Lēmums lietā 1252/2005/GG - Standartizācijas darbam paredzētā finansējuma atcelšana

Lēmums
Lieta 1252/2005/GG - **Uzsākta {0}** 03/05/2005 - **Lēmums par {0}** 01/06/2006

Līgumā, ko Komisija parakstīja 1991. gadā, tā apņēmās sniegt finansiālu atbalstu Eiropas Standartizācijas komitejai *(Comité Européen de Normalisation) (CEN)* , lai izveidotu noteiktus Eiropas standartus. Lai veiktu noteiktas pārbaudes Eiropas standarta vajadzībām, viens no *CEN* apakšuzņēmējiem iecēla par projektu vadītāju sūdzības iesniedzēju, vācu ekspertu.

2002. gada maijā/jūnijā Komisija un *CEN* parakstīja līguma papildpielikumu, pārtraucot projekta finansēšanu.

Sūdzības iesniedzējs apgalvoja, ka Komisijas lēmums atcelt finansējumu bija nepareizs un negodīgs. Viņš pieprasīja, lai Komisija nosūtītu atlikušo līguma summu *CEN* , kas ļautu iesaistītajām iestādēm un personām saņemt maksu par paveikto darbu.

Komisija norādīja, ka standartizācijas darbs vairāku līgumu ietvaros ir noritējis lēni un neapmierinoši. Tāpēc saskaņā ar drošas finanšu pārvaldības principu tā, konsultējoties ar uzņēmējiem, šos līgumus ir pārtraukusi. Komisija nebija atbildīga par apakšuzņēmēju līgumiem. *CEN* bija iespēja informēt katru iesaistīto spēlētāju par plānoto darbu pārtraukšanu un iesniegt Komisijai pieprasījumus par jebkādiem atlikušiem maksājumiem pirms līguma pārtraukšanas. Komisija uzskatīja, ka tā ir izpildījusi savas juridiskās saistības.

Ombuds arī lūdza Komisiju sniegt atzinumu par sūdzības iesniedzēja apgalvojumu, ka lēmums ir bijis negodīgs. Šajā kontekstā ombuds atzīmēja, ka attiecīgajā korespondencē netiek minēts tas, vai Komisija ir iepriekš brīdinājusi par savu nodomu pārtraukt līgumu.

Komisija paziņoja, ka, tiekoties ar uzņēmējiem, tā ir protokolējusi sanāksmes, un šajos protokolos ir skaidri minēts, ka Komisija var atcelt finansējumu jebkurā laikā, ja netiks ievēroti iepriekš noteiktie termiņi. Nebija nekāda iemesla izteikt *CEN* vēl vienu brīdinājumu. Attiecībā uz jautājumu par to, vai lēmums bija negodīgs pret sūdzības iesniedzēju, Komisija uzsvēra, ka tai nekad nav bijušas līgumsaistības ar sūdzības iesniedzēju.

Saistībā ar sūdzības iesniedzēja apgalvojumu par to, ka Komisijas lēmums ir nelikumīgs, ombuds atzīmēja, ka sūdzības iesniedzējs nebija apstrīdējis Komisijas argumentu par to, ka līgumu pārtrauca *CEN* un Komisija, par to kopīgi vienojoties. Viņš pauda viedokli, ka sūdzības

iesniedzēja apgalvojums nav pamatots.

Attiecībā uz apgalvojumu par negodīgumu ombuds uzsvēra, ka sūdzības iesniedzējs līdz brīdim, kad tika pieņemts lēmums par finansējuma atcelšanu, savu darbu bija pabeidzis. Tāpēc bija saprotams, ka Komisijas lēmums viņu neapmierināja. Taču Komisijas arguments par to, ka nebija iemesla izteikt vēl vienu brīdinājumu, bija pamatots. Ombuds izlēma, ka Komisiju nevar saukt pie atbildības par *CEN* lēmumu neiesniegt maksājuma prasību par sūdzības iesniedzēja darbu. Viņš slēdza lietu, neatrodot nekādu kļūdu pārvaldē.

