 2009. Among other things, the Commission supplied details concerning the five cases in which the highest amounts of interest on account of late payment had been paid in 2008.

According to this information, one case concerned a payment to a "public institute" where a delay of 754 days had occurred.

This was an exceptional delay. The Ombudsman took the view, therefore, that it was appropriate to take a closer look at this case.



At first sight, it appeared fair to assume that this case constituted an exception. The Ombudsman also noted that interest on account for late payment had been paid in this case and that no complaint seemed to have been submitted to him concerning this matter.

The Ombudsman therefore took the view that it was appropriate to examine this case separately from the above-mentioned general own-initiative inquiry concerning the issue of timeliness of payments by the Commission (inquiry OI/1/2009/GG).

He, therefore decided to open the present own-initiative inquiry.

## THE INQUIRY

On 15 March 2010, the Ombudsman's representatives inspected the Commission's file concerning the above-mentioned case.

The results of the inspection can be summarised as follows:

The relevant project had the aim of promoting clean energy and transport technologies in Latin America and the Caribbean ("OLA", project number NNE5/81/2002). It involved a project coordinator and 14 contractors.

In 2005, the Commission suspended payments to one of the contractors due to a suspicion of fraud. Under the terms of the contract concerned, however, this did not affect the situation of the other parties to this contract.

According to the terms of this contract, the final payment of the Community's financial contribution was to be made within a maximum period of 60 days from the date on which the Commission approved, or was deemed to have approved, the last project deliverable.

The last project deliverable was sent on 29 April 2005.

On 26 May 2005, the Commission registered the request for final payment made by the project coordinator. The payment requested amounted to EUR 522 249.84.

On 29 July 2005, the Commission's project officer sent detailed technical comments and requested additional information from the consortium. This request was rejected by the project coordinator on the grounds that it had been sent after the time-limit for approving the last project deliverable had expired.

Payment was only made on 17 October 2007.

On 22 November 2007, the project coordinator asked for interest to be paid on account of late payment.



On 7 April 2008, the Commission informed the project co-ordinator that this request had been accepted. According to the Commission, payment should have been made on 23 September 2005. An amount of EUR 38 298.80 was paid to cover the delay of 754 days calculated by the Commission.

On 14 April 2008, a Member of the European Court of Auditors wrote to Mr Piebalgs, Vice-President of the Commission, concerning certain errors detected in relation to the handling of the relevant project.

## THE DECISION

### 1. As regards the delay that occurred in the present case

1.1 The Ombudsman notes that an extra-ordinary delay of more than two years occurred in the present case. The Commission itself calculated the delay as extending to 754 days. Given that the project coordinator does not appear to have raised any objections, the Ombudsman considers that his assessment can be based on this figure.

1.2 Even though this is not relevant for the calculation of the delay under the terms of the contract, it is useful to note that the Commission appears to have resumed its work on the contract in late March or early April 2007. However, the delay that occurred would remain very substantial even if one were to consider only the period between September 2005 and March 2007.

1.3 On the occasion of the inspection, the representative of the Commission pointed out that the substantial delay that had occurred in the case at hand had been due to a serious lack of staff at the time, which itself was caused by a high turnover of staff. The Commission's representative stressed that the timeliness of payments within her Directorate had improved significantly since then.

1.4 The Ombudsman notes that the information that was provided to him during the inspection of the Commission's file would appear to confirm this statement.

1.5 In the Ombudsman's view, the present case thus appears to constitute an extreme example of a delayed payment, but not an indication of an endemic problem. To be more precise, whereas delays in payment still pose a real problem (which will be considered in OI/1/2009/GG), there is nothing to suggest that extreme situations like the one in the present case could repeat themselves presently or in the future.

1.6 In any event, the Ombudsman notes that the present case and the problems to which it has given rise (including the issue of the delay that has occurred) have already been examined by the Court of Auditors.



## 2. Conclusion

2.1 In view of the above, the Ombudsman considers that there are no grounds for further inquiries in this case.

2.2 The present inquiry can therefore be closed on the basis of the results of the inspection of the Commission's file, without having to ask the Commission for an opinion.

Yours sincerely,

P. Nikiforos DIAMANDOUROS