



Decision in case 279/2018/JN on the European Commission's decision to recover funds from a company that participated in an EU-funded project in Namibia

Decision

Case 279/2018/JN - Opened on 12/03/2018 - Decision on 07/08/2019 - Institution concerned European Commission (Settled by the institution) |

The case concerned the European Commission's decision to recover funds from the complainant - a company having implemented an EU project in Namibia.

While the Ombudsman was inquiring into the fairness of the Commission's decision, the Commission approached both the complainant and the government of Namibia to find a solution. Since Namibia accepted partial financial responsibility, the Commission paid to the complainant nearly the whole amount recovered.

Since the complainant appeared satisfied with this outcome, the Ombudsman found that the Commission had settled the complaint and closed the inquiry.

Background to the complaint

- 1.** The complainant, a German company, participated in an EU-funded project in Namibia between 2010 and 2014. The project was managed by the EU Delegation to Namibia and the National Planning Commission Secretariat of Namibia (the National Contracting Authority), with the European Commission ultimately responsible. The project sought to develop the capacity of national authorities to manage EU funds and implement EU-funded programmes.
- 2.** Following an audit, the Commission recovered slightly above EUR 100 000 from the complainant. The amount corresponded mainly to personnel costs that were deemed ineligible. In particular, the auditors considered that some staff members did not meet the requirements set out in the contract regarding minimum qualifications and experience, and that some staff members had worked on week-ends and public holidays, in breach of Namibian law.
- 3.** The complainant contested the decision to recover funds with the Commission. As it did not receive a satisfactory reply, the complainant turned to the Ombudsman in February 2018.



The Ombudsman's proposal for a solution

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4. The Ombudsman acknowledged that the Delegation and the Commission had tried to help the complainant to find a solution. However, it appeared that the situation had not yet been fully resolved. Moreover, the Ombudsman found that the Commission's approach may not have been entirely fair.

5. In particular, the Ombudsman agreed with the complainant that the relevant contractual criteria were recommendations rather than strict mandatory requirements. Moreover, it appeared that the National Contracting Authority had accepted the recruitment of the staff in question and was satisfied with its work. The information provided to the Ombudsman also suggested that the National Contracting Authority had authorised the practice of staff members working during week-ends and public holidays.

6. The Delegation proposed that, if the Namibian government agrees to accept financial responsibility for the recovery, the Delegation could offset the amount in question against future payments due to the Namibian government in the context of other EU-funded programmes. It would then pay the amount that has been offset to the complainant. The Ombudsman did not find this solution appropriate for the following reasons: (i) it depends on the agreement of the Namibian government which is in no way guaranteed; (ii) in the meantime, the complainant is deprived of the funds in question even though it relied on the approval it obtained from the National Contracting Authority; (iii) it suggests that the Commission and the Delegation are in no way responsible for the problems identified in this case; (iv) it takes no account of the fact that the very purpose of the project in question was to develop the capacity of national authorities to manage EU funds and implement EU-funded programmes.

7. Accordingly, the Ombudsman made the following proposal for a solution:

The Commission should address the points raised in the Ombudsman's assessment and, on that basis, review its position on the recovery order in this case.

8. The Commission replied to the Ombudsman that it had already settled the case. The Commission had had exchanges with both the complainant and the National Contracting Authority to find a solution. As a result, the National Contracting Authority accepted the financial responsibility for the amount corresponding to the selection of staff members with respect to their qualifications and experience (EUR 97 461). The Commission then paid this amount to the complainant who was satisfied and considered the case thereby closed. The Commission said that it could not pay more because the complainant did not provide relevant evidence concerning the work on week-ends and public holidays. The Commission considered that the complainant understood this and agreed to this course of action. The Commission sent to the Ombudsman copies of relevant correspondence.

9. The Ombudsman forwarded the Commission's reply to the complainant and invited it to



send comments. The complainant sent no comments.

The Ombudsman's assessment after the proposal for a solution

10. The Ombudsman considers that the Commission settled the complaint.

11. The Ombudsman notes that the Commission paid to the complainant almost the full amount claimed. Although the complainant did not obtain the full amount, the complainant did not inform the Ombudsman that it was not satisfied with the result. The Ombudsman notes that the Commission could not do more because the complainant did not provide it with further evidence that the Commission needed to grant the complainant's claim in full. The Ombudsman further trusts that the Commission will see to it that the terms of reference it uses in the context of tender procedures clearly and consistently distinguish between mandatory requirements and mere recommendations to avoid any possible confusion.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The European Commission settled the complaint.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 07/08/2019

[1] The full text of the proposal for a solution is available at:
<https://www.ombudsman.europa.eu/en/solution/en/117578>