



## Decision of the European Ombudsman closing the inquiry into complaint 1830/2014/DK concerning the European Commission's alleged failure to supervise the financial management of a grant agreement

Decision

**Case** 1830/2014/DK - **Opened on** 03/12/2014 - **Decision on** 31/10/2016 - **Institution concerned** European Commission ( No maladministration found ) |

### Decision

of the European Ombudsman closing the inquiry into complaint 1830/2014/DK concerning the European Commission's alleged failure to supervise the financial management of a grant agreement

*The case concerned the European Commission's alleged failure to supervise a grant agreement. The complainant was a beneficiary under the grant agreement. A co-beneficiary acted as Coordinator of the beneficiaries in all dealings with the Commission. The Coordinator went bankrupt and failed to pay the other beneficiaries the amounts paid to it by the Commission. Moreover, the Commission informed the other beneficiaries that it was entitled to recover from them any debt owed to the Commission. The complainant alleged that the Commission had failed to properly supervise the financial management of the grant agreement.*

*The Ombudsman inquired into the issue and found that the Commission had not failed in any duty to monitor the coordinator. The Ombudsman therefore closed the inquiry with a finding of no maladministration.*

The background to the complaint

- The complaint concerned the European Commission's alleged failure to supervise the financial management of a Grant Agreement.
- The complainant, an investment and advisory company, was one of ten beneficiaries of a grant given by the Commission for a project within the Competitiveness and Innovation Programme. The project started on 1 September 2009 and ran for 36 months until August 2012. As is the norm in such cases, the Grant Agreement provided that one of the beneficiaries should act as a 'Coordinator' in relation to the Commission. The role of the Coordinator includes receiving grant payments from the Commission and passing these payments on to the co-beneficiaries based on their agreed inputs and costs.
- In October 2013, more than one year after the completion of the project, the Commission informed the complainant and the other beneficiaries that it had recently discovered that the Coordinator had been declared bankrupt. It stated that, depending on the outcome of the



bankruptcy procedure, it reserved the right to recover any debt, owed to it by the Coordinator, from the other beneficiaries. The background to this statement was that the Commission believed the Coordinator had received more payments from the Commission than were due. It appeared also that the Coordinator had failed to pass on to the beneficiaries (including the complainant) payments received from the Commission.

- As the basis for its possible recovery claim against the beneficiaries, the Commission referred to a clause in the Grant Agreement, called the 'financial responsibility clause'. The clause provides that the beneficiaries are jointly responsible for all debt to the Commission. The Commission added that the recovery of money from each beneficiary would be limited to the value of the contribution that each beneficiary was entitled to receive from the Commission.

- On 5 November 2013, the complainant asked the Commission to provide it with all the information concerning the payments it had made to the Coordinator, as well as with any other related documentation.

- In December 2013, the Commission informed the complainant of all the payments made to the Coordinator for the whole consortium, and the amounts that it had agreed should be paid by the Coordinator to the complainant for each reporting period.

- The complainant, together with the other beneficiaries, then raised their concerns with the Commission as regards the Coordinator's bankruptcy and their joint responsibility. The beneficiaries stated that they were unaware that the Coordinator had received payments from the Commission, apart from the pre-financing. They also stated that the Coordinator had transferred to them only a small fraction of the amounts that were due to them. In their view, the Coordinator had failed to act in accordance with its obligations as laid down in the Grant Agreement and therefore it alone should be held accountable. Moreover, paying the debt as required by the Commission would, in fact, mean "returning" money to the Commission which the complainant had never received from the Coordinator.

- The Commission replied that the outcome of the Coordinator's insolvency proceedings needed to be awaited before determining the extent of the recovery of payments to which there was no entitlement.

- Dissatisfied with the Commission's response, the complainant turned to the Ombudsman in October 2014.

#### **- The inquiry**

- The Ombudsman opened an inquiry into the following allegations and claims. 1) The Commission failed to reply properly to the complainant's request for information of 5 November 2013. 1) The Commission should provide the complainant with all the information requested in the letter of 5 November 2013.

- 2) The Commission should pay the complainant EUR 81 523, 27 which is the amount outstanding under the Grant Agreement.

- 2) The Commission failed to supervise properly the financial management of the Grant Agreement. **Claims :**

#### **- Allegations :**

- In the course of the inquiry, the Ombudsman received the views of the Commission on the complaint and, subsequently, the comments of the complainant in response thereto. The Ombudsman subsequently requested and received further specific information from the Commission, as well as the complainant's observations on it. In conducting the inquiry, the Ombudsman has taken into account all the arguments and views put forward by the parties.



The Commission's alleged failure to reply properly to the request for information

## **Arguments presented to the Ombudsman**

- According to the complainant, the Commission had not provided it with all the information that it had requested in its letter of 5 November 2013. The Commission argued that it had provided the information sought by the complainant and that it had provided fuller information again in the course of this inquiry.

## **The Ombudsman's assessment**

- The Ombudsman finds that the Commission has now provided adequate information to the complainant. It may be that the information provided before the inquiry could have been more extensive. However, taking into account the information provided in the course of the inquiry, it must be held that the complainant has received adequate information.

