



Απόφαση στην υπόθεση ΟΙ/11/2015/EIS - Απόφαση της Ευρωπαϊκής Διαμεσολαβήτριας για την περάτωση της αυτεπάγγελτης έρευνας ΟΙ/11/2015/EIS σχετικά με την έγκαιρη εκτέλεση των πληρωμών από την Ευρωπαϊκή Επιτροπή

Απόφαση

Υπόθεση ΟΙ/11/2015/EIS - **Εκκίνηση έρευνας στις 15/06/2015 - Απόφαση στις 19/12/2016 - Εμπλεκόμενο θεσμικό όργανο** Ευρωπαϊκή Επιτροπή (Δεν δικαιολογούνται περαιτέρω έρευνες) |

Κατά τη διενέργεια της έρευνας, η Διαμεσολαβήτρια έλαβε υπόψη τόσο το καθήκον της Επιτροπής να διασφαλίζει χρηστή οικονομική διαχείριση, ιδίως μέσω της αποφυγής των αντικανονικών ή εσφαλμένων πληρωμών, όσο και το θεμελιώδες δικαίωμα των αναδόχων και δικαιούχων στη χρηστή διοίκηση, ιδίως με τη διεκπεραίωση των αιτημάτων τους για πληρωμή εντός εύλογου χρονικού διαστήματος.

Η Διαμεσολαβήτρια ζήτησε πληροφορίες σχετικά με τον αριθμό και το ποσοστό των περιπτώσεων κατά τις οποίες προέκυψαν καθυστερήσεις πληρωμών, την έκταση των καθυστερήσεων, τα σχετικά ποσά και τις περιπτώσεις στις οποίες καταβλήθηκε τόκος λόγω της καθυστέρησης εξόφλησης. Η Διαμεσολαβήτρια διενήργησε επίσης επιτόπια επιθεώρηση προκειμένου να κατανοήσει καλύτερα τον τρόπο με τον οποίο εφαρμόζεται στην πράξη η διαδικασία πληρωμών.

Η Διαμεσολαβήτρια επισημαίνει ότι το συνολικό ποσοστό των καθυστερούμενων πληρωμών έχει αυξηθεί από το 2013 λόγω δύο κύριων παραγόντων. Πρώτον, ο τρέχων δημοσιονομικός κανονισμός, ο οποίος τέθηκε σε ισχύ την 1η Ιανουαρίου 2013, έχει επιβάλει αυστηρότερες προθεσμίες πληρωμών. Δεύτερον, η αρμόδια για τον προϋπολογισμό αρχή της ΕΕ (δηλαδή το Κοινοβούλιο και το Συμβούλιο) περιόρισε το ποσό των «πιστώσεων πληρωμών» το 2014, δηλαδή των χρημάτων που διατίθενται στα θεσμικά όργανα για την εξόφληση των λογαριασμών κάθε έτους.

Η Διαμεσολαβήτρια εκφράζει την ικανοποίησή της για την πρόοδο που έχει συντελεστεί από την Επιτροπή για τη μείωση του αριθμού και της αξίας των καθυστερούμενων πληρωμών το 2015, μετά από την κορύφωσή τους το 2014. Αναγνωρίζει ότι η έλλειψη πιστώσεων πληρωμών ήταν ιδιάζων παράγοντας και πέραν του ελέγχου της Επιτροπής. Η Διαμεσολαβήτρια επισημαίνει περαιτέρω ότι η αύξηση των μέσων όρων καθυστερούμενων πληρωμών από το 2013 και στο εξής δεν σήμαινε υποβάθμιση των επιδόσεων της Επιτροπής σε απόλυτους αριθμούς. Την ίδια στιγμή, η Διαμεσολαβήτρια τονίζει ότι η Επιτροπή οφείλει να καταβάλει σημαντικές προσπάθειες προκειμένου να μπορεί να ανταποκριθεί στις προθεσμίες που προβλέπονται από τον τρέχοντα



δημοσιονομικό κανονισμό.

Η επιθεώρηση της Διαμεσολαβήτριας έδειξε ότι η Επιτροπή παρακολουθεί εκ του σύνεγγυς τις επιδόσεις της στον συγκεκριμένο τομέα και έχει αναπτύξει πολλές ορθές πρακτικές. Ωστόσο, η Διαμεσολαβήτρια ανησυχεί για το ότι ορισμένα από τα μέτρα που ανακοινώθηκαν πρόσφατα από την Επιτροπή είχαν συζητηθεί ήδη το 2010 κατόπιν διαβούλευσης που είχε ξεκινήσει από τον Διαμεσολαβητή στο πλαίσιο προηγούμενης έρευνας.