Strasbourg, 1 June 2006
Dear Mr S.,

On 23 March 2005, you made a complaint to the European Ombudsman against the European Commission concerning a project for which the latter had allocated funds.

On 3 May 2005, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 2 September 2005. I forwarded it to you on 5 September 2005 with an invitation to make observations, if you so wished, by 15 October 2005 at the latest. No observations were received from you by that date.

On 3 November 2005, I asked the Commission for a supplementary opinion and for further information in relation to your case. You were informed accordingly the same day.

On 7 December 2005, you submitted further information to me.

The Commission sent its reply to my request for a supplementary opinion and for further information on 10 January 2006. I forwarded it to you on 13 January 2006 with an invitation to make observations, if you so wished, by 28 February 2006 at the latest. No observations were received from you by that date.

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

THE COMPLAINT

Background

On 25 January 2005, the complainant, a German expert, submitted a complaint to the European Ombudsman (complaint 382/2005/GG) against the European Commission concerning a project that had been proposed by CEN (the "Comité Européen de Normalisation") and for which the Commission had allocated funds. Given that the complainant had failed to provide enough information to make it possible to examine the case, the Ombudsman informed the complainant, by letter of 9 February 2005, that there were insufficient grounds for an inquiry.

The present complaint

On 21 March 2005, the complainant renewed his complaint, submitting complementary information on his case. The case was therefore registered as a new complaint (complaint 1252/2005/GG).

According to the information provided by the complainant, the relevant facts are, in summary, as follows:

On the basis of Directive 89/106/EEC of the Council of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12), EU norms need to be established for building materials. The Commission has entrusted this task to CEN which, in turn, delegates the relevant tasks to Technical Committees ("TCs"). The work as such is carried out by Working Groups ("WGs"), which can establish ad hoc groups or project groups.

TC 134 was dealing with "Resilient, Textile and Laminate Floor Coverings". The secretariat of TC 134 was entrusted by CEN to the British Standards Institution ("BSI").

In 1997, TC 134 set up the project group "Experimental Work" to carry out experimental work on abrasion/wear tests and on the development of a method for the determination of slipperiness. The complainant was appointed as the leader of this project group.

Taking account of a subsequent amendment, the costs arising from the project were to be reimbursed in three steps, step 0 (30 %, to be paid at the commencement), step 1 (25 %, to be paid upon submission of the interim reports) and step 2 (45 %, to be paid upon submission of the final report).

In November 2001, the Commission decided to cancel any further funding. The remaining 45 % of the costs (a total amount of EUR 99 347.72) were thus not paid. The Commission's decision was taken on the grounds that the work had not been ready at the date envisaged. The complainant only learnt of the Commission's decision in 2002.

Various efforts undertaken by CEN and the complainant (starting with a letter sent by CEN on 27 November 2002) were unsuccessful.

In his complaint to the Ombudsman, the complainant essentially alleged that the Commission's decision to cancel its funding had been incorrect and unfair. He claimed that the Commission should forward the outstanding amount to CEN in order to allow the bodies and persons involved to be paid for their work.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

As regards the facts

CEN, one of the three European Standardisation Organisations ("ESOs"), is an autonomous private body under Belgian law, with which the Commission has maintained a working relationship over many years with a view to the drafting of voluntary standards aimed at supporting European policies. The members of CEN are the national standards bodies.

The project referred to by the complainant was intended to receive financial support from the Commission for the drawing up of defined European standards as indicated in mandate BC/CEN/91-06 (the "agreement"), which had been signed on 8 December 1991.

According to this agreement, CEN would follow the agreed work programme and report to the Commission on its progress. Payments were to be made only to the contractor (CEN), who could appoint various national standards bodies to execute defined tasks in relation to the mandate, organised in TCs. Accordingly, BSI had been designated by CEN to ensure secretariat tasks in the execution of the project. BSI had set up the project group "Experimental Work", appointing the complainant as project leader to carry out round robin tests in support of the drafting of a defined European standard ("EN 13893").