- The complainant disagrees with the Commission's views on the substance of the matter. That is, however, an issue different from the question of whether the Commission has provided adequate information.

- Thus, the Ombudsman is satisfied that the information provided by the Commission has allowed the complainant to fully understand the Commission's position as well as the reasons underlying that position.

- Thus, there are no grounds to investigate this allegation further.

The Commission's alleged failure to supervise properly the financial management of the project

## **Arguments presented to the Ombudsman**

- According to the complainant, the Commission failed to ensure financial oversight of the management of the Grant Agreement. The main thrust of its arguments is that the Commission has a duty, not only to safeguard the financial interests of the Union, but also the interests of the beneficiaries, notably when account is taken of the financial responsibility clause.

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- Under the Grant Agreement, beneficiaries could not communicate directly with the Commission but only through the Coordinator. According to the complainant, this prevented the beneficiaries from being adequately informed about the financial management of the project. In a situation of such "informational asymmetry", it was for the Commission to monitor the financial management of the project. The Commission thus had a duty to verify, in the interest of the beneficiaries, that the Coordinator actually transferred the funds received to the beneficiaries. The actions of the Commission showed that it had neglected its duty.

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- The Commission stated that it did not breach any duty in this regard. The appointment of the Coordinator is the responsibility of the beneficiaries. The Commission cannot be held responsible for the Coordinator's actions or the information provided to the beneficiaries by the Coordinator. Since the beneficiaries did not raise concerns or complain about the distribution of the payments by the Coordinator during the course of the project, the Commission relied on the information submitted by the Coordinator to the Commission,



confirming that the distribution of payments had taken place.

- The Commission also stated that it did not ask the Coordinator to provide it with the exact dates of the transfers it made to the beneficiaries as the Grant Agreement did not require the Commission to check whether the payments were effectively transferred by the Coordinator to the beneficiaries. The complainant should have known when to expect the payments from the Coordinator and should have contacted the Coordinator directly where there was any delay in the transmission of payments. As soon as the Commission knew of the bankruptcy of the Coordinator, it informed the beneficiaries, including the complainant.

## **The Ombudsman's assessment**

21.

**The Ombudsman notes that this inquiry does not concern the issue of whether the Commission should or will recover amounts due from the beneficiaries in the event it cannot recover such amounts from the Coordinator. This inquiry is concerned only with the question of whether the Commission failed in its duty to monitor the financial management of the project. The Ombudsman notes that the references by the Commission, in its letter to the beneficiaries, to its right to recover money from them in the event it cannot recover it from the Coordinator, is a standard statement in such letters which serves to put the beneficiaries on notice as regards a legal option open to the Commission. The fact that such a legal option exists does not imply that the Commission will or that it should exercise that option in any given case. The Ombudsman also notes that the Financial Regulation leaves open to the Commission the option of waiving a debt under strict conditions**

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**As regards the allegation that the Commission did not properly monitor the financial management of the project, the Ombudsman takes the view that, in this case, the Commission did not fail in its duties, either in general terms or in relation to the beneficiaries, including the complainant. The Ombudsman notes that it is in fact also the responsibility of the beneficiaries to monitor the work of a Coordinator during a project. Beneficiaries must, in their own interest, monitor the Coordinator with a view to ensuring that they receive the payments due to them during and at the end of a project. 23.**

**In the present case, the project ended in August 2012. In October 2013, the Commission found out that the Coordinator had become bankrupt. However, the beneficiaries had never informed the Commission that they had not been paid, despite the fact that the Grant Agreement set out when payments were due both during and at the end of the project.**

- As regards the relevance of the financial responsibility clause in the Grant Agreement, the Ombudsman notes that its very purposes is to create a strong incentive for all beneficiaries to monitor the actions of its co-beneficiaries and, in particular, the actions of the Coordinator.

25.

**The Ombudsman notes that the Commission does in fact monitor projects once they have been completed, through audits. This is a standard and efficient administrative practice. It could be argued that the Commission, as a matter of general practice, should conduct audits**

while



**projects are underway (so as to identify any problems as they occurred). The Ombudsman is of the view that such a practice would not be feasible. It would, if generally applied, place an enormous administrative burden on the Commission, as well as on beneficiaries who would need to report to the Commission while a project was underway. In this particular case, if the beneficiaries had informed the Commission that they were not being paid by the Coordinator, the Commission could have taken immediate steps to investigate it. However, the Commission was not so informed.**

26.

**The Ombudsman also notes that as soon as the Commission knew of the bankruptcy of the Coordinator, it informed the beneficiaries, including the complainant. Therefore, there are no grounds to conclude that the Commission failed to take actions open to it that could have prevented the complainant from sustaining the financial damage apparently inflicted upon it by the Coordinator.**

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**Thus, the Ombudsman finds that there was no maladministration on the part of the Commission.**

#### **Conclusion**

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

**The Ombudsman finds no maladministration by the Commission.**



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

Strasbourg, 31/10/2016

[1] A waiver is possible in three situations, namely

*(a) where the expected cost of recovery would exceed the amount to be recovered and the waiver would not harm the image of the Union;*

*(b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;*

*(c) where recovery is inconsistent with the principle of proportionality.*