

## **Decision in case 975/2016/JF on the Research Executive Agency's (REA) payment to an expert reviewing the quality of work done under a project**

Decision

**Case 975/2016/JF - Opened on 30/11/2016 - Decision on 30/11/2016 - Institution concerned** European Research Executive Agency ( No maladministration found ) |

The complainant considered that the Research Executive Agency (REA) did not pay her fairly for the expert work she had carried out in reviewing a project. The Ombudsman inquired into the issue and found that REA had paid the complainant in a manner which was not only more generous than the terms of the applicable contract, but that REA also had been attentive to the difficulties encountered by the complainant. The case was therefore closed with a finding of no maladministration by REA.

### **The background to the complaint**

1. The complainant participated in the review of a project managed by the Research Executive Agency (REA). The complainant's task was to assess, on the basis of the project report and the deliverables, whether the work carried out under the project complied with the "description of work" in the project agreement. The complainant was also expected to attend a one-day review meeting and to prepare a subsequent review report. For this purpose, a contract was entered into between REA and the complainant.

2. In the beginning of March 2016, the complainant asked REA to approve the reimbursement of her expenses related to the upcoming travel to Newtown, UK, for the review meeting on 16 March 2016. REA replied that it would cover the complainant's expenses for travel by car (at EUR 0,22/km), plane and train. The airport parking and the highway vignette would be covered by the daily allowance paid to the complainant. The complainant was surprised at REA reimbursing so little of her costs.

3. On 11 March 2016, REA asked the complainant to send it her questions for the review meeting, as well as a brief assessment of the project.

4. The complainant replied that she had 20 deliverables and a project report of over 370 pages to read and review before the review meeting. She stated that she could read all the documents, but she would not be able to draft a brief assessment. The project had been subject



to changes since its beginning and required a significant amount of time for the complainant to understand.

5. REA informed the complainant that she did not have to draft a brief assessment. REA acknowledged that the complainant had an extensive amount of documents to go through and stated that it would “*try to give*” the complainant “*one extra day*”.

6. In the meantime, on 8 March 2016, the complainant informed REA that she could not access the system from which she were to download the documents for the review. REA resolved the problem on 11 March 2016.

7. On 13 March 2016, the complainant informed REA that she could not come to the review meeting, because she could not find a hotel in Newtown. The complainant argued that the review procedure in general, and the review meeting in particular, had not been properly planned. She could not do review work and at the same time organise her travel. The complainant had managed to download all the documents four days before the meeting only.

8. On 14 March 2016, REA acknowledged that the organisation of the review meeting had been “*far from perfect*”. At the same time, REA emphasised that the complainant had known about the review meeting for some time. If the complainant could still consider coming to the review meeting, REA suggested accommodation “*relatively close*” to the meeting place and which, “*it seem [ed]*”, was still available. REA stated that if the complainant were not to come to the review meeting “*this will be far from perfect but we have to make the most from the situation*”. REA asked the complainant to send her questions for the project consortium to answer.

9. On 23 March 2016, REA informed the complainant that it would pay her for a total of three days of remote work.

10. On 5 and 6 April 2016, the complainant called REA’s attention to the fact that while REA had provided her with the description of work from February 2016, the project coordinator referred to the description of work from June 2015 as being the latest version. She asked REA to inform her which pages had been changed.

11. REA replied that both versions of the description of work were the same, except for some financial modifications which had finally not been adopted.

12. The complainant then argued to REA that she was losing a lot of time on the review and she asked REA to reconsider the number of days that she needed to do the work. Checking the modifications in the two versions of the description of work was a lot of extra work. The complainant also asked for some further clarifications.

13. REA replied on 7 April 2016, insisting that the complainant did not have to compare the two versions of the description of work. It also explained that, unfortunately, it could not pay her for any additional days. REA normally pays for 1.5 days of remote work. In the complainant’s case,



REA had agreed to pay her for three days of remote work. REA asked the complainant, “ *within the parameters of your contract (with the agreement for three days for remote work)* ” to submit the review report as soon as possible.

**14.** The complainant then submitted the review report to REA on 13 April 2016.

**15.** On 19 May 2016, the complainant again asked REA to consider paying her for more than three days of remote work and also to cover the CHF 325,66 for the unused airfare. She argued that she had lost a lot of time due to different problems encountered when reviewing the project, such as problems in accessing the documents, poor organisation of the review meeting and poor execution of the project. The complainant stated that REA had accepted to pay her for four days of work but that it had later changed its mind.

