

Entscheidung in der Sache 108/2013/JN - Rechtswidrige Wiedereinzahlung von Mitteln für ein EU-finanziertes Projekt

Entscheidung

Fall 108/2013/JN - **Geöffnet am** 01/03/2013 - **Entscheidung vom** 05/12/2014 - **Betroffene Institution** Europäische Exekutivagentur für Bildung und Kultur (Einvernehmliche Lösung) |

Die Beschwerdeführerin ist eine karitative Organisation aus Großbritannien. In diesem Fall ging es um die Rechtmäßigkeit und Angemessenheit der Wiedereinzahlung von Mitteln, die im Rahmen eines EU-finanzierten Projekts an die Beschwerdeführerin ausgezahlt worden waren.

Die Bürgerbeauftragte untersuchte den Fall und vertrat die Auffassung, die Wiedereinzahlung sei unrechtmäßig, da die Agentur die für die Ablehnung des Projekts geltende Frist nicht eingehalten habe. Die Bürgerbeauftragte unterbreitete zwei Vorschläge für eine einvernehmliche Einigung. Die Agentur nahm die Vorschläge der Bürgerbeauftragten letztendlich an und verpflichtete sich zur Zahlung von 49 467,21 EUR zuzüglich Verzugszinsen an die Beschwerdeführerin. Dieser Fall ist juristisch von Interesse, da er die Position der Bürgerbeauftragten in Bezug auf die Folgen von „Schweigen der Verwaltung“ in einer vertraglichen Beziehung deutlich macht.

The background

1. The complainant, a charitable organisation, received a pre-financing payment of EUR 73 943.06 in the context of an EU funded project. By 22 February 2012, the complainant submitted its final project report to the Agency. On 30 May 2012, the Agency rejected the final report and claimed full reimbursement of the pre-financing amount. On 4 January 2013, the complainant paid the Agency the amount claimed.

2. On 11 September 2013, the Ombudsman made a proposal for a friendly solution and called on the Agency to accept that it was not entitled to reject the final report, because it had missed the relevant 90-day time limit running from the day of submission of the final report. The Agency had set this time limit for itself in the grant agreement. The Ombudsman invited the Agency to annul its recovery order and to reimburse the amount recovered as well as default interest. In addition, the Agency was invited to enter into negotiations with the complainant in order to determine the value of the balance to be paid to the complainant, if any [1] .



3. Since the Agency refused to accept the Ombudsman's proposal for a friendly solution, the Ombudsman made a further proposal for a friendly solution on 27 June 2014. She confirmed the findings of the original proposal for a friendly solution and urged the Agency to implement it. She also invited the Agency to revise its grant agreement template in order to simplify and clarify the provisions relating to the approval of the final report and of the related documents [2] .

Allegation that the Agency did not comply with the principles of good administration in that the recovery was unfair and unlawful

The Ombudsman's friendly solution proposal

4. In its reply to the Ombudsman's further proposal for a friendly solution, the Agency disagreed with the Ombudsman's legal analysis of the relevant contractual provisions. Nonetheless, it accepted the friendly solution proposal and acknowledged that, given that it had missed the relevant time limit, the final report was deemed approved. On this basis, the Agency undertook to pay the complainant EUR 49 467.21 as a final grant for the project and to calculate the interest to be paid for late payment.

5. In addition, the Agency informed the Ombudsman that the grant agreement templates had been revised in 2012 and the relevant provisions relating to the time limits for the approval of reports had been removed. Moreover, the current provisions for reporting state that the approval of the report is just one part of the payment procedure. The Commission also issued new guidance on payment time limits, explaining the different steps before payment, in particular, the approval of supporting documents, including reports.

6. On 28 October 2014, the complainant submitted its observations. It welcomed the Agency's acceptance of the Ombudsman's proposal for a friendly solution and thanked the Ombudsman's services for their help. In addition, the complainant pointed out that the Agency's opinion did not make it clear from which day the interest - which the Agency undertook to pay for late payment - started to run. Lastly, the complainant stated that it understood that, by accepting the Ombudsman's proposal for a friendly solution, the Agency undertook not to seek to reopen the issue in question in the future.

The Ombudsman's assessment after the proposal for a friendly solution

7. The Ombudsman welcomes the Agency's decision to accept her proposal for a friendly solution. Since the complainant is satisfied with the outcome of the inquiry and since the Agency informed the Ombudsman that the grant agreement templates have been revised and that steps have been taken in order to ensure that the relevant provisions are clearer, the Ombudsman



considers that the case has been settled to the complainant's satisfaction.

8. The Ombudsman would however appreciate if the Agency could inform her that the final grant, with interest for late payment, has been paid to the complainant. Should there be any dispute concerning the payment of the final grant or the calculation of interest for late payment by the Agency, the complainant can renew its complaint to the Ombudsman.

Conclusion

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

The matter has been settled to the complainant's satisfaction.

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

Emily O'Reilly

Done in Strasbourg on 05 December 2014

[1] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's friendly solution proposal available at:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58469/html.bookmark>
[Link].

[2] The full text of the Ombudsman's further friendly solution proposal is available at:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58470/html.bookmark>
[Link].