



Decision of the European Ombudsman closing the inquiry into complaint 2099/2012/JN against the European Commission

Decision

Case 2099/2012/JN - **Opened on** 22/11/2012 - **Decision on** 08/07/2014 - **Institution concerned** European Commission (Friendly solution) |

The complaint in this case was that the European Commission had behaved unfairly in seeking to recover some of the financial support for an EU-funded project. The complainant was a not-for-profit organisation and it said that it was not possible for it to meet the recovery terms as set by the Commission. Having considered the complaint, made in October 2012, the Ombudsman made a proposal to the Commission for a friendly resolution of the issue. The Ombudsman proposed that the Commission would extend the time period over which the money was to be repaid by the complainant and, also, that the Commission would consider waiving the requirement that the complainant put in place a guarantee to cover the amount to be repaid. The Commission accepted this proposal. In closing the case, the Ombudsman suggested to the parties that they should make direct contact to work out these settlement arrangements.

The background **[1]**

- 1.** The complainant, a non-profit organisation, participated in a project for which it received financial contribution from the EU. On 6 March 2012, the European Commission claimed the reimbursement of a part of its financial contribution and liquidated damages.
- 2.** In reply to the complainant's objections, the Commission informed the complainant, on 19 July 2012, that taking into account the complainant's difficult financial situation, it would withdraw its claim for liquidated damages, which would be disproportionate. However, it maintained its demand for recovery of EUR 72 706 of its contribution to which the complainant was not entitled.
- 3.** On 26 September 2012, the Commission informed the complainant that, in principle, it could accept reimbursement in instalments for a maximum period of two or three years, on condition that default interest on the unpaid balance is paid and that a guarantee be provided, as required by the Financial Regulation and Article 85 of the Implementing Rules. The guarantee could either be a bank guarantee or a third-party guarantee if the guarantor provided evidence of his solvency. The complainant was further invited to inform DG Budget if it was engaged in another EU project, which would allow for reimbursement by offsetting.
- 4.** Since no agreement had been reached, on 10 October 2012, the Commission requested



the complainant to pay the outstanding EUR 72 706 within two weeks with interest. The complainant turned to the Ombudsman.

5. On 22 November 2012, the Ombudsman opened an inquiry into the following allegation and claim:

Allegation:

By offering conditions for the recovery which the complainant is unable to fulfil both due to its financial situation and the impossibility for it to obtain a guarantee, the Commission acted unfairly.

Claim:

The Commission should either reduce the debt or allow payment to be made in instalments in accordance with the complainant's financial resources. The reimbursement period should be longer and no guarantee should be required as it is impossible for the complainant to obtain one.

Allegation that the conditions of recovery imposed by the Commission were unfair

The Ombudsman's friendly solution proposal

6. On 5 September 2013, the Ombudsman made a proposal for a friendly solution. The Ombudsman took into account the arguments and opinions put forward by the parties. The Ombudsman emphasised that the specific situation of the complainant should be taken into account in the determination of the conditions of reimbursement in order not to impose an excessive burden on it. In particular, the Ombudsman was of the view that the period of time over which the amount due would be recovered was entirely in the Commission's discretion as well as the amount of each instalment. The Commission could further consider recovery by offsetting if possible. As regards the guarantee requirement, the Ombudsman pointed to the fact that under the Rules of Application which came into force in the meantime, the Commission was now empowered to waive that requirement. [2]

7. The proposal for a friendly solution was phrased as follows:

"Taking into account the Ombudsman's findings, the European Commission could meet with the complainant and, on the basis of the proposal which the complainant made in its observations on the Commission's opinion, discuss and consider the possibility of: (i) reimbursement by offsetting the debt; (ii) extension of the number of years over which the instalments could be paid; and (iii) possible waiver of the requirement of a guarantee.

The Ombudsman offers to attend the meeting between both parties, should the parties so wish."



8. On 29 November 2013, the Commission replied that it was prepared to accept the Ombudsman's proposal. It had already sent a corresponding letter to the complainant which was based on the complainant's offer outlined in its observations submitted to the Ombudsman. Thus, the Commission accepted that (i) the complainant would make a first reimbursement of EUR 30.000 by 30 October 2013 and (ii) the remaining amount increased by interests would be reimbursed in yearly instalments amounting to EUR 7.000 until 2021 [3]. As regards the guarantee requirement, the Commission accepted that under the new Rules of Application it was authorised exceptionally to waive that requirement. In order to be able to assess whether the conditions for a waiver were met, it invited the complainant to submit its available financial accounts for the past three accounting years. Both in its correspondence and its reply to the proposal for a friendly solution, the Commission showed its willingness to waive the guarantee requirement should the complainant prove its financial difficulties.

9. On 24 January 2014, the complainant submitted its comments on the Commission's reply. It stated that it had made the first reimbursement of EUR 30.000 on 24 October 2013. It further submitted its accounting documents to the Commission. On 12 October 2013, the Commission took the view that the accounting documents did not demonstrate that the complainant would be facing difficulties. The guarantee requirement thus could not be waived at this stage. Yet, it was materially impossible for the complainant to lodge either a bank guarantee or a third party joint and several guarantee (including by its three directors). It pointed to the fact that, following the reimbursement of the initial instalment, it was in a financially weak situation.

The Ombudsman's assessment after the proposal for a friendly solution

10. The Ombudsman appreciates that the Commission has shown willingness to settle the matter amicably and has taken concrete steps in that direction. The Ombudsman is pleased that the Commission agreed to all the points in the Ombudsman's friendly solution proposal (i, ii and iii). Therefore, the friendly solution proposal can be regarded as having been accepted and the Ombudsman's further intervention is not necessary.

11. As regards point (iii), the Commission seems to be prepared to waive the guarantee, if the complainant can submit evidence that it indeed faces financial difficulties. The Ombudsman therefore invites the parties to make direct contact with a view to finding a solution. Since the Commission has shown a willingness to consider a possible waiver of this requirement, it is for the complainant to submit evidence that the conditions laid down by Article 89 of the Rules of Application are met in its case.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion and a further remark:

The Commission accepted the Ombudsman's proposal for a friendly solution.



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

Further remark

The Commission and the complainant could engage in direct contacts with a view to reaching an agreement regarding the guarantee issue. The Ombudsman will appreciate it if the Commission would let her know, in due course, the outcome of these contacts.

Emily O'Reilly

Done in Strasbourg on 8 July 2014

[1] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's friendly solution proposal available at:
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54597/html.bookmark>

[2] Article 89 of the Rules of Application reads as follows:

" The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, and provided that the following two conditions are fulfilled:

(a) the debtor undertakes to pay interest at the rate specified in Article 83 for the entire additional period allowed, starting from the deadline referred to in Article 80(3)(b);

(b) in order to safeguard the rights of the Union, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution's accounting officer.

The guarantee referred to in point (b) of the first paragraph may be replaced by a joint and several guarantee by a third party approved by the institution's accounting officer.

In exceptional circumstances, following a request by the debtor, the accounting officer may waive the requirement of a guarantee referred to in point (b) of the first paragraph when, on the basis of his assessment, the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee and is in a distressed situation. "

[3] The last instalment would be slightly lower.