

Entscheidung in der Sache 2605/2009/MF - Ungerechtfertigte Einziehung eines Zuschusses

Entscheidung

Fall 2605/2009/MF - **Geöffnet am 21/12/2009 - Entscheidung vom 07/06/2011**

Die Kommission gewährte der Beschwerdeführerin (einer in Brüssel ansässigen NRO ohne Erwerbszweck) einen Zuschuss für die Durchführung eines Projekts. Anschließend führte das Organ ein Audit des Projekts durch. Aufgrund der Auditergebnisse forderte die Kommission die Beschwerdeführerin auf, einen Teil des Zuschusses zurückzuzahlen. Die Kommission begründete ihre Aufforderung damit, dass es die Beschwerdeführerin versäumt hatte, Belege für bestimmte Kosten fristgerecht vorzulegen. Obwohl die Beschwerdeführerin die entsprechenden Unterlagen vorgelegt hatte, weigerte sich die Kommission, die Einziehungsanordnung zu überdenken, da die Beschwerdeführerin die Dokumente verspätet eingereicht hatte.

Der Bürgerbeauftragte schlug eine einvernehmliche Lösung vor, indem er die Kommission um eine Erklärung bat, weshalb sie ihre Schlussfolgerungen aus dem Audit nicht relativieren und die Unterlagen nicht berücksichtigen könne, auch wenn diese verspätet eingereicht worden waren.

Die Kommission nahm den Vorschlag für eine einvernehmliche Lösung an. Sie erklärte sich bereit, die fraglichen Unterlagen vollständig zu prüfen ebenso wie den ursprünglich in ihrer Einziehungsanordnung geforderten Betrag.

Der Bürgerbeauftragte schloss die Angelegenheit daher als durch die Kommission beigelegt ab.

Außerdem richtete er eine weitere Bemerkung an die Kommission, in der er ihr vorschlug, die Beschwerdeführerin direkt über den Termin zu informieren, an dem die Kommission ihre Auswertung der weiteren Unterlagen voraussichtlich abgeschlossen haben wird; auch sollte dieser Termin vorzugsweise innerhalb von zwei Monaten nach dem Beschluss des Bürgerbeauftragten liegen, den Fall abzuschließen.

The background to the complaint

1. The complainant is the Migration Policy Group ('MPG'), a non profit NGO located in Brussels,



represented by its Managing Director.

2. On 31 March 2004, the Commission and the complainant signed a grant agreement for project JAI/2003/INTI/013, entitled " *European Migration Dialogue - linking the national and European debates on integration and integration policies* " ('the Project').

3. The complainant successfully carried out the Project, in collaboration with 20 other NGOs ('partner organisations') from across the EU. The Project ran for 18 months, as of 1st April 2004 to 30 September 2005, at a total cost of EUR 611 610. On 30 November 2005, the Commission received the complainant's final project report. On 17 August 2006, and following some additional contacts with the complainant, the Commission made the final payment for the Project.

4. On 10 September 2007, the Commission informed the complainant that the Project had been selected for an *ex-post* control in the annual standard audit programme of the then Directorate General " *Justice, Freedom and Security* " ('DG JLS'), and that the audit would take place six weeks later. It also informed the complainant that two Commission auditors would visit the complainant's premises to inspect the accounts documents relating to the Project. In order to carry out the audit, the Commission asked the complainant to make available to its auditors a number of accounting documents from which it would be possible to verify the Project expenses and income. The Commission also wanted to see payslips as proof of staff costs.

5. The audit took place on 24 October 2007. During the on-the-spot audit, certain Project documents were found to be missing. In accordance with the Commission's request, the complainant subsequently submitted more documents.