*Η Διαμεσολαβήτρια ενθαρρύνει, ως εκ τούτου, την Επιτροπή να εντείνει τις προσπάθειές της στους τομείς του **συντονισμού μεταξύ χρηματοοικονομικών και λειτουργικών ελέγχων**, της ανάπτυξης **επιγραμμικών εργαλείων**, της διαχείρισης της **εναλλαγής προσωπικού** στον βαθμό του εφικτού, της διαχείρισης των **αναστολών** και της **έγκαιρης καταχώρισης των τιμολογίων**. Συναφώς, διατυπώνει σειρά προτάσεων.*

The background

1. Delayed and late payments in commercial transactions have negative effects on contractors, especially on small businesses with limited cash flow [1] . On 16 February 2011, the European Parliament and the Council adopted Directive 2011/7/EU on combating late payment in commercial transactions to protect businesses, and in particular small and medium-sized enterprises (SMEs), against late payments from private companies and public authorities [2] .
2. The European Commission has overall responsibility for managing the EU budget. Each year, nearly 94 per cent of the EU budget is allocated to funds and programmes under direct, indirect or shared management [3] . To carry out its tasks, the Commission also needs to purchase goods and services through calls for tender. Late payments can damage the Commission's reputation and dissuade SMEs and small organisations from replying to calls for tender or participating in EU financing programmes.
3. The Ombudsman has, since 1999, conducted four own-initiative inquiries into this issue [4] . In her decision closing inquiry OI/2/2013/EIS, the Ombudsman noted that the Commission's average payment time had decreased in 2011 and 2012, as had the number and value of late payments. As the Commission's performance had evolved positively, there were no grounds for further inquiries at that time. The Ombudsman nevertheless considered it necessary to keep this issue under review and invited the Commission to provide her with statistical data on late payments for 2013 as soon as they were available.
4. In May 2014, the Commission submitted the requested figures, which revealed that the number and value of late payments in 2013 had increased compared to 2012. The Ombudsman thus decided to open a new inquiry to understand the reasons for these increases and to evaluate the remedial measures being taken by the Commission.
The inquiry
5. This inquiry concerns payments made by the Commission under direct and indirect management, with special emphasis on private contractors and beneficiaries of grants and subsidies, which are more likely than public authorities to face difficulties because of payment delays.



6. The Ombudsman requested information on the number and percentage of cases where delays in payment had occurred, the extent of the delays that occurred, the sums involved and the cases where interest was paid on account of late payment. The Ombudsman also asked the Commission why the delays had occurred and what remedial measures it was taking.

7. Ombudsman staff also carried out an on-site inspection of 16 files concerning payments made by seven Directorates-General (DGs) and one Executive Agency [5] . While these inspections were limited in terms of the number of DGs covered and files examined, they provided a useful insight into the issues arising, identifying some of the helpful practices introduced in certain areas as well as some problematic practices. In order to have the fullest possible information available, the Ombudsman decided to delay completing this inquiry until the Commission's Annual Activity Reports for 2015 had become available.

8. In carrying out her inquiry, the Ombudsman considered both the Commission's duty to ensure sound financial management, in particular by avoiding irregular or erroneous payments, and the fundamental right of contractors and beneficiaries to good administration, notably by having their payment claims handled within a reasonable period of time. The Ombudsman further considered the importance of avoiding disproportionate administrative burdens being imposed on contractors and beneficiaries.
Information obtained during the inquiry

A. The Commission's compliance with payment time limits

9. The Ombudsman requested and obtained statistical data for 2013, 2014 and 2015 [6] .

10. In 2015, the Commission made 379,220 payments amounting to a total value of EUR 26.67 billion. The Commission identified 67,805 payments, amounting to EUR 2.47 billion, as having been made outside the legal time limits. Late payments in 2015 thus represented 17.9 per cent of all Commission payments in number and 9.3 per cent in value.

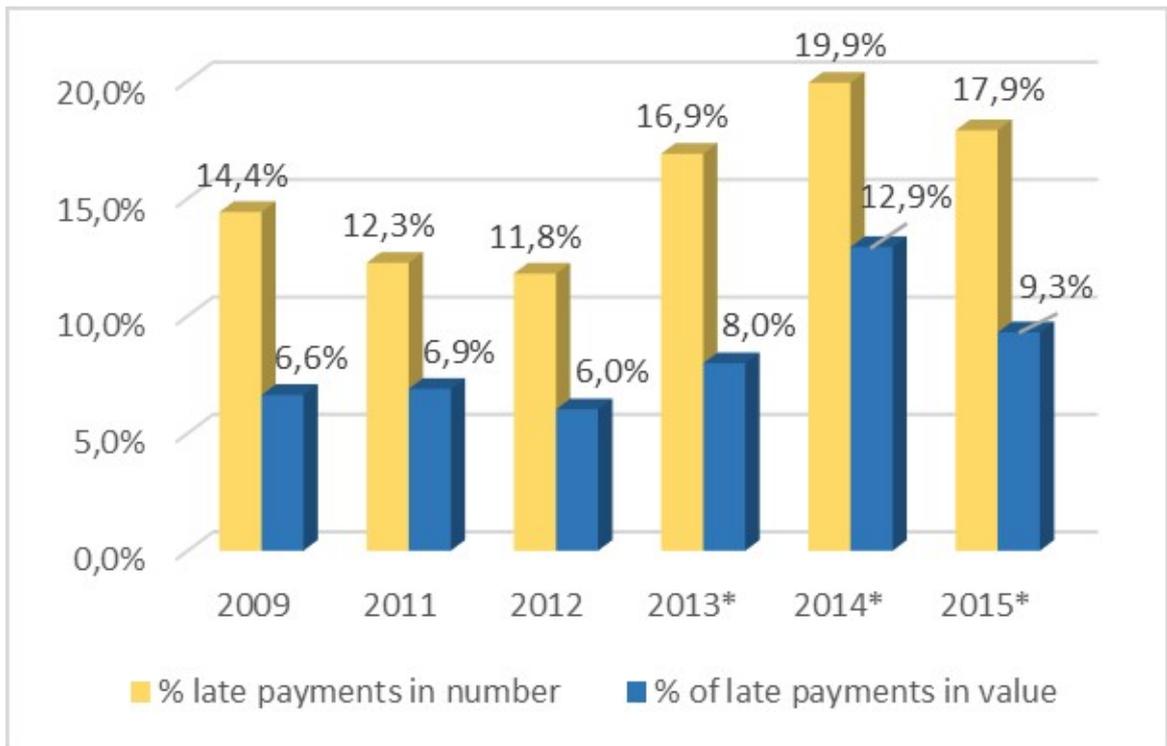
a. Commission's net payment time [7] (in days)