In November 2001, the Commission made an assessment of all pending projects. As far as the agreement in question was concerned, the target date for the adoption of the standards had been December 1994. In view of the delay that had occurred, the Commission sent, on 19 November 2001, a proposal to CEN to terminate the agreement.

By letter of 29 November 2001, CEN acknowledged the Commission's intention to de-commit the agreement and proposed to enter into a new agreement to fund the last two steps of the work. CEN also remarked that the draft standard was subsequently to be put to formal vote in the CEN system.

On 21 May 2002, CEN signed Addendum n o 2 to the agreement, terminating the financing of the two remaining steps (ratification and implementation) of the work items that had not been realised. The Commission signed this Addendum on 5 June 2002. The agreement was thus legally terminated.

On 20 November 2002, CEN published standard "EN 13893". By doing so, CEN had accomplished the task which had been the subject of the financing. However, this was done more than five months after the termination of the agreement.

As regards the complaint

In the period from 2000 until 2002, the Commission had been confronted with a large number of open agreements with the ESOs where financial commitments had not been kept due to the slow and unsatisfactory progress of the standardisation work. In accordance with the principle of sound financial management, the Commission therefore proceeded to terminate these agreements in consultation with the contractor and, moreover, with the latter's agreement as to the date of termination.

As in all other grant agreements in the area of standardisation during this time, the contractor was responsible for reporting back to the Commission on the progress of the work and for informing the Commission of any delays or other problems. If any tasks were sub-contracted outside CEN, the latter still retained the responsibility for the execution of these tasks. Consequently, the Commission was not responsible for any sub-contracting agreements that CEN had made and could not be made responsible for liaising or communicating with such

sub-contractors.

CEN had been consulted by the Commission on the termination of the agreement on 19 November 2001 and the usual practice for CEN was to inform the TCs and national standards bodies about the termination. CEN was therefore in a position to inform each actor involved about the planned termination in a timely fashion, assess the work actually executed until the date when the Commission requested termination and address any remaining payment requests to the Commission for payment before the signature of Addendum n o 2. The Commission could not be held responsible for the timeliness and adequacy of communication between CEN, its UK member BSI and their external sub-contractors. Only CEN was responsible for communicating with its TCs and their national members.

In the absence of any notification from CEN that the work of the TC had been fully accomplished, and in the absence of a payment request prior to the termination agreement, the Commission had signed the Addendum and thus legally terminated its commitment to provide funding. Because of the unsuccessful execution of the terminated agreement, the Commission had not accepted a renewal of the agreement as requested by CEN by letter of 27 November 2002.

Conclusion

In view of the above, the Commission considered that it had fully honoured its legal obligations in this case.

The complainant's observations

No observations were received from the complainant.

Further inquiries

In his letter opening the present inquiry, the Ombudsman informed the Commission that the complainant alleged that the Commission's decision to cancel its funding was incorrect and unfair. However, upon careful examination of the opinion, it appeared that the Commission had only examined the question as to whether its decision was correct. It thus emerged that further inquiries were necessary.

The request for a supplementary opinion and for further information

On 3 November 2005, the Ombudsman therefore asked the Commission to provide him with a supplementary opinion on the complainant's allegation that the relevant decision was unfair.

In this context, the Ombudsman invited the Commission to consider the following facts:

- In its letter to CEN of 19 November 2001, the Commission noted that serious delays as regards the standardisation work financed by the EU had occurred. It seemed that the delay had amounted to more than 70 months in the present case. However, the letter did not mention that the Commission had given prior warning of its intention to terminate the relevant agreement to CEN.
- In its reply of 29 November 2001, CEN had pointed out that the relevant work item was progressing satisfactorily, that a new voucher was therefore requested to be opened for it and that the relevant proposal had been submitted for the 'Formal Vote' in September 2001. However, there was nothing in the file to show if and how the Commission had taken these arguments into account.

The Ombudsman also asked the Commission to provide him with information (including copies of any replies that had been sent) as to how the Commission had dealt with the request made by CEN o n 27 November 2002 that the Commission should review its decision to cancel the remaining funding for the work concerned.