6. On 11 August 2008, the Commission sent a letter to the complainant, to which it attached the draft audit report. In its letter, the Commission requested the complainant to comment on the auditors' findings within the following 15 working days. Paragraph 4.5 of the above first draft audit report (" *Tracing of expenses to supporting documents* ") reads as follows:

" *The auditors noted that for the salary costs of project partners, salary statements [payslips] were missing. Additionally, daily allowances were not supported by proof of payment. In some cases, tickets and boarding passes were not provided. Costs for which insufficient supporting documentation was provided have been considered ineligible for an amount of EUR 307.931. "*

7. On 19 August 2008, the complainant sent the Commission a number of additional documents and stated that it disagreed with the conclusions of the draft audit report. It stated that it wished to submit the missing documentation and, therefore, requested a three-month extension of the deadline, which it considered necessary for contacting the partner organisations. The complainant also asked if the payslips MPG had issued for its partner organisations' staff during the Project period would be sufficient, or whether it would have to request the partner organisations concerned to submit the payslips directly to the Commission.

8. On 12 September 2008, the Commission sent the complainant a revised draft audit report,



without modifying the amount of ineligible costs. The Commission set a new two-month deadline, due to expire on 12 November 2008, within which the complainant could submit its comments. The Commission also stated that this deadline could not be postponed further because " *its annual schedule had to be respected.* " The Commission added: " *Considering your preliminary comments, we must mention that you are obliged under Article 1.9.1 of the grant agreement to ensure availability of supporting documents on the Commission request, especially lacked on-the-spot (salary slips or payrolls, proof of payments and invoices). The declarations on salary costs according to the partnership agreements are considered insufficient to verify the expenditure ...*"

9. On 7 November 2008, the complainant provided the Commission with further documents [1] .

10. On the basis of the new evidence submitted by the complainant, the Commission revised its draft audit report and reduced the amount of ineligible costs to EUR 220 086.59, leading to a financial correction of EUR 138 328. On 18 February 2009, the Commission sent the final audit report to the complainant. It included a detailed explanation of the reasons why some of the documents the complainant had provided were accepted, and some were considered as insufficient proof of expenses related to the Project. The Commission noted, for example, that there was no documentary evidence for 51% of the amounts declared under the heading "Staff costs". In most cases, the Commission found the staff costs ineligible on the grounds of " *missing payroll* " [2] .

11. In a letter dated 25 February 2009, the complainant challenged the outcome of the final audit report and requested a meeting with the Commission. It stated that it did not consider that the Commission had answered the question it, that is, the complainant, asked in its letter dated 19 August 2008, namely, whether some examples of payslips would be sufficient, or whether all the relevant payslips had to be submitted.

12. On 16 March 2009, the Commission replied, stating that its letter dated 12 September 2008 contained an answer to the specific question the complainant had asked in its letter dated 19 August 2008. The Commission further stated that, despite the two-month extension of the deadline, the complainant had not been able to provide the missing documents. The Commission, therefore, considered the audit to be closed, and the audit report, sent to the complainant on 18 February 2009, as final.

13. On 27 March 2009, the complainant, once again, requested a meeting with the Commission, reiterating that the Institution had still not replied to the question it asked in its letter dated 19 August 2008.

14. On 27 May 2009, the Commission replied, stating that the complainant's specific question of 19 August 2008 was answered by its letter dated 12 September 2008. The Institution also reminded the complainant that the letter dated 25 February 2009 did not contain any new information that would have allowed a revision of the audit's conclusions, and that MPG had already been given ample time to provide documentation.



15. In a letter dated 5 June 2009, the Commission stated that it would send the complainant a recovery order for the amount of EUR 138 328.

16. On 29 June 2009, the complainant and the Commission met in Brussels.

17. Following that meeting, on 7 July 2009, the complainant sent copies of the requested documents to the Commission. In the cover letter, the complainant wrote to the Commission:

" As mentioned to you during our meeting, since our last contact with the auditor, on 18 February 2009, we finally received most of the missing supporting documents we were requesting urgently from our partners for several months. The total amount that can be provided eligible thanks to these new documents attaining more than EUR 130.000, we would very much appreciate your agreement to take them into consideration ".