2011 2012 2013 2014 2015 26 25 24 28 24

b. Number and value of late payments

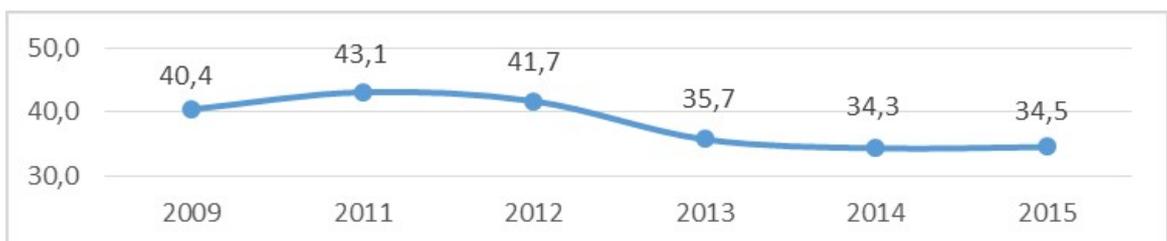
2011 2012 2013* 2014* 2015* Number 50.481 46.815 64.647 74.439 67.805 Value (in EUR million) 1.516 1.377 1.857 2.904 2.472

c. Percentage of late payments



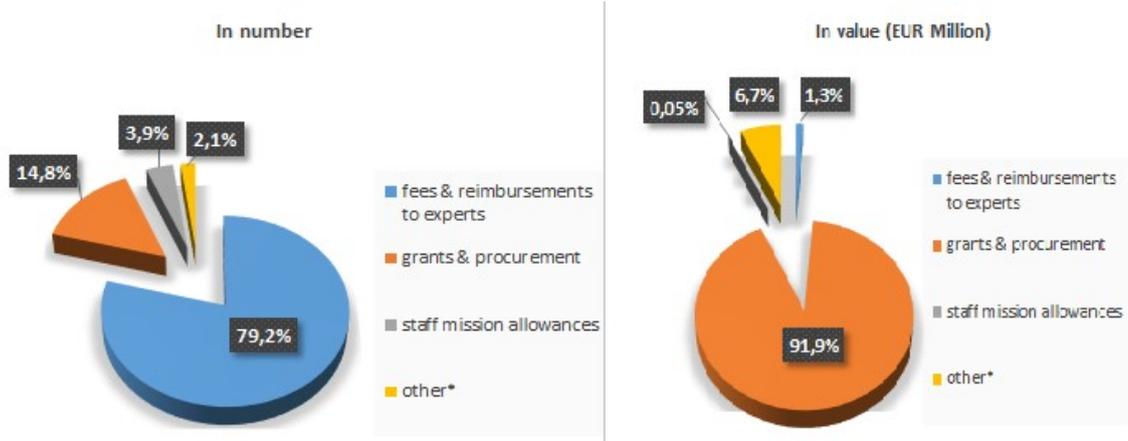
* Late payments are calculated on the basis of the current Financial Regulation for contracts and grant agreements signed as from 2013 and on the basis of the Financial Regulation of 2007 for contracts and grant agreements signed before 2013.

d. Average delay for payments made outside the legal time-limits (in days)



11. The Commission's net payment time has decreased since 2011 (with the exception of 2014, as will be explained below). Since 2011, the average number of days by which late payments were delayed has also been decreasing (with the exception of 2015). On the other hand, while the percentage of late payments decreased in number from 2009 to 2012, it then rose significantly, peaking in 2014. There was an improvement in 2015 but the percentage is still higher than 2013 levels.