**16.** On 20 May 2016, REA replied that it could not accept the complainant's request.

**17.** The complainant then turned to the Ombudsman.

### **The inquiry**

**18.** The Ombudsman inquired into the complainant's concern that REA had not fully and fairly compensated her for her review work on the Project.

The complainant considered that REA should

(i) pay her for six days of work; and

(ii) cover her CHF 325,66 airfare.

**19.** In the course of the inquiry, the Ombudsman's inquiry team duly considered the information provided in the complaint. In particular, the inquiry team carried out a thorough analysis of the correspondence that had taken place between REA and the complainant before the complainant turned to the Ombudsman. In a telephone conversation on 27 September 2016, the Ombudsman's inquiry team also asked the complainant for clarifications on the complaint.

### **Allegation of unfairness**

Arguments made by the complainant and the institution

**20.** In support of her concern, the complainant argued that REA (i) wrongly calculated the time needed to review the project, which had deficiencies from the beginning; (ii) was ineffective in helping her to solve problems related to her review work; (iii) did not organise her travel and accommodation to the review meeting; and (iv) failed to provide for appropriate reimbursement of her travel expenses.

**21.** The complainant explained that she wanted to be paid a fair fee for the number of days she



had dedicated to reviewing the project. She had spent at least 15 working days reviewing the project, due to a number of problems that she had signalled to REA. She considered that a reasonable and fair compensation would be to be paid for six days.

#### The Ombudsman's assessment

**22.** According to the contract [1] , REA was entitled to ask the complainant to perform remote review work, to draft reports and to attend meetings related to the project [2] . The complainant was expected to carry out these tasks during a maximum of three working days, including reading the documents, attending the review meeting and writing the report. The report had to be delivered within 30 days after starting the work. In the contract, the indicative number of working days were 1.5 days for remote work (that is, for reading and analysis of the grant agreement and the project, related background information and deliverables, including writing the report), and 1 day for a review meeting in Newtown, UK. [3] For this, REA would thus pay the complainant a fee, which was limited to the above maximum of three working days, including one working day for the review meeting [4] . REA would also pay the complainant's expenses for travel and accommodation for attending the meeting [5] . In case the complainant was unable to fulfil any of her obligations, she had to inform REA immediately [6] .

**23.** On 11 March 2016, when the complainant had informed REA that she considered that she needed a significant amount of time to understand the project, REA stated that it would “ *try to give [her] one extra day.* ” Contrary to what the complainant argues, REA did give her one extra day. REA agreed to pay her for three working days, excluding the review meeting [7] . The complainant should have attended the review meeting, but argued that due to exceptional circumstances, she could not attend it. Thus, normally, one of the maximum three days of work was earmarked for the review meeting, which should have meant that the complainant would only have been paid for a maximum of two days for the remote review work. Instead, REA gave her three days for the remote review work, which is, indeed, one extra day and, in addition, double the indicative amount set out in the contract.

**24.** The complainant stated that this was the first time that she participated in this kind of review exercise. This would reasonably mean that she needed some more time to do the job than someone having done a similar exercise before. However, it is not REA's responsibility to pay for the extra time needed in that regard.

**25.** It can also be noted that REA acknowledged that the circumstances for reviewing the project were not ideal. However, from the information provided by the complainant, REA was active in trying to resolve the problems that the complainant flagged to it. REA did resolve the problem that the complainant had with accessing documents; it sent her information on changes to the project that had taken place during its implementation; REA did not require her to submit a preliminary report before the review meeting; REA answered questions; REA explained to her that she did not have to compare the different versions of the description of work for the project; REA allowed her not to be present at the review meeting; and REA allowed her to submit her report after the 30-day deadline set out in the contract.



**26.** As regards the time that the complainant spent on travel arrangements and the booking of accommodation for the review meeting, the complainant has not provided any arguments or evidence to suggest that she could reasonably have expected REA to take care of these arrangements.