18. In its reply of 16 July 2009, the Commission stated that it had analysed the documents submitted by the complainant, but informed the latter that the documents could not be accepted at so late a stage in the audit procedure since they should have been available at the time of the audit, as provided by the grant agreement. The Commission, therefore, decided that the conclusions the Institution had drawn from the final audit report of 18 February 2009 should not be modified.

19. On 31 July 2009, the complainant requested another meeting with the Commission. It stated that it had been very difficult to obtain the documents requested. The Project involved " 28 " [3] organisations across Europe, one of which had gone out of business, while others were not able to provide the necessary information. For many of them, it was the first time that they had participated in a project of this kind. The complainant therefore stated that a meeting with the Commission would " *help to understand what the precise rules are concerning the audit and what the project leader could do to assist partners to provide the necessary information.* "

20. On 10 September 2009, the Commission replied, reiterating the arguments contained in its letter dated 27 May 2009.

21. On 14 October 2009, the Commission issued the recovery order amounting to EUR 138 328.

22. The complainant submitted a complaint to the Ombudsman on 21 October 2009.

The subject matter of the inquiry

23. In its complaint, the complainant submitted the following allegations:

- (1) The Commission acted unfairly in the course of the follow-up to the audit, and
- (2) There were procedural shortcomings in the audit procedure.



24. The complainant submitted the following claims:

(1) The Commission should consider the additional documents that the complainant submitted, and

(2) The Commission should settle the balance and issue a credit note.

25. The Ombudsman considered that there were insufficient grounds to include the second allegation in his inquiry because the complainant did not provide any evidence to sustain it. He therefore decided not to include this allegation in his inquiry, on the basis of Article 228 of the TFEU [4] , and informed the complainant accordingly. He opened an inquiry into the complainant's first allegation, and two claims.

The inquiry

26. On 21 December 2009, the Ombudsman asked the Commission to submit its opinion by 31 March 2010.

27. On 5 May 2010, the Commission sent its opinion.

28. The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations, which were sent on 30 June 2010.

29. After a careful consideration of the Commission's opinion and of the complainant's observations, the Ombudsman made a provisional finding of maladministration. In accordance with Article 3(5) of his Statute, on 8 February 2011, he, therefore, made a proposal for a friendly solution to the Commission.

30. By letter dated 11 May 2011, the Commission accepted the proposal for a friendly solution. A copy of that letter was forwarded to the complainant. By e-mail of 13 May 2011, the complainant informed the Ombudsman that he was satisfied with the Commission's reply.

The Ombudsman's analysis and provisional conclusions

A. Alleged unfair behaviour during the course of the follow-up to the audit and relevant claims

Arguments presented to the Ombudsman



31. In order to sustain its allegation, the complainant submitted the following three arguments:

(1) First, the Commission failed further to extend the deadline and thus take into consideration the complainant's difficulties in obtaining the requested confidential documents from its partner organisations.

(2) Second, the Commission failed to take into consideration the documentary evidence which the complainant finally provided on 7 July 2009.

(3) Third, the request for recovery of EUR 138 328 was disproportionate, given that the complainant submitted 94% of the requested documents to the Commission on 7 July 2009.

32. As regards the first argument, the Commission stated in its opinion that all documentation should have been presented by the submission date for project reports. Late acceptance of the supporting documents, namely, after the extended deadline of 12 November 2008, would have been "*in breach of the principle of equal treatment of beneficiaries under the Grant programme.*"

33. The grant agreement clearly foresaw that, to be considered eligible, all costs had to be supported by appropriate documentation, which should have been available at any time, and not only for audits. Article II. 14.1 of the grant agreement stated that the eligible costs of the action had to be "*identifiable and verifiable*". Article II. 19.2 of the grant agreement explicitly foresaw that "[t]he beneficiary shall keep at the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement for a period of five years from the date of payment of the balance ...". The grant agreement also provided that an audit could be performed up to "*... five years from the date of payment of the balance and that supporting documentation shall be kept during that period*".