e. Typology of late payments

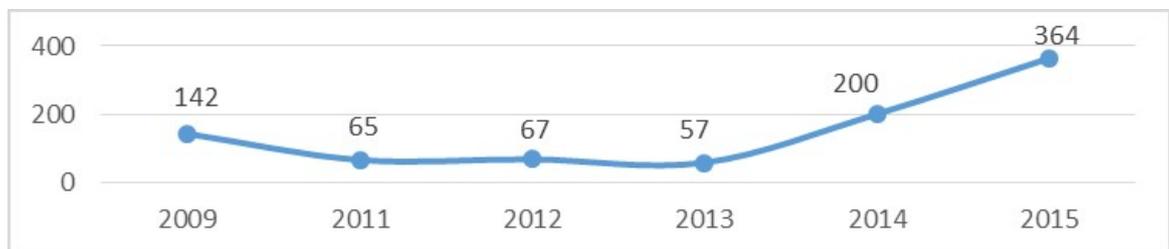


*Payments among services and to other EU institutions and bodies

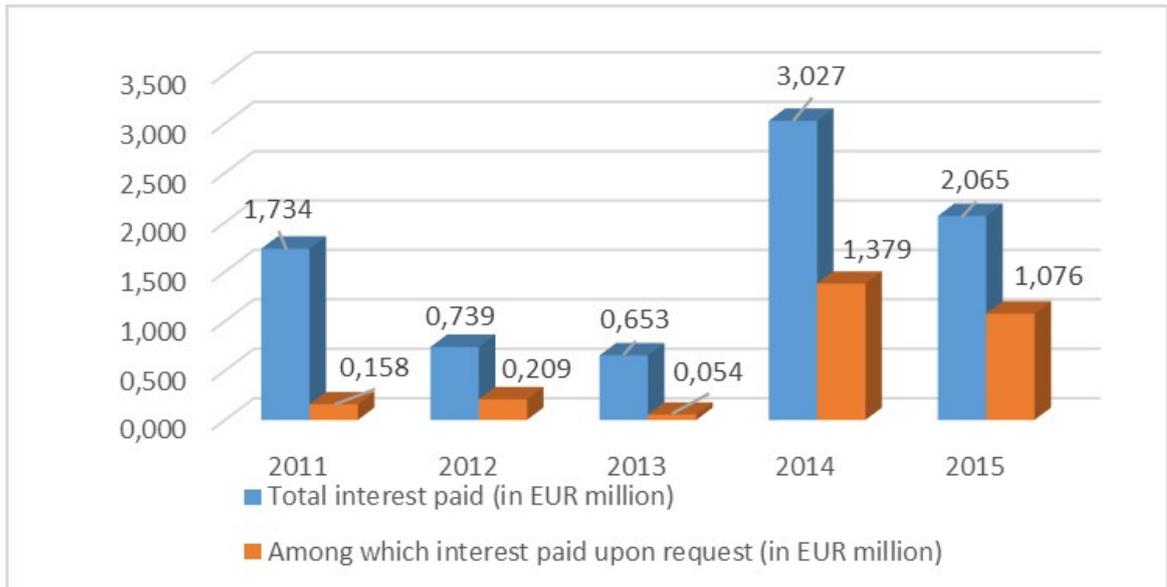
12. Fees and reimbursements to experts - which are usually payments of low value - represent by far the biggest category of late payments in terms of number (53,608 in 2015, i.e. 79.2 per cent of all late payments). However, they represent just EUR 33 million, i.e. 1.3 per cent of late payments in value. By way of contrast, grants and procurement - which involve larger sums of money - represent a relatively small number of payments (10,061 or 14.8 per cent of all late payments) but amount to 91.9 per cent of late payments in terms of value (EUR 2.27 billion).

13. Since 1 January 2008 [8] , creditors are automatically entitled to default interest where there is a late payment, provided the accrued interest exceeds EUR 200. If the interest is equal to or lower than EUR 200, it is paid only upon request. The number of requests for default interest and the total amount of interest paid by the Commission rose significantly in 2014 and 2015 as a consequence of the increased number of payments outside the legal time limits.

f. Number of requests for default interest



g. Default interest paid by the Commission (in EUR million)



B. The main reasons for the higher late payment averages

14. In its first reply to the Ombudsman, the Commission identified two main reasons for the increased late payment averages in 2013 and 2014: the shorter payment deadlines introduced from the start of 2013 with the entry into force of Regulation 966/2012 [9] (hereinafter referred to as the 'current Financial Regulation') and the shortage of payment appropriations [10] faced by the Commission in 2014.

First main reason: tighter payment deadlines

15. Until 31 December 2012, the Commission's legal time limits for payment were 30 calendar days for service or supply and 45 calendar days for contracts, grants and decisions which did not depend on the approval of a report or a certificate. For payments which required a report or a certificate, the time limit of 45 days did not begin to run until the report had been approved. The time allowed for approval could not exceed 20 days for simple contracts relating to the supply of goods and services, 45 days for other contracts, grants and decisions, and 60 days for cases involving technical services or actions that were particularly complex to evaluate [11]. Payment could thus take up to 105 calendar days in a complex case in which 60 days were required for the approval of a report and a further 45 days for the making of the payment.

16. The time limits and their calculation were altered and as a result reduced by the current Financial Regulation. According to Article 92(1) of the current Financial Regulation, "[p]ayments shall be made within:

(a) 90 calendar days for delegation agreements, contracts, grant agreements and decisions



involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;

(b) 60 calendar days for all other delegation agreements, contracts, grant agreements and decisions for which payment depends on the approval of a report or a certificate;

(c) 30 calendar days for all other delegation agreements, contracts, grant agreements and decisions ”.

