Decision in case 1467/2019/MDC on the European Commission’s decision to recover funds from a charitable organisation that carried out a project aimed at helping refugees and asylum seekers

The case concerned the decision of the European Commission to recover funds that it had paid in advance, by way of a ‘pre-financing payment’, to an organisation that carried out a project aimed at helping refugees and asylum seekers. The Commission sought to recover the funds, as the pre-financing payment amounted to more than the proportion of the overall project costs for which the Commission was ultimately liable.

The complainant, which is a small UK-registered charity, wrote to the Commission asking for lenience, and requested that the Commission consider waiving the recovery or adjusting the terms for the repayment.

In the course of the Ombudsman’s inquiry, the Commission agreed to the complainant’s request that the sum be repaid by means of instalments.

Following this, and as the Commission had acted in accordance with the rules governing the grant, the Ombudsman closed the inquiry with a finding of no maladministration. However, given the circumstances of the case, she invited the Commission to reconsider if anything further can be done to accommodate the complainant’s requests for assistance.

Background to the complaint

1. The complainant is a UK-registered charity that works with refugees and asylum seekers. It was awarded a grant [1] by the European Commission to carry out a project aimed at empowering refugees and asylum seekers to lead more fulfilled lives through physical activity.

2. In accordance with the grant agreement, the Commission was to pay 19.42% of the eligible costs of the project, which at the time the agreement was signed were estimated at EUR 294 657.22.
3. In advance of the project, the Commission made a ‘pre-financing payment’ of EUR 45 793.50 to the complainant.

4. However, at the end of the project, the actual costs incurred by the complainant amounted to EUR 105 539.29 only. Therefore, under the terms of the grant agreement, the amount of the final grant from the Commission for which the project was eligible was EUR 20 995.73, that is EUR 25 297.77 less than the amount of the pre-financing payment.

5. On 11 June 2018, the Commission asked the complainant, through what is known as a ‘pre-information letter’, to reimburse EUR 25 297.77. In its letter, the Commission explained the calculations made and informed the complainant that any queries or complaints should be submitted within 30 days. The Commission also set out in detail what information and documents the complainant would need to submit if it wished to contest the decision. The Commission added that it would send the complainant a debit note if the complainant did not react within 30 days. Moreover, it stated that if it did not pay within the deadline set in the debit note, penalty interest at the rate indicated in the note would be added.

6. In a letter dated 11 July 2018, the complainant replied to the Commission. It stated that it had made “an honest mistake” and did not realise it might have to refund part of the pre-financing payment. [2] The complainant said that it is a very small charity and that the impact of making an upfront repayment of the amount of €25 297.22 would be “catastrophic” for both the charity and its clients. It asked whether there were any grounds for appealing the amount of the repayment or its terms (such as through repayment in instalments). It also asked whether there was any way the Commission could write off or significantly reduce the amount to be repaid.

7. Following this letter, there were e-mail exchanges between the Commission and the complainant both on the possible reduction of the amount due and the possibility of repayment through instalments. [3]

8. In December 2018, the Commission issued a debit note which stated that the complainant should pay the sum of EUR 25 297.77 by 14 January 2019. Beyond that date, the complainant would have to pay interest of EUR 2.43 per day until the debt was settled.

9. On 29 January 2019, the complainant replied and pointed out that, according to the ongoing correspondence, the Commission was still considering its request. As such, it did not consider it prudent to repay the full amount, and asked the Commission to suspend interest payments. The Commission replied on the same day that it could not suspend the interest payments. [4]

10. After further correspondence, the complainant stated in an e-mail on 21 February 2019 that it understood that there was no option but to pay back the full amount and that it was working to confirm how to do so as soon as possible. However, on 21 July 2019, it informed the Commission that, having sought legal advice, it disputed the Commission’s right to request the repayment, as well as the interest. [5]
11. The complainant then turned to the European Ombudsman. It set out that its desired outcome was to be able to repay the amount in instalments and for the interest to be waived.

**The inquiry**

12. The Ombudsman opened an inquiry into whether the Commission had followed the applicable procedure in how it sought to recover the funds.

13. In the course of the inquiry, the Ombudsman received the reply of the Commission on the complaint [6] and, subsequently, the comments of the complainant in response to the Commission’s reply.

**Arguments presented to the Ombudsman**

14. The complainant contended that the Commission had not properly considered and replied to its request for leniency before issuing the debit note. Among other things, this meant that the complainant was being charged interest since 15 January 2019.

15. The complainant argued that it is a small charitable organisation and that repaying up front the amount requested, in combination with interest payments, would threaten its existence. It contended that the Commission should have taken this into account, and properly considered its request, before issuing the debit note. Finally, the complainant contended that neither the conditions for reimbursement nor the appeal procedure are clearly set out in the grant agreement.