34. However, the auditors noticed the lack of the following documentation: (i) a ledger for all the expenditure; (ii) proof of transfers to the partner organisations (the amounts in the cost statement did not fully correspond to the amounts indicated in the bank statements); (iii) sufficient supporting documentation for staff costs (payslips or payrolls) and subsistence allowances (proof of payment); (iv) sufficient supporting documents for travel costs (tickets or boarding passes).

35. The Commission stated that, at the complainant's request, it had granted the latter a *generous* extension of the deadline to submit the missing documents, namely, by extending it from 11 August 2008 to 12 November 2008. In addition, in a letter dated 12 September 2008, in which the extension of the deadline was granted, the Commission informed the complainant that "*only expenditures for which adequate supporting documents are available (especially salary slips for staff costs) can be considered eligible*".

36. Although the complainant's letter dated 7 November 2008 contained some additional documentation, the Commission considered that it was not clear from that letter that more



documentation was in the process of being retrieved from the partner organisations, or that difficulties had been encountered in collecting such documentation. The complainant merely stated in that letter that: "*We will also get back to the partners and ask for salary slips whenever available*". Moreover, the additional documentation submitted concerned almost all the partner organisations, which led to the belief that the complainant had succeeded in contacting almost all the partner organisations and collecting some of the supporting documentation for "*Staff costs*", "*Travel and subsistence allowances for project staff*", and "*Conferences and seminars*".

37. For the above reasons, the additional documentation provided by the complainant on 7 November 2008 was considered absolutely final by the Commission, and was used as a basis for the final audit report sent to the complainant on 18 February 2009.

38. The Commission concluded by stating that it was only at the very last stage of the procedure that the complainant mentioned that it was having difficulty in obtaining the requested information.

39. As regards the second argument, the Commission stated that the complainant provided the final pieces of documentation far too late, and "*on its own initiative*".

40. With respect to the third argument, the Commission recalled that the amount of EUR 138 328 corresponded strictly to costs that could not be considered eligible, since they were not substantiated on time by adequate supporting documents which, in most cases, would have been payslips. Therefore, in the Commission's view, the amount of the recovery order was not disproportionate.

41. As regards the complainant's claims, the Commission stated that it considered that the decision not to consider the additional documents provided by the complainant was well-founded. Thus, in the Commission's view, there was no need to revise the final amount of the grant after the audit, or to issue a credit note.

42. In its observations, the complainant argued that, although payslips for the staff of partner organisations were not available during the inspection, payslips for MPG staff who participated in the Project were among the supporting documents. The complainant stressed that at no time during the inspection was there any indication whatsoever that the non-availability of the payslips would constitute a major obstacle in obtaining approval for the financial statement relating to the Project.

43. The complainant further stated that, in all the years it had worked on projects carried out on behalf of the Commission, time-sheets, which are documents that substantiate salary-related expenses requested by the Commission, were always accepted as sufficient proof of expenditure. Moreover, it stressed that payslips are confidential documents since they relate to people's private lives. The complainant stated that it did not keep details of payrolls or payslips of the staff employed by the partner organisations because it considered that it had no right to infringe those persons' rights to confidentiality by keeping documents of a sensitive and personal nature.



44. Nevertheless, when it received the draft audit report dated 11 August 2008, the complainant went to great lengths to obtain the payslips relating to the staff of the partner organisations. The numerous obstacles that the complainant had to face in order to obtain copies of these personal and confidential documents (the divulging of which to unauthorised third parties is unlawful in many countries) made it quite clear that the two-month extension granted by the Commission (from 12 September 2008 until 12 November 2008) was grossly insufficient.

45. The complainant drew attention to the fact that the Commission considered this two-month extension to be a "generous" offer, and that it had refused to grant any further extension, even though there was no provision which stated that no more than one extension can be granted.

