

Brussels, 28 MAI 2009
D-282/09

Dear Mr Diamandouros,

Subject: Own Initiative Inquiry, ref. OI/1/2009/GG

I refer to your letter of 17 February 2009 to President BARROSO about this inquiry.

Please find attached the opinion of the Commission.

The Commission remains at your disposal for any further information you may require.

Yours sincerely,



Enclosure

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1. Background

In his previous own-initiative inquiries closed on 16.2.2001 and 20.6.2008 respectively, the Ombudsman already investigated the subject of late payments by the Commission.

In his decision of 20 June 2008, the Ombudsman noted that *'many of the measures adopted by the Commission in this context, and in particular those that resulted in changes of Regulation 2342/2002, appeared to be comparatively recent'* and that it was therefore *'too early to assess the impact that they would have on the situation'*. In the Ombudsman's view, the best way to proceed was thus to close the inquiry and *'to open a new own-initiative inquiry in early 2009, when figures for the Commission's performance in 2008 would be available. On the basis of these figures the Ombudsman will then be able to decide whether the Commission has taken all appropriate steps to combat delays in payments or whether further action is necessary'* (point 1.9).

Therefore, as announced, on 17 February 2009, the Ombudsman launched a third own-initiative inquiry to establish whether there are still problems which need to be redressed in relation to payment delays. The Ombudsman would like in particular to obtain the following information:

- Statistical data illustrating the number and percentages of late payments, the extent of the delays, the sums involved, the cases where interest was paid, and the number of creditors entitled to interest for late payments (see section 2.1 below),
- Results of the steps already taken by the Commission to identify and deal with the causes of delays for payment, in particular following the introduction of automatic late interests exceeding 200 EUR as provided in Article 106(5) of the Implementing Rules of the Financial regulation (IR)¹ (see section 2.2 below),
- Any further steps the Commission would have taken (see section 2.3 below).

2. Reply from the Commission

2.1. The **Commission has maintained a similar level of performance** for payments in 2008, in number and in value, and in average delay. The following table summarises the 2008 situation concerning payments made after the expiry of the time-limits, as resulting from data encoded in the Commission accounting system (ABAC). Data relating to 2005 and 2007 already communicated are used for the sake of comparison:

¹ Commission Regulation (EC, Euratom) No 2342/2002 of 23.12.2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1), as last amended by Commission Regulation (EC, Euratom) No 478/2007 of 23.4.2007 (OJ L 111, 28.4.2007, p. 13).

| | 2005 | 2007 | 2008 |
|--------------------------------------|------------|------------|------------|
| Late payments in number | 42,74% | 22,57% | 22,67% |
| Late payments in value | 17,48% | 11,52% | 13,95% |
| Delays on average² | 49,13 days | 47,98 days | 47,45 days |

As far as the **payment of interest for late-payments** is concerned, the Commission has had to deal with more requests and has had to pay more interest in 2008 than over 2005-2007.

| | 2005 | 2007 | 2008 |
|--|-----------------|-----------------|--|
| Requests for interest for late payments in number | 149, i.e. 0,11% | 136, i.e. 0,16% | 173, i.e. 0,19 % |
| Amounts of interest paid for late payments | 230.736,58 € | 378.211,57 € | 576.027,10 € (512.830,79 € on request + 63.196,31 € without request) |

2.2. The many steps already adopted in the last years to avoid late payments, both at the administrative and legislative levels, which are listed in the Commission reply to the Ombudsman's second inquiry, have helped reducing considerably the percentage of late payments but the situation, in 2008, is very close to the one witnessed in 2007. One must nevertheless note that most of the different measures adopted to tackle the issue of late payments, are of **long-term character**. Their effect will therefore only be shown gradually. For instance, the revised article 106(5) IR is applicable as from 1 January 2008 but requests are still needed to claim for late interest in accordance with procurement contracts or grant agreements/decisions concluded before 1 January 2008. The full impact of this new measure will therefore be measured only when most on-going procurement contracts or grant agreements/decisions are contracts, agreements or decisions signed or concluded after 1 January 2008.

2.3. The Commission is fully aware of the need to comply with time-limits for payments and still considers that more efforts are needed, in particular in these difficult times of economic crisis, given the crucial importance of the need for increased fluidity of funds for all beneficiaries, and especially for the SME and NGOs. This is why the Commission adopted on 8 April 2009 a communication entitled '*Streamlining financial rules and accelerating budget implementation to help economic recovery*³', sent for information to the Ombudsman. This communication focuses on the part of the budget that the Commission implements directly (centralised management) and instructs the Commission services to go a step further by

² Net delays.

³ SEC(2009) 477/5.

implementing the following summarised measures **on a voluntary basis** (without prior modification of the legal texts and without amending the in force procurement contracts or grant agreements/decisions):

- **Speed up 'first' pre-financing payments** (which are due upon signature of the procurement contract or grant agreement/decision, without being subject to any further check or condition) **by paying within 20 calendar days** from the date of the conclusion of the procurement contract or grant agreement/decision to the day on which the Commission bank account is debited⁴. Pre-financing payments cover about one third of the payments in value,
- **Speed up all other payments** (i.e. 'renewed pre-financing', interim and final payments which depend on the completion of a phase of a project and the approval of the corresponding reports and relevant supporting documents), for which the Commission will apply a **30-day time-limit** where currently 45 days apply (in the case of grants),
- **Promoting the use of lump sums** (fixed amounts) **and flat rates** (scale-of-unit cost), which avoid time consuming and cumbersome checks for standardised actions/costs⁵.

Through this communication, the Commission also reinforces the monitoring of its departments' performances. Firstly, the Commission Accounting Officer has been entrusted with monitoring and coordinating progress in the implementation and delivery of the reduced time-limit. His first appraisal will be made on the basis of payment delays observed during the last quarter of 2009. Secondly, the stock-taking, which is already reported in the Annual Activity Reports as well as in the Annual synthesis report on management achievements by the Commission, will be intensified and become a more dynamic exercise as Directors-General and/or Heads of Service will now have to present and, if need be, comment on the performance of their Directorate-General/service.

In the light of the above developments, it is clear that the Commission is engaged with determination in addressing the challenges it faces with late payments and has made its departments fully aware of the need to achieve better performance with regard to payment delays in 2009 and beyond.

⁴ Instead of 30 days from the date on which an admissible payment request is registered for service or supply contracts, or even 45 days in other cases according to Article 106 IR. Due to the constraints linked to the annual budgetary closure and the making available of carryovers, the period between 15 December and 15 January will not be taken into account for the time-limit targeted under this measure. Interest for late payments will continue to be applied in accordance with the regulatory time-limits, as set in Article 106(5) IR.

⁵ Article 181 IR.