16. The Commission contended that it had offered continuous assistance to the complainant during and after the end of the project, including after it received the complainant’s reply to its pre-information letter.

17. However, according to the Commission, in that reply, the complainant had not contested the amount to be recovered and did not submit any “observations” or evidence to support its appeal. As a result, the Commission had not considered that it needed to make a formal ‘reasoned reply’ prior to issuing the debit note. [7]

18. Nevertheless, the Commission claimed that, in telephone contacts with the complainant, it provided information about the possibility to reimburse the outstanding amount in instalments, as well as the conditions linked to this option. The Commission pointed out that, according to the EU Financial Regulation [8], it cannot write off the debt in question [9]. It added that any repayment in instalments implies that the debtor is repaying the debt beyond the due date and must therefore also pay interest. Thus, it could not waive the obligation to pay the interest, which is considered part of the debt. According to the Commission, it had provided this information and other clarifications to the complainant.
19. Furthermore, the Commission pointed out that, in an e-mail of 21 February 2019, the complainant’s legal representative confirmed that the complainant “understood that there is no option but to pay back the full amount.” The complainant therefore acknowledged its debt.

20. The Commission stated that the grant agreement made clear that, should the pre-financing payment subsequently be greater than the final amount of the grant, the Commission is obliged to recover the difference. [10]

21. The Commission also rejected the complainant’s argument concerning the lack of clarity on the appeal procedure. It argued that the grant agreement clearly sets out the procedure, and the grounds on which the observations should be based, “i.e. the amount due and the reasons for recovery”. [12]

22. Although it rejected the complainant’s arguments, the Commission stated that it could accept the complainant’s request for payment by instalments. It said that the details of this would have to be agreed upon in accordance with the applicable rules. [13] However, the Commission considered that there was no justification for waiving the interest.

23. In its comments on the Commission’s reply, the complainant declared that it does not contest the accuracy of the facts as stated in the Commission’s reply. It said that it has been repaying the debt in instalments of £500 per month. However, since its last exchange with the Commission, its financial situation has materially worsened, resulting in significant financial distress. The complainant pointed out that, according to the Financial Regulation, debts can be waived in certain circumstances, such as, where the recovery is inconsistent with the principle of proportionality. [14] The complainant argued that, as repaying the debt threatens its existence as a small charity, the recovery is at odds with the principle of proportionality. [15]

The Ombudsman's assessment

24. The Ombudsman appreciates how difficult it must be for a small charity like the complainant to navigate procedures such as the one at issue here. What the complainant saw as a success of the project, namely the fact that it was delivered well under budget thanks to the work of volunteers, has resulted in it facing a budgetary situation that threatens its existence.

25. The Ombudsman further notes that the Commission issued the debit note in question in December 2018, despite the fact that it was at that stage still exchanging with the complainant on the issues examined in this inquiry. The issuing of that debit note triggered the payment of interest, which has further compounded the complainant’s financial difficulties.

26. The Ombudsman accepts the Commission’s argument that the grant agreement clearly sets out the conditions for reimbursement of sums paid in excess by the Commission and
the appeal procedure. Moreover, although there may have been a certain amount of 
miscommunication between the Commission and the complainant, for which the 
Commission apologised before this inquiry was opened, ultimately the Commission acted in 
line with the grant agreement.

27. The grant agreement states clearly [16] that the grant amounts to 19.42% of the eligible 
costs that are "actually incurred". Moreover, it clearly sets out [17] what costs may be 
considered 'eligible costs'. If some of the budgeted costs are, in the end, not actually incurred 
by a contractor, these are not, under normal circumstances, eligible for funding.

28. As mentioned by the Commission, the grant agreement [18] also makes clear that, 
should the pre-financing payment subsequently be deemed to be greater than the amount 
of the grant, the Commission is obliged to recover the difference.

29. The grant agreement sets out that the complainant could have submitted observations 
on the pre-information letter and, in doing so, contested the recovery. [19] That letter also 
clearly explained how the Commission's decision could have been contested (and the need 
to provide supporting arguments and supporting documents). Unfortunately, in the 
complainant's reply to the pre-information letter, it did not put forward arguments that could 
be considered to contest the Commission's decision and the amount due. It merely asked the 
Commission to take a lenient approach and enquired about the possibility of paying the sum 
due in instalments. These requests cannot be considered to amount to observations. Such 
observations would have had to show, for example, that the Commission had erred when 
calculating the sum to be reimbursed or that the sum which the Commission was claiming 
from the complainant was not due for some other reason. These observations would also 
have had to be accompanied by supporting documents. Regrettably, the complainant did not 
submit any such arguments or supporting documents.

