

## Decision of the European Ombudsman closing the inquiry into complaint 17/2012/PMC against the European Commission

Decision

**Case 17/2012/PMC - Opened on 27/02/2012 - Decision on 18/05/2015 - Institution concerned** European Commission ( Friendly solution ) |

This case concerned the EU Delegation to Armenia's alleged unlawful and/or unfair decision to terminate a grant contract related to a project implemented in Armenia and Jordan, to the detriment of the complainant, an Italian NGO active in the field of development cooperation. After a careful assessment of all the facts and arguments, the Ombudsman concluded that the Delegation's explanation for the termination decision was incomplete. The Ombudsman therefore suggested that the Commission, in its supervisory role over the EU Delegations, provide the complainant with a more comprehensive explanation as to the grounds for terminating the project.

In reply to the Ombudsman's proposal, the Commission declared that the Delegation had taken all the relevant factors into consideration when deciding to terminate the contract. However, it recognised that the explanation for terminating the grant might not have been sufficiently comprehensive. Therefore, it forwarded to the Ombudsman a letter which the Delegation had sent to the complainant explaining all the factors it took into account in its assessment.

The Ombudsman considered that the Commission had taken steps to resolve the matter and thus decided to close the case.

## The background

1. The complainant is an Italian university which is active in the field of development cooperation. It took part, as project leader, in a project which was selected as one of the beneficiaries of the EU Cooperation in Urban Development and Dialogue (CIUDAD) Programme, financed by the EU in the context of its development cooperation policy. The EU Delegation in Armenia supervised the implementation of the project in question, which was going to be carried out in Armenia and Jordan. Soon after the start of the project, the project activities in Armenia were disrupted by tensions between the Italian and the Armenian partners. This situation led the Armenian partners to withdraw from the project in November 2010. In



January 2011, the project partners submitted the first interim report to the EU Delegation and requested it to release the second instalment of the financing grant. The Delegation rejected the request, due to serious concerns about the implementation of the project. The Delegation took a number of steps aimed at finding solutions to the problems it had identified. Among other things, it organised a meeting (in May 2011) and a workshop (in September 2011). In September 2011, the Commission decided to organise a Result Oriented Monitoring (ROM) mission to the project. An external expert from the United Nations Development Program, appointed to help in getting the project back on track, also submitted a report on the project in September 2011. However, dissatisfied with the outcome of the measures taken, the Delegation eventually informed the project leader, on 11 November 2011, of its decision to terminate the grant contract.

2. The complainant turned to the Ombudsman alleging, among other things, that the EU Delegation unlawfully and/or unfairly terminated the grant contract. It claimed that the Commission should reconsider its decision. [1] In support of its above-mentioned allegation, the complainant put forward the following arguments. (i) The Delegation contributed to the circumstances which led to the termination of the contract by refusing to authorise the new partnership and to release the second instalment of the grant. (ii) The Delegation did not adequately take into consideration the ROM reports. (iii) The Delegation did not take into consideration the activities carried out and the results achieved by the project in Jordan.

3. During the course of this inquiry, the Ombudsman received the opinion of the Commission (which is the supervisory body for EU Delegations abroad) on the complaint and, subsequently, the complainant's observations on that opinion. [2] The Ombudsman then made a proposal for a friendly solution to the matter brought before her.

## **Alleged unlawful and/or unfair termination of the grant contract**

### **The Ombudsman's analysis and proposed solution**

4. The Ombudsman concluded that the Delegation could not be held responsible for the problems in the implementation of the project, and that the Delegation's letter of 11 November 2011, terminating the grant contract, was in conformity with the relevant procedural requirements.

5. However, as regards the complainant's argument that the Commission failed fully to take into account the ROM reports, the Ombudsman noted that, despite the criticism reported by the Delegation in its termination decision, the ROM I report, which concerned the Armenian part of the project, highlighted that the project still had potential to reach its objectives in Armenia. The ROM I report, therefore, did not recommend termination of the project. The Ombudsman noted that there was no reference to this part of the ROM I report in the Delegation's assessment of the project.



6. The Ombudsman furthermore observed that the Delegation was aware that a second ROM mission (ROM II), monitoring the results of the project activities in Jordan, was underway when it decided to terminate the contract. According to the Commission, the decision to terminate the contract without awaiting the imminent ROM II report was due to the need to avoid “further waste of public money”. However, the Ombudsman took the view that the Commission’s position did not appear convincing.

7. The Ombudsman also noted that, in its decision to terminate the contract, the Delegation did not carry out any specific assessment of the activities undertaken and the results achieved by the project partners in Jordan. It was only in its opinion to the Ombudsman, that the Commission argued that the ROM I report had found that the project lacked a credible regional dimension and that, in any event, the termination of the project in one of the two beneficiary countries would have undermined one of the eligibility criteria of the CIUDAD Programme, automatically leading to the termination of the project in the other country. In that regard, the Ombudsman noted that the ROM reports are autonomous evaluations of the project activities, which provide material for the Delegation’s assessment, but do not replace the Delegation’s assessment. Thus, the ROM findings become part of the Delegation’s assessment only when expressly endorsed or mentioned, which was not the case as regards the statement on the regional dimension of the project. The Ombudsman also pointed out that eligibility criteria and termination conditions are different concepts and that Article 12(1) of the General Conditions of the contract refers to the execution of the contract in its entirety. The Ombudsman considered, therefore, that the reasons given by the Commission to justify why it had not specifically assessed the project activities and results in Jordan were not fully convincing.

