EUROPEAN COMMISSION

THE SECRETARY GENERAL

Brussels, 19 October 2000

Dear Mr Söderman,

Subject: Own initiative inquiry, ref. OI/5/99/IJH

By letter dated 3 July 2000 the Commission informed you that it would send you its communication on payment delays as its definitive opinion. I have pleasure in enclosing this memorandum which was approved by the Commission at its meeting of 19 July 2000.

By the above-mentioned letter the Commission undertook to make publicly available the outside study, prepared by Grant Thornton and the report of its own ad hoc group. The report by Grant Thornton has been published on the Budget DG web site and the report by the ad hoc group is annexed to the memorandum to the Commission enclosed with this letter.

In your letter of 3 December 1999 announcing your decision to undertake an own initiative inquiry you requested information on three specific points. I would, therefore, like to summarise the contents of the Communication of the Commission on the first two points and then reply to the third point.

1. Steps taken by the Commission to identify and deal with the causes of delay in making payments to contractors and to the beneficiaries of grants and subsidies:

   1.1 The Commission has considered the problem of payment times on several occasions.

   In May 1991 it set itself the rule that payments should be made within 60 days of receiving an invoice (or any other equivalent request for payment).

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In 1995 it decided that the target was to execute 95 % of payments within 60 days and that in principle no operation should take longer than 90 days. The Commission also instructed authorising departments to inform the beneficiary within 25 days if for any reason payment was likely to take longer than 60 days. Directors-General were asked to check their payment times on a monthly basis to ensure that they were achieving the target times.

In June 1997 the Commission decided to amend its contract policy to include a clause formalising the requirement that payments be made within 60 days and providing for the possibility of interest being paid, at the creditor's request, where the payment period is exceeded, except where it has been suspended by the Commission.

In April 2000 the Commission included in the action plan contained in the White Paper on Reform (in particular in Section VII – "Speeding Up Payments" in Chapter II – "A culture based on service") a statement that "It is Commission policy that all valid invoices should be submitted within 60 days. For a variety of reasons, this timeframe is respected for only 60 % of the current payments. The objective of the Reform is to raise this to 95 % by 2002".

Finally in July 2000 the Commission included in its proposal for the recasting of the Financial Regulation (Article 77) the principle of time limits for payments and interest for late payment. The details will be specified in the implementing rules.

1.2 Two studies have been made aimed at identifying and dealing with the causes of delay in making payments:

Grant Thornton conducted a study in 1998. The consultants' findings and main recommendations are set out in Annex 1 of the Commission communication.

An ad hoc group of Commission officials carried out a study in early 2000. The detailed record of the group's discussions and recommendations are set out in Annex 2.

2. Analysis of the continuing causes of the problem of late payment, together with an analysis of possible ways in which the problem could be dealt with, distinguishing between matters that could be dealt with administratively and those that would require action by the Community legislator.

2.1 The settlement of a payment request often consists of a reimbursement of expenditure procedure that requires thorough examination and numerous supporting documents.

It is now proposed to simplify the financial clauses in contracts and to reduce the number of supporting documents by setting standard amounts for certain categories of expenditure such as travel expenses.

2.2 Many payments depend upon the approval of a technical report or of a cost statement. This gives rise to complaints about late payment because it is not clear enough in the contracts what is the starting point for the payment time of 60 days and what the obligations for providing information are of the two parties.

It is now proposed:

- to incorporate separate concepts in the contracts for “time allowed for approving the report” and for the “payment time” (for the invoice) and to specify in contracts that the Commission departments must react quickly if the technical report is not satisfactory or the payment request not eligible; time limits for approving different types of reports have been set, after which payment requests are receivable unless the time allowed for approval in the contract has been suspended by the Commission by means of a formal message to the contractor;
- to ensure that the technical annexes to the contracts setting out what the contractor is to deliver to the Commission at each stage of the project are drawn up with precision and can be checked by both parties;
- to make it a general rule that a formal payment request (or invoice) must always be sent to the Commission and to lay down in the contracts the particulars to be contained in the requests for payment.

2.3 The Commission’s IT tools and procedures need improvement.

The Commission has set deadlines for the installation of tools that:

- will allow services to monitor more rigorously their payment times;
- will provide services with a common system for recording and monitoring invoices.

It has also instructed its services to simplify the rules for the reimbursement of experts’ meeting expenses and to improve the tools available to help authorising services manage the whole cycle of reimbursements. Further decentralisation to the operating DGs is aimed for.

DG Budget will take steps to advance the start of the financial year and reduce the time needed to take over commitments from the previous financial year.

All the above measures are of an administrative nature. The only measure requiring the intervention of the Community legislator is the proposal in the recasting of the Financial Regulation to fix payment times and the rights of creditors to interest in the case of late payment.

3. Procedures for redress open to contractors in case of dispute with the Commission about the adequacy of the contractor’s performance or of the documentation supplied by the contractor. Whether the procedures for redress are sufficiently rapid and effective and whether improvements could be envisaged.

In the event of a difference over the quality of the contractors’ services, they may in the first place contact the managers and afterwards present their claims to the Director-General. The contractors have also the possibility of informing the Commissioner responsible or even the President of the Commission. These different possibilities thus allow contractors to have their claims examined at the highest level in the Institution. Finally, they may take legal action in the courts which the contracts state as being competent to decide on any disputes.

It should be noted that the Commission's Legal Service is often associated with questions raised by contractors. This service is able to assess the arguments advanced by both sides from the point of view of neutrality and of legal analysis.

Yours sincerely,

David O'SULLIVAN

<u>Enclosure</u>