

## **Note on the results of the public consultation concerning inquiry OI/1/2009/GG**

Correspondence - 15/02/2011

**Case OI/1/2009/GG - Opened on 17/02/2009 - Decision on 08/02/2011**

### **The public consultation**

On 12 January 2010, the Ombudsman launched a public consultation.

### **The responses received**

By the deadline that had been foreseen (31 March 2010), 8 contributions had been submitted. A further contribution was submitted on 13/14 April 2010.

### **The arguments raised in the responses**

The arguments put forward in these contributions can be summarised as follows:

(1) After the relevant documentation is submitted to the Commission, the latter typically transmits a list of observations and indicates mistakes and defects related to the documents that need to be corrected. The deadline for payment is suspended until the applicant has made the necessary amendments. After these corrections have been made, the Commission again transmits observations that are not related to the above corrections and that concern issues that could already have been raised in its first observations. This again leads to a suspension of the deadline for payment.

(2) Delays are in particular due to the fact that there are two separate departments dealing with reports as regards substance and administrative aspects respectively. There does not appear to be enough communication between these departments. Queries from applicants are often passed from one of these departments to the other and back, thus further complicating matters.

(3) During the summer break of 4 weeks there is practically no one available at the Commission to deal with payment issues.



(4) The problem of late payment is endemic, i.e., it is a problem that is built into the system. Delays occur when the Commission has questions to one or more project partners that lead to an interactive process between the Commission, the project coordinator and the partners that can be quite protracted. Where an amendment to the contract is proposed, payments are suspended until the amendment has been finalised. Finally, delays occur because the Commission's financial officer is ill, or because he is new and takes time to process matters.

(5) The Commission withholds 20 % of the budget when making interim payments. This means that a lot of money is owed for a long time after the end of the project.

(6) The problem has become much worse since the Commission moved from 6-monthly payments to annual payments. The system needs changing so that payments are received more frequently - say quarterly - with interest to be paid if payments are delayed for more than 1 month for whatever reason.

(7) Where payments are delayed, the beneficiary often needs to find the necessary means to cover the relevant expenditure in the meantime. The right to ask for interest on account of late payment does not solve the problems involved in finding such funds.

(8) It appears that the problem is no longer due to the central payment system of the Commission but rather to delays on the part of the Commission's delegation in the country concerned. This points towards management/staff problems at certain delegations, which should be examined more closely.

(9) The delays in payment could be due to the lack of competence or of care on the part of the officials in charge. A code of good behaviour should therefore be drawn up in order to define the rights and obligations of creditors and to foresee appropriate measures, notably systematic compensation in case of avoidable delays. This code should be mandatory.

(10) An inquiry should systematically be opened where this code is not respected or where avoidable delays occur, so as to understand the origin of these difficulties, to establish the reasons and responsibilities and to define corrective measures (notably dissuasive sanctions against the responsible persons).

(11) Recitals 18 and 19 and Articles 4(6) and 12 of Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (OJ 2000 L 181, p. 65) could serve as a model for the measures to be adopted.

(12) Where questions or problems arise as regards one project partner, payments are withheld as regards the entire consortium. It would be useful to consider the possibility to ensure that at least the other project partners are already paid.



(13) There is a lack of uniformity as regards the 30-days time-limit for payments to suppliers. DG AIDCO for example applies a 45-days time-limit.

(14) The period for making payment only starts to run on the date when the Commission enters an invoice into the system. As a matter of fact, the relevant period only starts to run when the Commission confirms that the invoice is complete (provisional acceptance - PAC). The date when the product or service is supplied would be a more appropriate date.

(15) Requests for further information enable the Commission to create the impression that no delays occurred.

(16) Interested parties do not contact the European Ombudsman because they fear to lose the Commission as a customer. Businesses also waive any claims for damage on account of late payment.

(17) Experts working for the Commission are regularly only paid after 55-65 days, sometimes even later. The problem appears to be due to a lack of commitment and motivation on the part of the Commission staff dealing with financial issues. The Commission should see to it that this staff is better qualified, that a working atmosphere conducive to commitment and motivation is created and that a system of personal responsibility, combined with performance-related pay, is introduced.

GG 21/4/2010