

Decision concerning the Executive Agency for Small and Medium-sized Enterprises (EASME) rejecting as ineligible certain costs in the context of an EU-funded project (case 341/2021/LM)

Decision

Case 341/2021/LM - Opened on 28/06/2021 - Decision on 28/06/2021 - Institution concerned European Innovation Council and SMEs Executive Agency |

Dear Mr X,

On 17 February 2021, you submitted a complaint to the European Ombudsman on behalf of DSP Valley V.Z.W. Your complaint is against EASME's decision to reject as ineligible for EU funding certain costs incurred by DSP Valley V.Z.W. in the context of the project "European Smart City Tech goes Global" [1]. EASME rejected costs for a consultant who worked on the project. EASME did not consider the costs to be 'direct personnel costs' under the Grant Agreement [2].

In your complaint to the Ombudsman, you disagree with EASME's assessment and its decision to reject the costs as ineligible. You argue that the costs can be qualified as costs "*of natural persons working under a direct contract with the beneficiary other than an employment contract or seconded by a third party against payment*", as provided for in the Grant Agreement [3]. You also say that your company acted in good faith. You consider EASME's decision to be unreasonable and disproportionate as it may cause your company to go bankrupt.

After a careful analysis of your complaint, I regret to inform you that **the Ombudsman finds no maladministration by EASME.** [4]

In this case, EASME considered that the costs for the consultant did not qualify as personnel costs under the Grant Agreement because the service contract that your company entered into was with the consultancy company and not with the owner of the company (the consultant) acting as a natural person. According to EASME, this finding applies even if the consultant worked on the project under conditions similar to those of employees. Moreover, EASME considered that the contract with the consultancy company could not be considered a 'secondment' under the Grant Agreement because the consultant had no employment contract with the consultancy company.



We find EASME's position on the matter reasonable and in line with the applicable rules set out in the Grant Agreement and the supporting financial guidelines. While one of the points in the financial guidelines seems, at first sight, to allow for your interpretation of the rules [5] , the guidelines must be read together with the grant agreement. Where the guidelines conflict with the provisions of the grant agreement, the latter prevails [6] .

EASME's decision is also in line with the case law of the European Court of Justice. According to the Court, the fact that a project has been carried out with good results is not enough to consider that the costs declared by the beneficiary are eligible. The beneficiary also has to prove that the costs fulfil the conditions laid down in the grant agreement. This requirement is not in breach of the principle of proportionality [7] .

We do not question that your company acted in good faith and we appreciate that this situation may cause difficulties. We also appreciate that the meaning of the relevant provisions is not always straightforward. However, we note that EASME provided continuous assistance and advice from the start of the project. For instance, EASME organised a kick-off meeting to explain the key provisions of the Grant Agreement, including those related to costs. EASME also guided you in completing the financial statement by replying to all your queries in a detailed manner and by suggesting to declare the costs in question as subcontracting costs, which you chose not to do.

While we understand that this decision may be disappointing for you, we hope you find these explanations helpful.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 28/06/2021

[1] COS-CLUSINT-2016-03-01. The project is part of the Programme for the Competitiveness of Small and Medium-Sized Enterprises (COSME).

[2] Article 6.2.A of the Grant Agreement

[3] Article 6.2.A.2 of the Grant Agreement

[4] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/70707> [Link]



[5] Point V of the COSME Financial guidelines.

[6] See the Introduction to the COSME Financial guidelines.

[7] ADR Center SpA v. Commission, C-584/17 P, para 109.