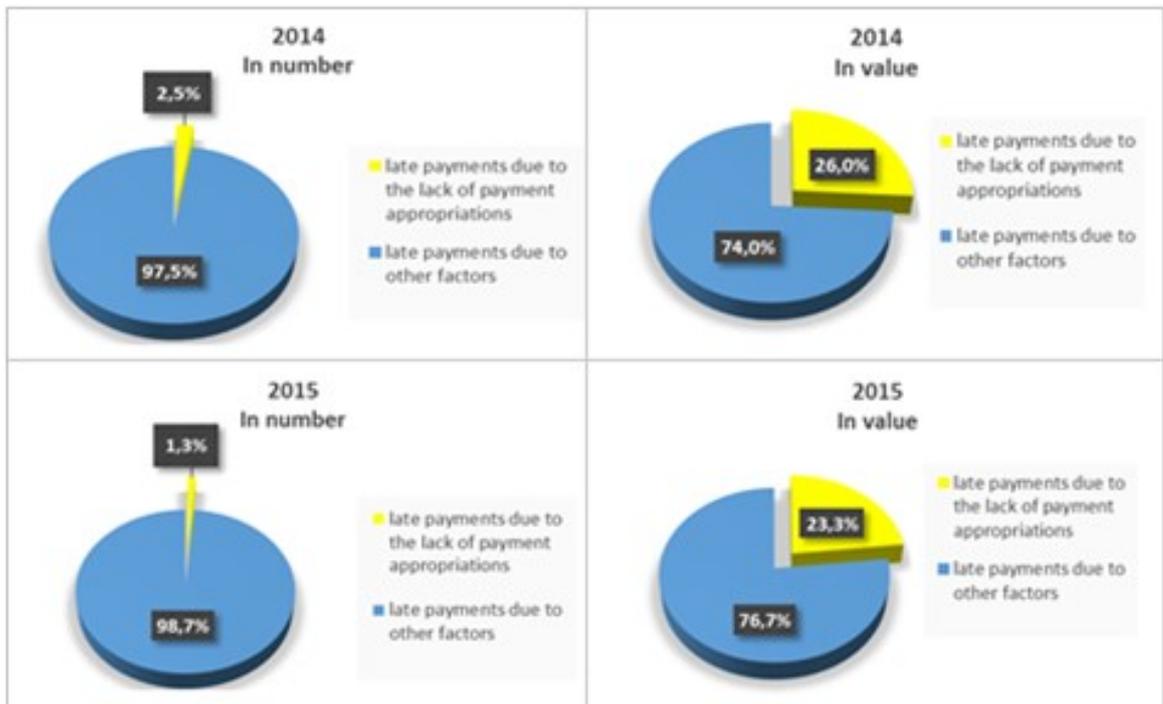
17. These time limits include the time required by the Commission to assess and approve all supporting documents. This means that, under the current Financial Regulation, the payment deadline cannot exceed 90 days even in the most complex cases [12].

Second main reason: shortage of payment appropriations in 2014

18. The second main reason accounting for the significant rise in late payments between 2013 and 2014 was a shortfall in payment appropriations agreed by the budgetary authority (Parliament and Council). This problem, which surfaced in 2014 [13], led to payment backlogs.

19. The Ombudsman asked the Commission to provide her with the number and value of late payments which were due to the shortage of payment appropriations in 2014 and 2015. The Commission provided figures which show that the lack of payment appropriations accounted for 2.5 per cent of all late payments in number in 2014 (i.e. 1,851 out of a total of 74,439) and 26 per cent in value (i.e. EUR 755 million out of a total of EUR 2.90 billion). This problem mostly affected grants and procurement invoices.

h. Analysis of the number and value of late payments



20. The Commission informed the Ombudsman that, despite its efforts in May 2014 to obtain the necessary increase in payment appropriations, the budgetary authority did not agree to authorise the payment appropriations until mid-December 2014. When doing so, it provided EUR 1.1 billion less than the amount requested by the Commission. As a result, the Commission was unable to honour all its legal commitments in 2014. The shortage of payment appropriations also had an impact on 2015 figures; the backlog of payments from 2014 caused some delays at the beginning of 2015.

21. In her request for additional information, the Ombudsman asked the Commission about the measures it had taken to mitigate the effects of this shortage of payment appropriations. The Ombudsman was especially interested in finding out if the Commission had prioritised financially fragile beneficiaries. The Commission listed the following measures in response to these concerns:

(i) The Commission prioritised payment claims from fragile entities that ran a risk of insolvency in the event of payment delays (NGOs, small private companies and individuals) over payment claims from big private companies, international organisations and Member State agencies.

(ii) The Commission prioritised payment claims to consortia which included SMEs.

(iii) The Commission held off on payments to lower priority beneficiaries so as to have a reserve for payments to fragile beneficiaries.

(iv) The Commission prioritised a larger number of smaller payment claims - mainly originating from SMEs and other fragile beneficiaries - over large payments to low priority beneficiaries.



(v) The Commission prioritised payment claims to more politically-sensitive projects or beneficiaries.

22. To further prioritise payments to fragile beneficiaries, the Commission put in place other mitigating measures, such as: delaying calls for proposals, start dates of projects and signature of legal commitments; delaying or decreasing pre-financing payments or advances; postponing lower priority payments or making partial payments; postponing final payments in order to deal with urgent new needs; and ensuring an active management of payment appropriations through continuous transfers between budget lines [14] .

Other reasons

23. The Commission identified the following reasons - other than the shortage of payment appropriations and the new legal deadlines - to which payment delays could be attributed:

- increasing numbers of payments and their uneven distribution during the year combined with shrinking staff levels;
- lengthy procedures for handling payments to experts; and
- beneficiaries' delayed submission of supporting documentation.

24. The Commission also drew attention to the following remedial measures it has taken:

- it centralised the registration of invoices within DGs;
- it moved from a sequential analysis of final reports by operational and financial agents to a parallel analysis with the same deadline and with only one (if necessary) request for additional information;
- it developed online tools for beneficiaries to submit payment claims and supporting documentation;
- it established monitoring mechanisms, such as reports and key performance indicators (KPIs);
- it raised awareness among operational and financial agents;
- it took action towards an efficient application of suspensions; and
- for a large number of low value payments, it streamlined financial processes, centralised financial circuits and in some cases transferred a substantial part of these payments to services that are specialised and more efficient in dealing with big numbers of payments.