8. On the basis of the above, and having carefully assessed the arguments put forward by the Commission and the complainant, the Ombudsman took the view that **the Commission might have terminated the contract without having considered all of the relevant factors and that, in any case, its explanation for the termination decision was incomplete. She therefore suggested that** *‘the Commission could review its handling of the termination decision and provide the complainant with a comprehensive explanation dealing with all of the factors it took into account and of the assessment it conducted in relation to each of these factors.’*

9. In its reply, the Commission stated that it had taken all the relevant factors into consideration when deciding to terminate the contract. However, it acknowledged that the explanations for terminating the contract might not have been clear and/or complete enough. Therefore, it forwarded to the Ombudsman a letter which it had sent to the complainant in November 2014, explaining all the factors it took into account in its assessment.

10. In its letter, the Commission explained that the project would have continued with the proposed new partners, provided that a new logical framework, a work plan, as well as an activity based budget had been developed and presented to the Delegation for approval.

11. The letter continued by saying that the EU Delegation had received revised project documents prepared by the external expert. However, the revised documents were not in line



with the agreement reached during the meeting held in May 2011, or with the original objectives of the project. Furthermore, the Delegation considered that none of the revised documents met the standards required to continue the project. In addition, the monitoring mission organised in Armenia (ROM I) concluded that the project resources were under-used. The ROM I report also stated that since the project was running late, it was unlikely that the expected results and specific objectives would be achieved within the remaining time-frame. The Delegation never excluded an extension of the time-frame for finalising the project. However, such an extension could only be contemplated at a second stage, after the project had shown considerable progress.

**12.** The Commission stated that, on the basis of the above, the Delegation found that, notwithstanding its efforts to find a solution, no further progress had been made as the first tasks to be carried out under the project had not been properly performed.

**13.** Concerning the specific assessment of the activities undertaken in Jordan, the Delegation stated, in its letter to the complainant, that it is true that it did not wait for the formal results of the ROM II mission before terminating the contract. However, the ROM II mission to Jordan essentially confirmed the findings of the ROM I mission to Armenia. The Delegation endorsed the results of the ROM II mission at the end of 2011.

**14.** Furthermore, according to the grant contract, both parts of the project, in Armenia and Jordan, were linked, and could not be considered to constitute separate components. Hence, the failure to implement the activities in Armenia constituted grounds for termination.

**15.** The complainant did not submit any observations on the Commission's reply.

## **The Ombudsman's assessment after the friendly solution proposal**

**16.** There were two grounds for the Ombudsman to propose a friendly solution in this case. She concluded that the Commission, before terminating the relevant grant contract, had failed (i) fully to consider the ROM reports, and (ii) to conduct a specific evaluation of the activities undertaken and the results achieved by the project partners in Jordan. The Ombudsman therefore proposed that the Commission could review its handling of the termination decision and provide the complainant with a comprehensive explanation of the factors it took into account and of the assessment it conducted in relation to each of these factors.

**17.** The Ombudsman takes note of the Commission's reply that it took all the relevant factors into consideration when deciding to terminate the contract. She welcomes the fact that the Commission acknowledged that it might not have sufficiently explained to the complainant the grounds underlying its decision to terminate the grant contract.

**18.** As regards point (i) above, the Commission has now further clarified that regardless of the remaining potential of the project, and notwithstanding the efforts made to resolve the problems



affecting it, the steps taken were simply considered insufficient. Moreover, while the Commission acknowledged that it had not waited for the formal results of the ROM II report, it added that the ROM II report essentially confirmed the findings of the ROM I report, that is, that the project implementation in Jordan also lacked the required standard.

19. As regards point (ii), the Ombudsman's concern was based on the fact that the findings of the ROM missions become part of the Delegation's assessment only when expressly endorsed or mentioned. She notes that the ROM II report identified certain shortcomings also in the implementation of the project in Jordan. It is clear from the further information provided by the Commission that it endorsed the results of the ROM II report, which confirmed the preliminary results, informally communicated to the Commission.

20. The Ombudsman therefore considers that points (i) and (ii) have now been appropriately addressed. She thus considers that the Commission has done what she had asked it to do.

21. On the basis of the above, the Ombudsman considers that the Commission has taken steps to resolve the instance of maladministration found. She thus closes the case.

## Conclusion

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

**By taking steps to resolve the instance of maladministration found, the Commission accepted the Ombudsman's solution proposal.**

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

Emily O'Reilly

Strasbourg, 18/05/2015

[1] The complainant also alleged that the Commission had failed to manage the project with due diligence. However, in her solution proposal, the Ombudsman found that none of the arguments supporting the complainant's second allegation could be sustained. See, in particular, point 73 of the Ombudsman's solution proposal. 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 solution proposal.

[2] The Ombudsman's representatives also went to inspect the Commission's file.