30. The complaint also asked whether there were any grounds for appealing the amount 
to be repaid or the terms of repayment. However, as mentioned above, any such appeal 
should have been submitted within one month of the date that the pre-information letter 
was sent (that is, by 11 July 2018, which was the date of the complainant's letter).

31. Taking the above into account, the Commission was entitled to issue a debit note. 
However, as noted above, it would have been preferable if the Commission had replied to 
the complainant's requests before it issued the debit note. Not least because, once the debit 
note was issued, the complainant became liable for interest for each day that the repayment 
of the debt was delayed, in addition to the overall amount of the debt.

32. The Ombudsman welcomes the fact that the Commission apologised early on for any 
misunderstanding. In addition, the Commission has now accepted the complainant's request 
to repay the amount due in instalments which, the Ombudsman understands, the 
complainant has been doing for the past year.

33. In view of the foregoing, the Ombudsman finds that there was no maladministration by 
the Commission.
34. Nonetheless, the Ombudsman notes the complainant’s statement that its financial situation has materially worsened. She also acknowledges the important work of the complainant, and has no reason to doubt that the error was made in good faith.

35. As such, and taking into account the possibility for waiving debts under the Financial Regulation [20], the Ombudsman invites the Commission to examine attentively the complainant’s latest arguments with a view to deciding whether it could reconsider its position. At the very least, it could consider, for example, whether it is possible to waive an amount of the debt that is equivalent to the anticipated interest payments.

36. If the Commission decides not to waive the debt due, the Ombudsman urges it to take steps to reach an agreement as soon as possible on the details of the repayment by instalments.

**Conclusion**

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

*While there is no evidence of maladministration by the European Commission, the Ombudsman urges the Commission to take her assessment into account in its further exchanges with the complainant.*

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

Emily O'Reilly European Ombudsman

Strasbourg, 31/07/2020

[1] The grant was awarded for “The Ashtanga Yoga Good Health Project” (grant agreement: EAC-2016-0469), in the framework of the call for proposals EAC/S16/2016 on Promoting policy measures in the field of health-enhancing physical activities (HEPA) and actions for refugees.

[2] The complainant also stated that the project was delivered well under budget “*solely thanks to the exceptionally dedicated and generous volunteers who put in a huge number of voluntary hours to make this work possible.*”

[3] On 14 September 2018, the complainant proposed a payment plan with four payments of EUR 6 324.44 every three months starting from 1 October 2018. It also repeated its
request for a waiver of or reduction in the amount of the repayment. On 26 November 2018, the Commission sent a reminder that the terms of the pre-information letter continued to apply.

[4] The Commission recommended that the complainant make the required payment as soon as possible in order to limit the interest. It pointed out that, should there be a subsequent decision to amend the repayment, any excess payments would be reimbursed.

[5] The complainant added, however, that as a gesture of goodwill, it would commence repayments at a rate of £500 per month with effect from July 2019.


[7] The Commission referred to Article II.26.2 of the grant agreement, which stated that: “if no observations have been submitted or if, despite the observations submitted, the Commission decides to pursue the recovery procedure, the Commission may confirm recovery by sending a formal notification to the beneficiary consisting of a debit note [...].”


[9] The Commission argued that Article 101(2) of the Financial Regulation provides for the possibility to waive the debt or part of it under very specific conditions only and these are not applicable in the complainant’s case.

[10] The Commission referred to article I.5.2 and I.5.4 of the special conditions of the grant agreement.

[11] Article II.26 of the grant agreement states that: “Before recovery, the Commission must send a formal notification to the beneficiary: (a) informing it of its intention to recover the amount unduly paid; (b) specifying the amount due and the reasons for recovery; and (c) inviting the beneficiary to make any observations within a specified period “.

[12] The Commission also referred to Article II.18 of the general conditions of the grant agreement, which sets out the rules on dispute resolution and appeals.

[13] In particular, the Financial Regulation.


[15] The complainant referred Article 101(2) and 101(3) of the Financial Regulation. It argued that a debt can be waived when the error was made in good faith, and the waiver of the debt does not have a material impact on the financial interests of the European Union.
[16] See Article 1.3.2 of the special conditions of the grant agreement.

[17] See Article II.19 of the general conditions of the grant agreement.

[18] Article I.5.2 and article I.5.4 of the special conditions of the grant agreement.

[19] Article II.26.2 - the observations should be submitted within the time specified by the Commission in its pre-information letter (one month in this case).

[20] Article 101(2)