25. Finally, the Commission set out the following steps it has taken to ensure that payments are suspended only when it is correct to do so:

- it has improved guidance to applicants through handbooks, information days and kick-off meetings, clearer instructions on how to present required information, internal workshops and guidance to operational and financial agents;
- it has standardised requests for supplementary information, specific to each type of cost; and
- it has introduced or made more extensive use of lump sum payments and unit costs [15] to simplify and speed-up the payment process.

The Ombudsman's assessment



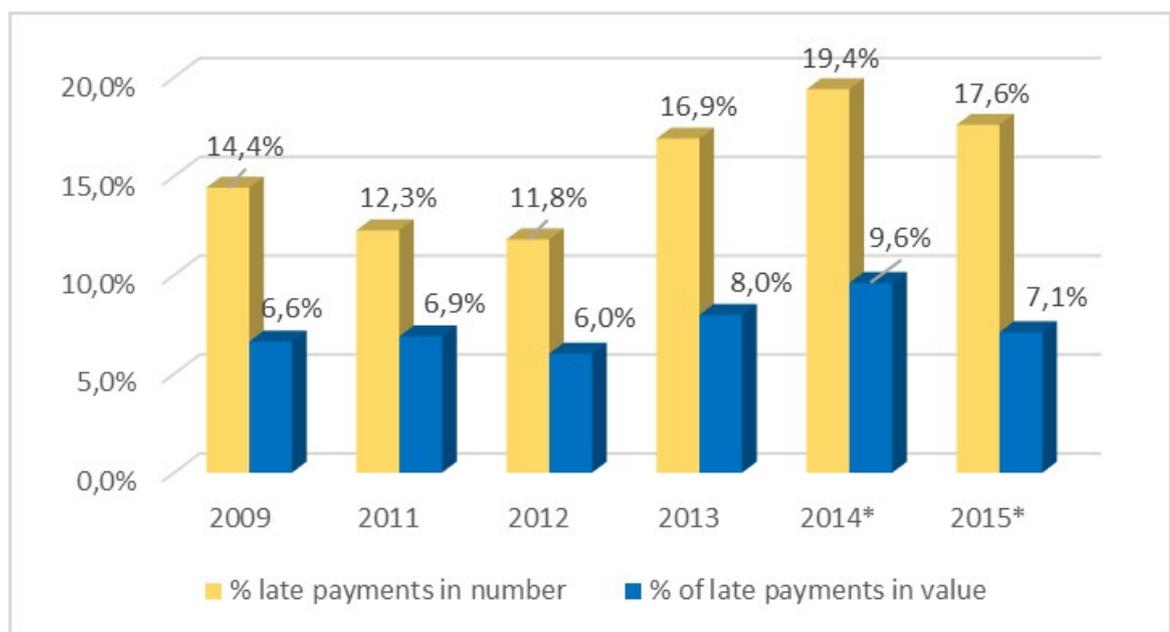
A. The 2014 shortfall in payment appropriations

26. The Ombudsman notes that the shortfall in payment appropriations was beyond the Commission's control and welcomes the measures taken to ensure that payments to SMEs and other financially fragile recipients were given priority. She further notes that, beyond the negative impact on contractors and beneficiaries, having to deal with this shortfall in payment appropriations led to additional administrative work for the Commission.

B. Evolution in the Commission's performance

27. The Ombudsman's focus is on late payments resulting from factors other than the lack of payment appropriations and can be seen in image (i) below.

i. - Percentage of late payments among all payments made by the Commission



* Excluding late payments due to the lack of payment appropriations

28. The Ombudsman understands that the increased percentage (both in overall numbers and in value) of late payments from 2013 onwards is mainly due to the shorter time limits introduced by the current Financial Regulation. The Commission's performance has not evolved negatively in absolute terms; on the contrary, the Commission's net payment time has decreased over the years. At the same time, the Ombudsman points out that the Commission will have to make significant efforts to meet the current legal deadlines. While the current, shorter deadlines help explain the increased proportion of late payments, they cannot serve as a justification for them.



C. Measures taken by the Commission to improve its payment process in general

29. Before making suggestions for improvement, it is important to examine in greater depth the fact that the situation varies widely within the Commission, as demonstrated by the Commission's Annual Activity Reports [16]. The percentage of late payments (by number) varied from less than three per cent in 2015 for several Directorates General and Executive Agencies to 24 per cent for DG International Cooperation and Development (DEVCO). While the Commission notes that relative performance is monitored by the Accounting Officer and follow-up action is undertaken where problems are identified with particular DGs, the Ombudsman observes that some DGs have had a high percentage of late payments since 2013. This does not automatically imply that DGs with the highest averages are the most problematic, as some manage very complex financing programmes whereas others manage simpler contracts. However, the Commission needs to pay particular attention to Directorates that deal with third countries (such as DG DEVCO, DG Humanitarian Aid and Civil Protection (DG ECHO)), or the Service for Foreign Policy Instruments (FPI) with late payments in the range of 15 to 25 per cent of all payments over several years. At the same time, the Ombudsman recognises that these Directorates may face specific difficulties arising from the fact that so much of their spending is in third countries.

30. The Ombudsman also notes that some of the measures mentioned by the Commission - notably, improved coordination between financial and operational checks and accelerated payments to experts - are recurring issues which already appeared in the responses to the consultation launched by the Ombudsman in 2010 in the context of own-initiative inquiry OI/1/2009/GG [17].