The complainant's letter of 7 December 2005

On 7 December 2005, the complainant wrote to thank the Ombudsman for pursuing his case. The complainant stressed that he had not been informed that the grant was to be cancelled. He further submitted that the relevant work had been completed before the end of 2001.

The Commission's reply to the Ombudsman's letter

In its reply to the Ombudsman's request for a supplementary opinion and for further information, the Commission made the following comments:

During 2001, the Commission had systematically reviewed, in close consultation with the three ESOs, all contracts dating back to 1987 that were still open and had taken action to close the contracts with unacceptably long delays. This exercise was intended to implement the Commission's policy of bringing the situation regarding outstanding commitments under control and of putting an end to commitments that were outstanding for an unacceptably long time.

At an operational level, sector-specific review meetings had been held with the ESOs in 2000-2001. The minutes of these meetings clearly pointed out that the Commission could cancel the funding at any time if the agreed timetables were not respected. The minutes of these meetings had always been communicated to the ESOs. Particular reference was made to the minutes of a review meeting held on 1 February 2001 during which the agreement in question in the present case had been discussed. There was no reason why any further warning should have been issued to CEN.

Setting up a new order voucher immediately after having decommitted a previous one on the same subject, as suggested in CEN's letter of 29 November 2001, would only have been possible under restricted conditions, in particular with regard to important work to be carried out after the signature of such an order voucher. However, the circumstances communicated at that stage by CEN could not be considered as sufficient in this context. CEN's statement had to be understood as meaning that the main technical work had been carried out but that the processing of the procedure for the final work was still to be done. Until the moment the termination agreement was signed, CEN had not provided the Commission with any information on open invoices including those concerning the work of the complainant. The fact that CEN did not come back to the issue in its letter of 21 May 2002 confirmed its acceptance of the unconditional termination of the relevant agreement.

As regards the question whether the Commission's decision was unfair with regard to the complainant, it should be pointed out that the Commission had never been in a contractual relationship with the complainant.

The Commission regretted not being in possession of written information concerning CEN's letter of 27 November 2002. It confirmed, however, that it did take note of CEN's request but considered that it could not be satisfied. Opening a new commitment would not have been

compatible with the Financial Regulation since the standard had been adopted in July 2002 and published in November 2002. It would have been impossible to make a commitment with retroactive effect.

The complainant's observations

The Commission's reply was forwarded to the complainant for his observations. However, no observations were received from the complainant.

THE DECISION

1 Allegedly incorrect and unfair decision to cancel funding

1.1 The Ombudsman's notes that the facts that gave rise to the complaint are as follows. In an agreement which was signed in 1991, the European Commission committed itself to providing financial support to CEN, one of the three European Standardisation Organisations ("ESOs"), for drawing up certain European standards. CEN delegated this task to Technical Committees ("TCs"). TC 134 dealt with "Resilient, Textile and Laminate Floor Coverings". The secretariat of TC 134 had been entrusted by CEN to the British Standards Institution ("BSI"). BSI had set up the project group "Experimental Work", appointing the complainant, a German expert, as project leader to carry out round robin tests in support of the drafting of a defined European standard ("EN 13893"). Taking account of a subsequent amendment, the costs arising from the project were to be reimbursed in three steps.

In November 2001, the Commission made an assessment of all pending projects. As far as the agreement in question was concerned, the target date for the adoption of the standards had been December 1994. In view of the delay that had occurred, the Commission sent, on 19 November 2001, a proposal to CEN to terminate the agreement. By letter of 29 November 2001, CEN acknowledged the Commission's intention and proposed to enter into a new agreement to fund the last two steps of the work. CEN also remarked that the draft standard was going to be put to formal vote in the CEN system later.

On 21 May 2002, the Secretary-General of CEN signed Addendum n o 2 to the agreement, terminating the financing of the two remaining steps (ratification and implementation) of the work items that had not been realised. The Commission signed this Addendum on 5 June 2002.

