



Decision on the European Commission's decision to recover grants paid under EU funded projects carried out by a national police authority (case 1733/2020/LM)

Decision

Case 1733/2020/LM - Opened on 15/12/2020 - Decision on 11/10/2021 - Institution concerned European Commission (No maladministration found) |

The complainant, a national police force, received two grants from the European Commission for projects to fight transnational crime, which it carried out successfully. Following audits of the projects, the Commission found that a big part of the costs were ineligible mainly due to the lack of supporting documents. The Commission therefore decided to recover a considerable part of the grants. The complainant turned to the Ombudsman arguing that the decision was disproportionate and that the Commission had not shown flexibility. The complainant considered that the Commission should have allowed it more time to send additional supporting documents and that it should have done another audit.

The Ombudsman found that it was reasonable for the Commission to conclude that the complainant had violated its contractual obligations under the 'grant agreement'. The Commission had acted in accordance with EU financial rules and given the complainant ample opportunity to provide comments and submit additional supporting documents as proof of the costs it claimed. The Commission had also shown flexibility by agreeing to review supporting documents submitted late. The Ombudsman thus closed the inquiry with a finding of no maladministration.

Background to the complaint

1. In 2012 and 2013, the European Commission awarded the complainant, a national police force specialised in combatting financial crime, two grants amounting to over EUR 850 000 for projects to fight transnational crime. The 'framework partnership agreements' (hereafter grant agreements), setting out the contractual terms for the projects, stated that the Commission may audit the grant recipients up to five years after the final payment . The grant recipients should thus keep all original documents as proof of incurred costs. [1]

2. The two projects were carried out successfully. When closing one of the projects in 2017 (hereafter 'project X'), the Commission applied a financial penalty amounting to 2% of the value of the grant because the complainant had not provided essential documents, including an audit certificate and a detailed account of the expenses. [2] The complainant did not object to the application of the financial penalty within the stipulated two months. [3]



3. In January 2019, the Commission informed the complainant that it would audit the two projects in June 2019. It reminded the complainant that, in accordance with the provisions of the grant agreement, it had to make available during the audit all original documents, especially accounting and tax records. It also informed the complainant that it would not accept additional supporting documents submitted after the audit.

4. The auditors concluded that a significant portion of the costs (mainly staff costs) in the two projects were ineligible, as they were not verifiable because supporting documents were missing. [4] During the audits, the complainant did not provide any comments on the auditor's findings.

5. On 28 August 2019, in the context of the 'audit contradictory procedure', the auditors sent the draft audit reports to the complainant and gave it until 18 September 2019 to provide comments on the findings. [5] On 18 September 2019, the complainant replied to the auditors that it had no specific comments but that it could provide additional supporting documents. The auditors replied that, while they could not carry out the audit again, they could examine additional supporting documents submitted within five days, as the contradictory procedure was coming to an end. The complainant did not send any documents to the auditors.

6. In February 2020, the Commission sent to the complainant the final audit report. The Commission informed the complainant that, based on the audit findings, it would issue a debit note of EUR 251 133.06. Interest would accrue on the debt by default if the complainant did not pay before 12 June 2020. The Commission gave the complainant thirty days to submit comments. The complainant did not provide any comments.

7. In April 2020, the Commission informed the complainant that, since it had not received any observations within thirty days, it would proceed with the recovery of the amount due.

8. In June 2020, the complainant contacted the Commission, saying that the documentation required by the auditors was now available. In August 2020, the Commission agreed to review a sample of documents. In September 2020, the Commission confirmed that the documents did not satisfy the requirements of the auditors.

9. On 22 September 2020, the complainant provided the Commission with detailed explanations about the staff costs in project X. On 1 October 2020, the Commission replied that it was not possible to carry out a new audit of the project.

10. In October 2020, the Commission settled the debit note by offsetting it against another payment that it had been due to a different department of the police force in the context of another project. Dissatisfied with how the Commission had handled the matter, the complainant turned to the Ombudsman in October 2020.

The inquiry

11. The Ombudsman opened an inquiry into the complaint that the Commission was wrong to recover funds for costs deemed ineligible by the audit.



12. In the course of the inquiry, the Ombudsman met with Commission representatives and inspected the Commission's file on the case. The Ombudsman received the complainant's comments on the inspection meeting report as well as additional supporting documents. The inquiry team also spoke with representatives of the complainant.

Arguments presented to the Ombudsman

Arguments by the complainant

13. The complainant contends that it is disproportionate and unfair to recover a significant portion of the funds allocated under the grants, as the projects achieved good results. It argues that the Commission had mistakenly addressed the payment requests to junior staff members. Due to this and the disruption of the COVID-19 pandemic, the management became aware of the Commission's letters only at a later stage. Furthermore, it was difficult to retrieve the documents related to the projects because the staff members who were responsible for the projects no longer worked for the complainant. The complainant also contended that, during a phone conversation in August 2019, the auditors had advised it to wait for the Commission to contact them and not to send any documents.

14. The complainant argues that the Commission was not cooperative. It did not give the complainant more time to submit supporting documents and it refused to carry out another audit even though the complainant offered to pay for the audit. The Commission already began to recover the funds - by offsetting payments due for another project - even though the complainant was still trying to negotiate.

15. The complainant sent the Ombudsman documents to show that it had carried out an internal audit of project X that, it argued, showed that the Commission had incorrectly applied the 2% penalty.

Arguments by the Commission

16. The Commission argued that, in the context of EU-funded projects, it tries to be flexible in terms of deadlines, in particular when projects are carried out successfully. However, grant recipients have to comply with the financial provisions of the grant agreement. If there is no evidence to demonstrate that costs were incurred, as in this case, the Commission has an obligation to recover the funds.

