

Decision in case 1134/2015/TN on the European Commission's decision to declare ineligible certain costs incurred by a partner to an EU funded project

Decision

Case 1134/2015/TN - Opened on 10/08/2015 - Decision on 11/02/2016 - Institution concerned European Commission (No maladministration found) |

The case concerned the Commission's decision to declare ineligible certain costs declared by a partner to an EU funded project. The Ombudsman inquired into the issue and found that the Commission's grounds for not accepting the costs in question were reasonable. The Ombudsman therefore closed the case with a finding of no maladministration.

The background to the complaint

1. The complaint is related to the BIOCHEM project [1] , the aim of which was to accelerate the growth rate of European transnational bio-based businesses. The complainant, a Danish company, became a consortium partner to the project in 2010, replacing a previous partner. To this end, a contract amendment was signed between the project coordinator and the Commission. The contract amendment stated that any task foreseen (set out in the description of work in Annex I to the grant agreement) to be carried out by the previous partner was deemed to have been, and to be, carried out by the complainant. There was also a contract signed between the complainant and the coordinator, establishing the complainant as a co-beneficiary under the project.
2. The Commission asked no questions in relation to two intermediate cost statements (for reporting periods 2 and 3), on the basis of which the Commission paid funding to the project. However, following the final cost statement, the Commission decided to disallow an amount of EUR 110 865.42 of the costs declared by the complainant for reporting period 4.
3. The coordinator wrote to the Commission, setting out a number of considerations as to why the Commission's decision to disallow some of the complainant's declared costs was not correct. The Commission did not change its decision.
4. Being of the view that the Commission had failed to deal with the points made by the coordinator, the complainant turned to the Ombudsman. The Ombudsman asked the



Commission to address the following points:

- 1) The Commission did not address the issue of it having wrongly assumed that there was no valid contractual agreement for the complainant's participation in the project;
- 2) The Commission had not explained why costs related to activities in Denmark and other Nordic countries had not been accepted, given that activities related to companies and research institutions in these countries were carried out as part of the planned work following the complainant's inclusion in the project as a partner;
- 3) The Commission should have asked for an external independent review of the project, as it had done in another project (INNOWATER);
- 4) Neither the complainant, nor the coordinator, had received any prior information from the Commission that it envisaged disallowing a substantial part of the complainant's costs;
- 5) The complainant has a detailed time registration system registering time spent on each project at "work package level". The Commission did not request time registration to be at task level in relation to previously accepted cost claims (for reporting periods 2 and 3);
- 6) The Commission incorrectly considered the number of hours declared during the last reporting period to be unreasonably high, given that the tasks which involved the complainant were particularly demanding during the last period.

5. In response, the Commission provided, in summary, the following response:

- 1) The Commission had no doubt about the contractual status of the complainant. Had there been any such doubt, no payment would have been made to the complainant.
- 2) If a country is not included in the project plan, or in the description of work, the costs related to these activities cannot be deemed as eligible.
- 3) The external independent review in the INNOWATER project was carried out without any additional information and on the initiative of the Commission. Furthermore, the situation for each project is different and it is not possible to draw any parallels between them.
- 4) The Commission has no obligation to "previously inform" the beneficiaries of its intention to disallow costs.
- 5) No timesheets were submitted by the complainant during the lifetime of the project, although there was a clear deadline for submission of reports and an obligation for the beneficiaries to submit all evidence within that deadline.
- 6) Even if the last reporting period required a higher activity level, all *results* achieved should be fully reflected or referred to in the reports.



6. Being dissatisfied with the Commission's response, the complainant made a new complaint to the Ombudsman.

The inquiry

7. The Ombudsman considered that the Commission had provided useful additional information for the understanding of the issue at hand. She found, however, that some of the complainant's concerns needed further clarification before she could take a final position on the substance of the case. The Ombudsman therefore opened a new inquiry into the following allegations and claims put forward by the complaint:

The Commission's evaluation of the complainant's cost statements for the fourth project period:

- 1) was biased;
- 2) did not follow the Commission's normal internal procedures and principles; and
- 3) wrongly concluded that substantial costs should be disallowed.