46. As a result of the complainant's many "calls for a meeting" to explain the situation in person, the Commission finally agreed to meet the complainant. A meeting was arranged for 29 June 2009, during which the complainant informed the Commission that (i) it had finally succeeded in collecting most of the missing documents "a few months earlier" and (ii) "as a matter of fact, [MPG was] already able to produce the bulk of the demanded pay [slips] in February 2009, but [MPG] could not get in touch with any responsible interlocutor." The complainant also stated that during that meeting the Commission's representative advised it to "send these documents to him which [the complainant] did on the 7th of July."

47. Attached to the complainant's observations were copies of the following: (i) an e-mail dated 20 January 2004, in which one of MPG's experts stated that he had contacted his accountants and was informed that they "do not communicate salary slips to thirds"; (ii) a letter from a Belgian partner organisation dated 2 February 2004 in which the latter stated that "it remained at the Commission's disposal to show the supporting documents", and (iii) a reply from a partner organisation, dated 24 October 2008, to the complainant's letter of 26 September 2008, with which four payslips of one named expert, covering the period from 31 May 2004 to 30 April 2005, were enclosed. In that letter, the following statement was made: "Tracking down wages slips meant going through papers stored in a garage, and it was quite a task!"

The Ombudsman's preliminary assessment leading to a friendly solution proposal

48. At the outset, the Ombudsman recalled that the recovered amount of EUR 138 328 corresponded to the costs that could not be considered eligible because they were not substantiated by adequate supporting documents, in most cases, staff payslips issued by partner organisations ('the payslips in question'). The Ombudsman understood that it was the recovery of this sum, established as a result of the audit, which is in dispute.

49. Furthermore, the Ombudsman pointed out that Article II.14.2 of the grant agreement's General Conditions provides that the eligible direct costs are "the cost of staff assigned to the action, comprising actual salaries". There was, however, no provision in the grant agreement



which specifies that the payslips are necessarily the only proof of the above expenses. Article I.4.3 of the grant agreement " *Payment of the balance* " refers only to " *supporting documents*. " [5]

50. The Ombudsman further noted that the Commission's document " *Fiche de control* ", dated 31 July 2006, which was attached to its decision on final payment dated 17 August 2006, mentions the payslips as supporting documents. The Commission commented as follows in the " *Fiche de control* " on the costs of the UK coordinator and UK conference organiser: " *Timesheets received but not the copy of salary slip and payment made to this person (not the complainant's staff) - provide information on how daily rates have been calculated* ".

51. Apart from the above example of how the costs for the UK coordinator and the UK conference organiser were calculated, the Commission, apparently, knowing that there were no payslips available in some cases, nevertheless paid the balance of the staff costs on the basis of " *declarations* " (presumably, *the declarations on salary costs according to the partnership agreements* [6]) and, in other cases, on the basis of copies of time-sheets.

52. In light of the above, it did not appear that the non-availability of the payslips in question among the Project documentation infringed the grant agreement.

53. The Ombudsman understood the complainant's argument that it was difficult for it, as leader of a project involving more than 20 different partner organisations from a number of EU countries, to retrieve originals or copies of the individual payslips of experts who were not directly engaged by MPG, but by partner organisations. The Ombudsman also found it reasonable to assume that such difficulties inevitably increase with the passage of time. It appears that this is what actually occurred, since the complainant was unable to comply with the Commission's request dated 10 September 2007, namely, to make all the payslips in question available during the audit which was scheduled to take place only six weeks later, that is, on 24 October 2007.