31. The Ombudsman's inspection revealed that payment delays can stem from different causes both at financial and operational levels: misunderstanding of a working procedure, lack of staff in a financial service, late submission of a technical evaluation by an external expert or delayed approval of the payment file at operational level.

32. During the inspection, the Ombudsman also found that the Commission closely monitors its key performance indicators (KPIs) on payment times and that many good practices have been introduced, such as the systematic use of checklists for operational and financial verification, the creation of a common support centre for research programmes and a stricter application of time limits when resorting to external technical verification. For payments to experts, which represent the vast majority of late payments in terms of numbers, the Commission has developed several online tools for experts to submit payment claims which the Ombudsman believes will speed up the process.

33. The Ombudsman acknowledges that her inspection involved a limited number of files and was not intended to be exhaustive. In addition, the diversity of situations between Commission services may call for different solutions. Nevertheless, when comparing practices across the Commission, the Ombudsman identified scope for improvement in three particular areas:



(i) Further enhancing co-operation between Commission services dealing with the operational part of the projects and services handling financial aspects. This issue, which was already mentioned in the consultation launched by the Ombudsman in 2010, was raised during the inspection at DG ECHO, which has taken steps to improve the situation.

(ii) Introducing paperless circuits for processing invoices (some of the DGs visited by Ombudsman staff still rely on paper files). The Ombudsman understands that progress is being made in this area, as the whole process for submitting cost statements and supporting documents is electronic in other DGs.

(iii) Ensuring that the Commission's internal deadline of seven calendar days for registering invoices, which is the first step of the payment process, is always respected. This issue is particularly relevant for DG DEVCO and has been identified in the internal reports analysing the DG's Key Performance Indicators (KPIs).

34. Finally, the inspection showed that staff turnover within the financial and operational units can create delays in the case of complex projects which are designed to last several years. The Ombudsman acknowledges that there is no simple or short-term solution to this problem. However, this was mentioned during the Ombudsman's inspection as an important issue in the overall context, especially in the research area [18].

D. Management of suspensions

35. The Commission identified 26,511 suspensions [19] of payment claims in 2015, 91 per cent of which were triggered by missing documents, corrections, requests for additional information or the need to amend the contract. According to the Commission's Annual Activity Reports, the percentage of suspended payments (by number) in 2015 varied across DGs from less than 5 per cent in 2015 to 35 per cent in the case of DG Research and Innovation (RTD).

36. The Ombudsman is mindful of the fact that suspensions aim to avoid irregular or erroneous payments and are a fundamental tool to ensure sound financial management. Suspensions can also provide an opportunity for Commission staff to provide advice to beneficiaries. However, suspensions should be limited to what is strictly necessary given that, like payment delays, long suspensions may have damaging effects on small organisations with limited cash flow. The high proportion of suspended payments in some DGs suggests that, in spite of the Commission's efforts to improve its guidance and simplify its contracts, beneficiaries continue to encounter difficulties justifying their cost claims.

37. The Ombudsman notes that the Commission's Annual Activity Reports, while often analysing the "net time to pay", do not always provide information on the "gross time to pay", which includes those periods when payments are suspended [20]. While the "net time to pay" measures how the Commission complies with legal deadlines, the "gross time to pay" measures the actual time beneficiaries must wait before receiving payment. Publishing more information on the "gross time to pay" would serve as a useful indicator to measure the



Commission's efforts to further simplify the allocation of EU funds. It would also increase transparency on the impact of the mechanisms the Commission has put in place to check payment claims [21]. The Ombudsman thus makes a corresponding suggestion to the Commission.

38. Finally, the Commission said that, among the measures implemented to improve the payment process, was making "only one (if necessary) request for complementary information" when analysing final reports. However, in one case inspected by the Ombudsman's services, an interim payment was preceded by 13 successive requests for information sent to the beneficiary in the context of a desk check, spread out over more than one year with long periods of administrative inactivity. While supporting the timely use of suspensions as a fundamental tool to ensure sound financial management and meet payment deadlines, the Ombudsman believes that, on the basis of the principles of good administration, the Commission should intensify its efforts to limit the number of successive requests sent to beneficiaries.

E. Payment of default interest

39. On the expiry of the time limits laid down in the Financial Regulation, creditors, with the exception of Member States, are automatically entitled to default interest [22]. Article 111(4) of the Rules of Application of the Financial Regulation [23] specifies that "*[h]owever, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment*".

40. The Ombudsman inspected the files in the three cases with the highest default interest paid in 2014. Her conclusion is that none of the cases was due to maladministration, as one was triggered by a court decision and the two others by the shortage of payment appropriations.

Conclusions

41. The Ombudsman welcomes the progress made to reduce the number and value of late payments in 2015, after the peak reached in 2014. She acknowledges that the shortfall in payment appropriations in 2014 was beyond the Commission's control. She particularly welcomes the measures introduced by the Commission, in this context, to prioritise financially fragile beneficiaries. She further recognises that having to deal with this shortfall in payment appropriations led to additional administrative work for the Commission. This exceptional factor aside, the Ombudsman considers that the increased late payment averages from 2013, both in number and in value, do not mean that the Commission's performance has deteriorated in absolute terms. They do, however, show that the Commission will have to intensify its efforts if it is to meet the tighter legal deadlines in force since January 2013.