On 20 November 2002, CEN published standard "EN 13893".

1.2 In his complaint to the European Ombudsman, the complainant essentially alleged that the Commission's decision to cancel its funding had been incorrect and unfair. He claimed that the Commission should forward the outstanding amount to CEN in order to allow the bodies and persons involved to be paid for their work.

1.3 In its opinion, the Commission pointed out that from 2000 until 2002, it had been confronted with a large number of open agreements with the ESOs where financial commitments had not been kept due to the slow and unsatisfactory progress of the standardisation work. In accordance with the principle of sound financial management, the Commission had therefore proceeded to terminate these agreements, in consultation with the contractor and with the

latter's agreement as to the date of termination. The Commission further stressed that, as in all other grant agreements in the area of standardisation during this time, the contractor (CEN) had been responsible for reporting back to the Commission on the progress of the work and for informing the Commission of any delays or other problems. Consequently, the Commission was not responsible for any sub-contracting agreements that CEN had made and could not be made responsible for liaising or communicating with such sub-contractors.

The Commission pointed out that it had consulted CEN on the termination of the agreement on 19 November 2001 and that the usual practice for CEN was to inform the TCs and national standards bodies about the termination. According to the Commission, CEN had therefore been in a position to inform each actor involved about the planned termination in a timely fashion, assess the work actually executed until the date when the Commission requested termination and address any remaining payment requests to the Commission for payment before the signature of the addendum terminating the agreement. In the absence of any notification from CEN that the work of the TC had been fully accomplished, and in the absence of a payment request prior to the termination agreement, the Commission had signed the Addendum and thus legally terminated its commitment to provide funding. Because of the unsuccessful execution of the terminated agreement, the Commission had not accepted a renewal of the agreement as requested by CEN by letter of 27 November 2002.

The Commission noted that CEN had published standard "EN 13893" on 20 November 2002 and had thus accomplished the task which had been the subject of the financing. However, this was done more than five months after the termination of the agreement.

In view of the above, the Commission considered that it had fully honoured its legal obligations in this case.

1.4 No observations were received from the complainant by the date set for this purpose.

1.5 The Ombudsman noted that, whereas the complainant had alleged that the Commission's decision to cancel its funding was incorrect and unfair, the Commission's opinion dealt only with the question as to whether its decision was correct. On 3 November 2005, the Ombudsman therefore invited the Commission to provide him with an opinion on the allegation that its decision had been unfair. In this context, the Ombudsman noted (1) that the Commission's letter to CEN of 19 November 2001 did not mention that the Commission had given prior warning of its intention to terminate the relevant agreement and (2) that whereas, in its reply of 29 November 2001, CEN had pointed out that the relevant work item was progressing satisfactorily, that a new voucher was therefore requested to be opened for it and that the relevant proposal had been submitted for the 'Formal Vote' in September 2001, there was nothing in the file to show if and how the Commission had taken these arguments into account. The Ombudsman also asked the Commission as to how it had dealt with the request made by CEN o n 27 November 2002 that the Commission should review its decision to cancel the remaining funding for the work concerned.

1.6 In a letter sent o n 7 December 2005, the complainant stressed that he had not been

informed that the grant was to be cancelled. He further submitted that the relevant work had been completed before the end of 2001.

1.7 In its reply to the Ombudsman's request for a supplementary opinion and for further information, the Commission pointed out that sector-specific review meetings had been held with the ESOs in 2000-2001. The minutes of these meetings clearly pointed out that the Commission could cancel the funding at any time if the agreed timetables were not respected. The Commission referred, in particular, to the minutes of a review meeting held on 1 February 2001 during which the agreement in question in the present case had been discussed. According to the Commission, there was no reason why any further warning should have been issued to CEN.