54. When the complainant was informed on 11 August 2008 of the auditors' finding that certain costs were ineligible due to the lack of payslips, it made every possible effort to obtain the payslips. The Commission agreed to wait two (effectively, three) more months, that is, until 12 November 2008, for the relevant documents. In the complainant's view, however, the two-month extension of the deadline was not sufficient for it to obtain the documents in question in time, and it considered that the Commission acted unfairly by refusing to grant any further extension of deadline. Moreover, the complainant took the view that the Commission had not replied to its question on whether " *one example of a salary slip issued during the project period is enough, or if salary slips covering the full period need to be provided*. "

55. The Ombudsman regretted that the Commission did not provide the complainant with a clear answer in its letter dated 12 September 2008. The Ombudsman does not share the Commission's view that the following statement, which was made in the letter dated 12 September 2008, is a clear answer to the complainant's question: " *... you are obliged under Article 1.9.1 of the grant agreement to ensure availability of supporting documents on the*



Commission request especially lacked on-the-spot (salary slips or payrolls, proof of payments and invoices). The declarations on salary costs according to the partnership agreements are considered insufficient to verify the expenditure".

56. The Ombudsman could not, however, exclude that, if the complainant had explicitly informed the Commission of the difficulty it was having in obtaining the payslips before the Commission adopted the final audit report of 18 February 2009, the Institution might indeed have agreed to a further extension of the deadline. However the complainant did not do so at the relevant time. The complainant did not make any such explicit reference in its communications with the Commission up until 31 July 2009, and it did not ask for a further extension of the deadline. In its letter dated 19 August 2008 to the Commission, the complainant merely stated that "[p]artnerships are not concluded on evidence of salary slips, which are considered by many organisations /persons as private information. The documents provided by partners can be made available. We will also get back to the partners and ask for salary slips whenever available." [7]

57. In this respect, the Ombudsman also noted that the complainant repeatedly requested a meeting with the Commission to discuss the difficulties it was having in obtaining the payslips from the partner organisations. Its requests were to no avail until 29 June 2009. The Ombudsman does not understand, however, why the complainant did not submit a clear, written statement of these difficulties to the Commission.

56. In light of the above, the Ombudsman could not agree with the complainant's *first argument* that the Commission acted unfairly by not extending the deadline a second time, thereby failing to take into account the difficulties the complainant encountered in obtaining the requested confidential documents from the partner organisations.

57. The Ombudsman then considered the complainant's *second argument*, namely, that the Commission unfairly rejected the documents which the complainant was finally able to submit on 7 July 2009.

58. First, the Ombudsman noted the divergent opinions of the complainant and the Commission on what was said during the meeting of 29 June 2009, which preceded the submission of the documents. According to the complainant, the Commission advised it during that meeting to submit the required documents. The Commission, however, stated that the complainant submitted the documents "on its own initiative". The Ombudsman did not consider it necessary to make further inquiries in order to decide which version of events is correct since, regardless of what was said at the meeting, the Commission appears to have analysed the said documents. In its letter to the complainant dated 16 July 2009, the Commission stated: "The Commission has completed the analysis of the information received with your letter dated 7 July 2009." The Ombudsman considers that, by analysing the documents, despite their late submission, there can be no doubt that the Commission acted fairly.

59. If the documents submitted by the complainant were indeed analysed, the Ombudsman did



not understand why the Commission did *not* justify its decision of 16 July 2009 (namely, that the final audit report of 18 February 2009 should not be modified) by referring to that analysis, instead of merely stating that the documents were submitted too late. This was not consistent administrative behaviour.

60. In light of the above, the Ombudsman invited the Commission, on the basis of the documents submitted by the complainant on 7 July 2009, to explain why the Institution's conclusions drawn from the audit report of 18 February 2009 can or cannot be modified. Such an explanation would help the Ombudsman to decide whether the Commission behaved reasonably as regards the complainant's *third argument*, which concerned the proportionality of the Commission's recovery.

61. In light of the above, the Ombudsman made the following corresponding proposal for a friendly solution, in accordance with Article 3(5) of the Statute of the European Ombudsman.