17. The Commission said that it decided to apply a financial penalty to project X because the complainant failed to provide an audit certificate on the project's financial statements and accounts. Over a period of eighteen months, the Commission sought to obtain the audit certificate from the complainant. As a gesture of goodwill, and because the complainant had successfully carried out the project, the Commission applied the lowest possible financial penalty (which can go up to 10% of the value of the grant) instead of terminating the grant



agreement, which would also have been an option. If the complainant had produced the requested documents at the time project X was concluded, the shortcomings that eventually led the Commission to recover a big part of the grants might have been detected and remedied in due time.

18. The Commission argued that it had tried to be as understanding as possible, and offered the complainant many possibilities to submit additional supporting documents, even long after the audit's contradictory procedure had ended. In order to verify whether it had committed any manifest error, in September 2020 the Commission even agreed to review a sample of new supporting documents from the complainant. However, the Commission found that the documents did not allow it to reach a different conclusion without re-auditing the projects in full. However, carrying out a new audit was not an option, as this would have been contrary to the principle of equal treatment of recipients of EU funding.

The Ombudsman's assessment

19. The EU budget must be implemented in accordance with the principle of sound financial management. [6] This means that grants allocated to projects or programmes under the EU budget are normally based on the reimbursement of *eligible costs*, that is, costs incurred by the grant recipient that are deemed necessary for carrying out the project in question. Recipients of EU grants have to provide evidence for such costs in the way described in the grant agreements, so that the Commission can check whether EU funds were used properly. If a grant recipient fails to provide such evidence, the grant recipient may have to repay the grant or parts of it. The grant recipient does not have any definitive right to full payment of the grant if it does not satisfy the applicable conditions. [7]

20. According to the Court of Justice of the European Union, the fact that a project has been carried out with good results is not enough to show that the costs declared by the grant recipient are eligible. The grant recipient has to prove, in accordance with the conditions laid down in the grant agreement, that the costs have been incurred. This requirement is not disproportionate [8] as the grant recipient, by signing the grant agreement, has agreed to provide the evidence required under the agreement.

21. In this case, the grant agreement, as well as the guide to applicants [9], clearly informed the complainant that it should keep all original documents for five years, because there may be audits. However, the complainant was not able to provide sufficient supporting documents to justify a significant portion of the costs, neither within the contractual deadlines (before the final payment in the case of project X), nor in the context of the audits (in both projects). The Commission gave the complainant ample opportunity also to make comments and to provide supporting documents. However, the complainant did not make any observations or objections when it was given the possibility to do so. The complainant claims that the auditors had told it by phone not to submit any further evidence, but there is no record of this conversation. On the contrary, there is written evidence that the auditors allowed the complainant to submit supporting documents after the deadline for sending comments, in the context of the contradictory procedure. The complainant did not send any



supporting documents. Regarding the complainant's argument that the Commission's letters and requests were not sent to the correct people in its organisation, a public authority like a police force should be able to overcome the difficulties linked to staff turnover and reorganisation and thereby ensure that information and correspondence is promptly passed on to the relevant sections or staff members.

22. Despite the fact that the complainant had been informed that the Commission would not accept additional supporting documents submitted after the audit, the Commission nevertheless did consider a sample of evidence submitted one year after the closure of the audit contradictory procedure. The Commission's argument as to why it cannot do another audit is reasonable.

23. On the basis of the above, the Ombudsman finds that the Commission has shown good will and flexibility. The Ombudsman also finds it reasonable for the Commission to conclude that the complainant had violated the contractual obligations of the grant agreement by not providing support documents for a large portion of the costs. While the complainant contests the application of a financial penalty for project X, it has not provided any evidence to show that it sent the required audit certificate to the Commission.

24. The Ombudsman thus concludes that there has been no maladministration by the Commission in this case.

Conclusion

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

There was no maladministration by the European Commission.

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

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 11/10/2021

[1] See Articles II.20.2 and II.20.3 of the framework partnership agreement.

[2] This was in line with Article II.16.4 ('Payment of the balance') of the framework partnership agreement, which stated that: "*The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the partner in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the framework agreement and the specific agreement.*".

[3] In accordance with Article II.17.5 of the framework partnership agreement, the



complainant may object in writing within two months.

[4] Article II.15.1 of the framework partnership agreement states that costs shall be “ *identifiable and verifiable, in particular being recorded in the accounting records of the partner and determined according to the applicable accounting standards of the country where the partner is established and according to the usual cost accounting practices of the partner*” .

[5] During the audit contradictory procedure, the auditee can provide comments, which are taken into account to either maintain or drop an audit finding.

[6] Article 310(5) of the Treaty on the Functioning of the European Union, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FTXT>

[7] Judgement of the Court of First Instance of 22 May 2007, *Commission v. ICC*, case T-500/04, paragraphs 93 and 95, available at <https://curia.europa.eu/juris/document/document.jsf?jsessionid=B9BC00BE67698A67CE183AB358DEC21>

[8] Judgement of the Court of 16 July 2020, *ADR Center SpA v. Commission* , case C-584/17 P, paragraph 109, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=228665&pageIndex=0&doclang=EN&>

[9] Point 5.3 of the guide for applicants CIPS/ISEC 2012, “Prevention, preparedness and consequence management of terrorism and other security related risks” (CIPS) and “Prevention of and fight transnational crime” (ISEC), available at https://ec.europa.eu/home-affairs/sites/default/files/funding/cips/call_2012/cipsisec_2012_guide_for_app