The Commission should pay in full the costs declared by the complainant in cost statement 4, including interest for late payment.

8. Having carried out an inspection of the Commission's file and on the basis of the clarifications provided by the Commission at the occasion of the inspection, the Ombudsman's inquiry team drew the preliminary conclusion that the Commission had not committed any maladministration in its evaluation of the complainants cost statement for reporting period 4. The complainant submitted comments on the inspection report and the inquiry team's preliminary conclusion. The Ombudsman has taken into account all the arguments put forward by the parties.

Allegation of incorrect evaluation of cost statements

Arguments presented to the Ombudsman

9. In its new complaint to the Ombudsman, the complainant put forward the following main concerns in relation to the points previously raised:

- 1) The complainant's minutes from a meeting with the Commission stated that one of the Commission officials present said that the complainant had no valid contract. In the complainant's view, this serious misunderstanding affected the Commission's evaluation.



2) The objective of the project was to assist in developing investment readiness and exploitation plans for *all* companies and entrepreneurs identified by *all* BIOCHEM project partners. The complainant became a Danish partner to the project in 2010. It is therefore difficult to understand why Denmark (or any other Nordic country) should not be included in the project plan or description of work.

3) The complainant did not mean to suggest that it had been allowed to provide additional information during the external independent review in the INNOWATER project (which it had not), but that it had been allowed to do so *before* the external review of that project.

4) The complainant argued that the Commission made a change to its administrative practice when it required cost reporting at task level (see further point 5 below). This was contrary to "good public governing practices" since there was no "hearing process" to allow the Commission to take into account subsequent material aiming at correcting obvious misunderstandings.

5) The complainant's costs statements for reporting periods 2 and 3 had been "honoured in full" by the Commission without any timesheets having been submitted, and despite the fact that costs were declared only at work package level (and not at task level). The complainant therefore assumed that this level of detail would also be sufficient for reporting period 4. The full documentation behind all costs has always existed in the complainant's accounting system, at a level of detail assumed to be satisfactory, which, according to the complainant, "normally means" work package level. The complainant considered "work package level" to be the natural reporting level, given that the budget only detailed efforts at that level. The Commission never indicated that a more detailed reporting level was required.

6) The complainant believed that the reporting for period 4 provided all the relevant information. The reporting referred to information that was found in the comprehensive interactive BIOCHEM website operated by the complainant, which fully met the information requirement of the Commission. The level of detail of the reporting for period 4 did not differ from that for periods 2 and 3.

10. At the occasion of the inspection, the Commission stated that according to Article I.4.3. of the Grant Agreement, the complainant, being a beneficiary to the project, should carry out the work as required in Annex I. The Commission stated that the project coordinator had provided a very good and comprehensive report, from which it was clear that the complainant had not carried out the work as required.

11. The Commission also stated that, according to Article II.16.1. of the Grant Agreement, eligible costs are costs actually incurred by the beneficiary which must be connected with the subject of the grant agreement, must be necessary for the performance of the action, reasonable and justified, and must accord with the principles of sound financial management, in particular in terms of value for money and cost-effectiveness. Compared, where relevant, with other beneficiaries having carried out the same kind of activities, it was clear that the costs declared by the complainant were not in line with Article II.16.1. Given the clear and



unequivocal information in the report, the Commission found that there was no need for an audit of the project.

12. The Commission also provided the following clarifications regarding the complainant's concerns:

1) The Commission had never said that the complainant had no valid contract. Otherwise it would not have paid it at all.

2) Even if the complainant appears to consider that Denmark *should have been* included in the project plan, *it was not* included in the project plan (as explicitly stated in the Final Activity Report under Work Package 8, D 8.1 SME Audits). No amendment was made of the project plan although it is possible to make certain amendments, which do not change the nature of the project. The Commission cannot allow changes that affect the nature of a project because projects are chosen by an independent evaluation committee.

3) The coordinator had done an excellent job providing a high quality report, which contained a clear description of what was done. Based on the report, it was possible to make a good judgment of the actions carried out and by whom. The complainant had signed the report and provided no additional evidence of what it had done in the context of the project at the meeting held with the Commission.