" Taking into account the Ombudsman's findings, the Commission could consider providing an explanation, on the basis of the documents submitted by the complainant on 7 July 2009, as to why the Institution's conclusions drawn from the audit report of 18 February 2009 can or cannot be modified. "

The arguments presented to the Ombudsman after his friendly solution proposal

62. In its reply, the Commission accepted the Ombudsman's proposal for a friendly solution.

63. The Commission stated that, "on reflection", it admitted that its refusal to accept the additional information, merely because it was submitted too late, could be considered to be disproportionate. The Commission stated that it was, therefore, prepared to complete its analysis of the information provided, and to examine the eligibility of the documents submitted.

64. The Commission stated that, once it had completed its analysis of the information provided by the complainant, it would inform the latter of the amount considered eligible, and that this could result in the Commission making a payment to the complainant.

65. The complainant informed the Ombudsman's services that it was satisfied with the Commission's reply to the proposal for a friendly solution. The complainant was glad that the Commission agreed to consider all the documents it had submitted. It thanked the Ombudsman for his efforts and patience. The complainant stated that it would appreciate it if the Commission would inform it of the date on which it expects to finalise its assessment of the documents, and that it hoped that such date would be within the forthcoming two months.

B. Conclusions



On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

A friendly solution has been achieved to the full satisfaction of the complainant.

The complainant and the Commission will be informed of this decision.

Further remark

The Commission could consider informing the complainant directly of the date on which it expects to finalise its assessment of the documents it submitted. The Ombudsman hopes that such date will be within two months of the date of his decision to close his inquiry into this complaint.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 7 June 2011

[1] This short letter read as follows: " *With reference to your letters of 11 August and 12 September 2008, please find attached our comments, explanations, proofs of payment and other documents in support of the expenses incurred in the framework of this project, and which were deemed ineligible in your audit report of August 2008. We hope we have provided you with satisfactory answers to your questions* ". The above mentioned attachments were not submitted with the complaint to the Ombudsman.

[2] See the relevant excerpts of the Commission's letter dated 18 February 2009: " *The amount of EUR 7 398 (item A1) concerning [the] Project leader was considered ineligible. The amount of EUR 2 565, 45 (item A3) is ineligible because of the differences between the payroll and the cost claims. The estimated cost by the beneficiary based on January 2004 is in excess to the real cost specified in the payroll for project period; therefore this expenditure remains ineligible. The items A6-A14 and A16-A33 are considered ineligible in the draft audit report because the supporting documents were not provided* ".

[3] In its observations, the complainant referred to 20 organisations.

[4] Article 228 of the Treaty on the Functioning of the European Union reads as follows:

" *In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds...* ".



[5] Article I.4.3 of the grant agreement reads as follows: " *The request for payment of the balance shall be accompanied by the final technical and financial implementation reports specified in Article II.15. The Commission shall have 45 days to approve or reject the documents in question or to request additional supporting documents or information under the procedure laid down in Article II.15.4. In that case, the beneficiary shall have 30 days to submit the additional information or new documents requested. A payment representing the balance of the grant determined in accordance with article II.17 shall be made to the beneficiary within 45 days following approval by the Commission of the documents accompanying the request for payment of the balance.* "(Emphasis added)

[6] See the Commission's letter dated 12 September 2008: " *Considering your preliminary comments, we must mention that you are obliged under Article 1.9.1 of the grant agreement to ensure availability of supporting documents on the Commission request especially lacked on-the-spot (salary slips or payrolls, proof of payments and invoices). **The declarations on salary costs according to the partnership agreements are considered insufficient to verify the expenditure.** The subsistence allowances have to be proved that the amount was received by the travelling person, so that appropriate proof of payment (bank transfer or cash receipt) is necessary.* " (Emphasis added).

[7] In its further letter dated 7 November 2008, the complainant only stated the following: " *With reference to your letters of 11 August 2008 and 12 September 2008, please find attached our comments, explanations, proofs of payment and other documents in support of the expenses incurred in the framework of this project, and which were deemed ineligible in our audit report of August 2008. We hope we have provided you with satisfactory answers to your questions* ".