42. The Ombudsman is aware, from dealing with complaints from individual beneficiaries or contractors, that some SMEs and smaller NGOs struggle to cope with the burden of meeting the Commission's exacting financial reporting requirements. There is a risk that smaller



operators will be discouraged from being involved in EU-funded projects simply because of the risk of having costs incurred disallowed by the Commission. While appreciating the need for the Commission to guard against any misuse of EU funds, the Ombudsman feels there may be some scope for the Commission to further adapt its requirements in the case of smaller operators. It might in fact be useful for the Commission to get external advice on how it might adapt its requirements in order to better facilitate the needs of smaller operators.

43. The Ombudsman therefore closes this inquiry and makes the following suggestions [24] to the Commission:

1. The Commission should further pursue its efforts to:

- **accelerate the registration of invoices, which is the first step of the payment process;**
- **better coordinate financial and operational checks;**
- **further develop paperless submissions and paperless circuits;**
- **investigate what further adaptations are possible in order to meet the needs of smaller operators;**
- **ensure that the number of successive requests for clarifications sent to beneficiaries is limited to what is strictly necessary; and**
- **manage staff mobility in order to minimise the negative consequences of excessive staff turnover.**

2. The Commission should publish more information on its gross payment time in its Annual Activity Reports.

Emily O'Reilly

European Ombudsman

Strasbourg, 19/12/2016

[1] See, for example, the Commission's Economic paper 531 on "The Economic Impact of Late Payments", September 2014.

[2] Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, OJ 2011 L 48, p. 1. This Directive is addressed to the EU Member States but the Ombudsman takes the view that the Commission, which prepared the proposal, should lead by example.

[3] In the case of programmes under direct management, the Commission is in charge of all



budget implementation tasks. In the case of programmes under indirect management, the Commission entrusts budget implementation to partner countries, public development agencies or international organisations. In the case of programmes under shared management, the Commission delegates implementation tasks to EU Member States.

[4] See inquiries OI/5/99/(IJH)GG, closed on 16 February 2001; OI/5/2007/GG, closed on 20 June 2008; OI/1/2009/GG, closed on 8 February 2001; and OI/2/2013/EIS, closed on 17 December 2013.

[5] The inspected files concerned the three cases with the longest delays in payment to non-public recipients in 2014, the three cases where the highest amount of interest was paid to private recipients, the three cases with the highest number of successive suspensions, three cases concerning late payments to SMEs and four cases considered as exemplary by the Commission.

[6] To place these data in a broader context, they have been added to the data obtained during previous Ombudsman's inquiries whenever possible. The original tables provided by the Commission are available on the Ombudsman's website at the following address:
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/68950/html.bookmark>
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/68951/html.bookmark>

[7] The average number of days it takes to make a payment, not taking any suspensions into account.

[8] Article 106(5) of Commission Regulation (EC, EURATOM) No 2342/2002 of 23 December 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 2002 L 357, p. 1.

[9] Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation 1605/2002, OJ 2012 L 298, p.1.

[10] The EU budget consists of 'commitment appropriations' and 'payment appropriations'. Commitment appropriations cover the total cost of legal obligations (contracts, grant agreements, etc.) that the Commission can sign in a financial year. Payment appropriations cover the amounts due in the current year, arising from legal commitments signed in the same year or earlier.

[11] Article 106 of Regulation 2342/2002.

[12] On 14 September 2016, the Commission presented a proposal for a new Financial Regulation. The provisions concerning time limits for payment and payment of default interest however remain largely unchanged.

[13] For example, see: http://europa.eu/rapid/press-release_MEMO-14-550_en.htm



[14] Furthermore, on 19 May 2015, after a proposal from the Commission, the European Parliament, the Council and the Commission agreed on a "joint statement on a payment plan 2015–2016".

[15] For unit costs, reimbursement is calculated on the basis of a delivered quantity multiplied by a unit cost. Lump sums are a fixed amount which is reimbursed when the terms of agreement on activities or outputs have been completed.

[16] As provided for in Article 111(5) of the Rules of Application of the Financial Regulation, Commission services publish information on their compliance with payment time limits in their Annual Activity Report and in the summary presented to the European Parliament and the Council. See Annual Activity Reports for 2015 (Table 6 of Annex 3): http://ec.europa.eu/atwork/synthesis/amp/mplans2015_en.htm

[17] <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/10076/html.bookmark>

[18] In one inspected case, the Ombudsman found that four successive project officers had been in charge of following a project between 1 January 2011 and 30 June 2014, which represents an average of less than one year per officer.

[19] According to Article 92(2) of the Financial Regulation, Commission services have the right to suspend the time limit for payment if the amount of the payment request is not due or the appropriate supporting documents have not been produced.

[20] The "gross time to pay" appears in only a few of the DGs' and Executive Agencies' Annual Activity Reports, mostly in the research area.

[21] Extensive prior checks of payment claims can indeed reduce the number of errors but are also likely to increase the gross payment time. On the contrary, selective controls are likely to reduce the gross payment time but may result in a higher number of erroneous payments.

[22] The objective of default interest is two-fold. First, it aims to compensate the contractor/beneficiary for the costs caused by the late payment (for example if they suffered reduced cash flow or needed to borrow money in the meantime). Second, it is a budgetary sanction applied to the institution responsible for the late payment, which serves as an incentive to pay on time.

[23] Commission Delegated Regulation No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ 2012 L 362, p. 1.

[24] Given the variations in performance across the Commission, the Ombudsman recognises that some of these suggestions may not be relevant for some of the Commission's DGs.