The report submitted in the INNOWATER project, referred to by the complainant, was poor, despite the Commission giving the coordinator the opportunity to improve it. It had therefore been necessary to consult an external expert in order to clarify what had been done and by whom.

4) It was clear from the report concerning the present project that the complainant had not carried out what was required. There were thus no misunderstandings. Requiring that the report should state what had been done, and by whom, was not a change in its administrative practice.

5) Not all reporting periods are looked at in detail for every beneficiary, because this would constitute a burden for the beneficiaries. Detailed checking is made based on a risk assessment. As regards the complainant, the Commission decided to look in detail at reporting period 4 only. The fact that the cost claims for previous periods had been accepted did not imply that the reporting for those periods was without problems. For instance, the report for period 3 stated that the complainant had not provided any update for that reporting period as regards Work Package 5.

6) The Commission reiterated that it was clear from the report that the complainant had not carried out all the work for which it had claimed costs. The complainant had not organised the events provided for in the project plan and the information on the website as regards the complainant's activities, which the Commission had indeed checked, was not at all convincing. There is no "information requirement of the Commission", as argued by the complainant. On the contrary, it is the Grant Agreement that constitutes the basis for what information needs to be



provided on the work that has been carried out.

13. In its comments on the inspection report, the complainant put forward the following main arguments:

1) The complainant maintained that the Commission had stated in a meeting that a signed contract amendment was not a valid contract unless associated with an approved budget. The complainant referred to e-mail correspondence following that meeting, indicating that the contract amendment procedure had not been completed at that point in time. The complainant was concerned that "*information about the contract status might not have been handed over correctly to new Commission staff members*".

2) The complainant maintained that the description of work stated that the scope of the project was "pan-European", which, by definition, includes Denmark. The description of work refers to "7 European countries" which meant to secure that the activities should cover *at least* 7 countries. There is nothing in the description of work limiting the countries to partner countries, which in any case would include Denmark once the complainant became a partner to the project.

3) The complainant maintained that it was not allowed to provide additional evidence.

4) - 6) The complainant maintained that the Commission had drawn biased conclusions, on the number of "man months" used to complete the different tasks. It is also likely that the Commission did not take into account the interactive BIOCHEM website in its evaluation.

The Ombudsman's assessment

14. On the basis of the inspection and the additional arguments put forward by the parties in the course of the inquiry, the Ombudsman makes the following conclusions:

1) Although the contract amendment procedure might have taken some time, the Ombudsman finds convincing the Commission's argument that without a valid contract, the complainant would not have been paid at all. There is thus nothing to suggest that the Commission's evaluation of the complainant's cost statements was affected by the contractual situation.

2) Although the scope of the project might very well have been "pan-European", this does not mean that the more detailed description of work would not identify particular countries in which particular tasks were to be carried out. The Ombudsman considers that the description of work referring to "the 7 BIOCHEM countries", meant the seven countries of the original partners. Given that the contract amendment stated that *any task foreseen (set out in the description of work in Annex I to the grant agreement)* to be carried out by the previous partner was deemed to have been, and to be, carried out by the complainant, the Ombudsman agrees with the the Commission that in order to include a new country into the project, an explicit amendment to that effect would have to be made.



3) On the basis of the inspected documents, the Ombudsman agrees with the Commission that the report for period 4 concerning the work carried out by the complainant was clear enough not to require any further clarifications.

4) - 6) The Ombudsman finds nothing to support the complainant's argument that the Commission made a change to its administrative practice as regards cost reporting. The Ombudsman finds convincing the Commission's explanation that the reporting for periods 2 and 3 had not been looked at in detail. The fact that the costs declared for these periods were accepted cannot be used as an argument for the Commission having to accept also the costs declared for period 4. There is nothing to indicate that the Commission did not take into account all the information provided in the report for period 4.

15. On the basis of the above, the Ombudsman finds no maladministration by the Commission.

Conclusion

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

There has been no maladministration by the Commission.

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

Emily O'Reilly

11/02/2016

[1] The project ran from December 2009 to April 2012.