The Commission submitted that setting up a new order voucher immediately after having decommitted a previous one on the same subject, as suggested in CEN's letter of 29 November 2001, would only have been possible under restricted conditions, in particular with regard to important work to be carried out after the signature of such an order voucher. However, the circumstances communicated at that stage by CEN could not be considered as sufficient in this context. The Commission added that until the moment the termination agreement was signed, CEN had not provided the Commission with any information on open invoices including those concerning the work of the complainant. In the Commission's view, the fact that CEN did not come back to the issue in its letter of 21 May 2002 confirmed its acceptance of the unconditional termination of the relevant agreement.

As regards the question whether the decision was unfair with regard to the complainant, the Commission further stressed that it had never been in a contractual relationship with the complainant.

The Commission submitted that it had taken note of CEN's request of 27 November 2002 but considered that it could not be satisfied. According to the Commission, opening a new commitment would not have been compatible with the Financial Regulation since the standard had been adopted in July 2002 and published in November 2002. It would have been impossible to make a commitment with retroactive effect.

1.8 The Commission's reply was forwarded to the complainant for his observations. No observations were received from the complainant.

1.9 As regards the complainant's allegation that the Commission's decision to cancel its funding was illegal, the Ombudsman notes that the legal basis of this funding was an agreement concluded in 1991 between the Commission and CEN. The complainant has not disputed the Commission's argument that this agreement was terminated by CEN and the Commission by common agreement in May/June 2002. In these circumstances, the Ombudsman takes the view that the complainant has not established his allegation that the Commission acted illegally when deciding to cancel its funding.

1.10 As regards the complainant's allegation that the Commission's decision to cancel its

funding was unfair, the Ombudsman notes that it seems that the work to be carried out by the complainant was completed by the time the decision to cancel the funding was taken. It is therefore understandable that the complainant is displeased with the Commission's decision. However, regard should be had to the fact that the Commission was in a contractual relationship not with the complainant, but with CEN. In this respect, the complainant has not disputed the Commission's argument that CEN's obligations were only fulfilled once standard "EN 13893" had been published and that this had not been done by the time the agreement was terminated. Nor has the complainant challenged the Commission's view that a considerable delay (more than 70 months) had occurred as regards the work to be carried out under the agreement. The Commission has further argued that its decision to terminate agreements with the ESOs, where financial commitments had not been kept, due to the slow and unsatisfactory progress of standardisation work, was in accordance with the principle of sound financial management. The Ombudsman considers this to be a valid argument. In view of these circumstances, the Ombudsman takes the view that the Commission's decision to cancel its funding was not unfair in itself.

1.11 As regards the way in which the cancellation was carried out, the Ombudsman notes that the Commission's letter of 19 November 2001 proposing to terminate the agreement did not refer to any prior warning having been given. However, in reply to a question put to it by the Ombudsman, the Commission explained that sector-specific meetings were held with the ESOs in 2000-2001 and that the minutes of these meetings clearly pointed out that the Commission could cancel the funding at any time if the agreed timetables were not respected. The Ombudsman notes that such a warning was also included in the minutes of a review meeting held on 1 February 2001 during which the agreement in question in the present case was discussed. In these circumstances, the Commission's view that there was no reason why any further warning should have been issued to CEN appears to be reasonable.

1.12 The Ombudsman further notes that the Addendum cancelling the funding was only signed in May/June 2002. As the Commission has correctly observed, CEN was therefore in a position to inform each actor involved about the planned termination in a timely fashion, assess the work actually executed until the date when the Commission requested termination and address any remaining payment requests to the Commission for payment before the signature of the Addendum terminating the agreement. The Ombudsman considers that the Commission cannot be held responsible for CEN's decision not to submit such a payment request as regards the work carried out by the complainant.

1.13 The fact that the Commission decided not to accept CEN's request of 27 November 2002 that it should enter into a new commitment as regards the funding of the work carried out by the complainant is not immediately relevant for the assessment of the Commission's decision to cancel the funding. However, the Ombudsman considers it useful to note that the Commission's argument, that, in the light of the relevant rules, it would have been impossible to make such a commitment with retroactive effect, does not appear to be unreasonable.

1.14 In view of the above, the Ombudsman takes the view that the complainant has not established his allegation that the Commission acted unfairly when deciding to cancel its

funding.

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