**27.** Thus, looking at the situation not only from a purely contractual perspective - which clearly defines the maximum number of days to be paid - but also from a perspective of good administration, the conclusion is, on the basis of the above, that the complainant's concern that she was not fairly compensated, based on her first three supporting arguments set out in paragraph 20 above, and her wish to be paid for six days of work, cannot be sustained. There was therefore no maladministration by REA in paying the complainant for three days of work.

**28.** As regards the complainant's claim for reimbursement of her airfare, the complainant signed a contract saying that the review meeting would take place on 16 March 2016 in Newtown, UK. After she had booked her flight, she argued that she could not come to the review meeting because the travel was too complicated and she could not find accommodation. If the complainant did not know the itinerary until after she had booked the flight ticket, she has to bear the responsibility for that. In addition, REA assisted the complainant by suggesting accommodation that was relatively close to where the review meeting was going to take place and which, according to REA, appeared to be available. The complainant has not put forward any argument or evidence to suggest that the accommodation suggested by REA was not available. On the basis of the above, and on the fact that the costs for the flight ticket are not connected to any work [8] that the complainant carried out (given that she never attended the review meeting), there was no maladministration by REA in respect of its refusal to cover the complainant's costs for the unused flight ticket.

## **Conclusion**

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion [9] :

**There was no maladministration by REA in respect of the complaint.**

The complainant and REA will be informed of this decision.

Strasbourg, 30/11/2016

The copy of the Contract submitted to the Ombudsman by the complainant is not signed nor dated.

[2] Article 2 'Work to be provided' of the Contract: " *Depending on the action's complexity and*



*progress, the review may include remote work (reading and analysis of the grant agreement(s), grant decision(s) and other background information and deliverables, and drafting the report(s)). The expert may also be required to attend intermediate and periodic project meeting(s) and ad-hoc review meeting(s)... The experts must send the contracting party a report for each grant agreement, and include recommendations. ”*

[3] Article 3 ‘Working arrangements’ of the Contract: “ 1. *The expert’s work may start on 01/03/2016 and cannot exceed 3,0 working day(s). This maximum total number of days includes the ‘number of working days’ set out below...* 2. *The indicative planning and number of working days for accomplishing the tasks are as follows: - 1.5 working day(s) for remote work (reading and analysis of the grant agreement(s) and project(s), and related background information and deliverables, including writing the report. - 1 working day(s) for attending review meeting(s) taking place at Newtown (UK) between 16/03/2016 and 16/03/2016. - The expert must submit the report(s) within 30 days from start of the work at the latest. ”*

[4] Article 4 ‘Fees’ of the Contract: “ 1. *The expert is entitled to a fee of EUR 450 for each full day actually worked in accordance with Article 3(2)...* 3. *The maximum amount of fees paid under the Contract is limited to the maximum number of working days (see Article 3(2)). ”*

[5] Article 5 ‘Allowances and reimbursement of expenses’: “ 1... [T] *he contracting party will also reimburse travel expenses directly connected with the work specified in the Contract, in accordance with Commission Decision C(2007) 5858... The expert is entitled to the reimbursement of their travel expenses to and from the point of departure and to and from the place of the meeting...* 2. *In addition to the fees... the contracting party will pay daily allowances, in accordance with Commission Decision C(2007) 5858...* 3. [T] *he contracting party will pay accommodation allowances, in accordance with Commission Decision C(2007) 5858...* 6. *Other expenses will not be reimbursed...* ” The Commission Decision C(2007) 5858 providing for, among other, a reimbursement rate of EUR 0,22 per km and a flat rate daily allowance of EUR 92 to cover all expenditure at the place where a meeting is held, including, for example, meals and local transport (bus, tram, metro, taxi, parking, motorway tolls, etc.), as well as travel and accident insurance, is available here:

[http://ec.europa.eu/employment\\_social/egf/docs/reglementation\\_experts\\_2008\\_en.pdf](http://ec.europa.eu/employment_social/egf/docs/reglementation_experts_2008_en.pdf) [Link]

[6] Article 6 ‘Performance of the contract’: “ 1. *The expert must perform the Contract in compliance with its provisions... The experts must do so fully, within the set deadlines...* 2. *If the expert cannot fulfil their obligations, s/he must inform the contracting party immediately. ”*

[7] On 7 April 2016, REA informed the complainant, by e-mail, that “[I] *n this particular case we have to pay you for three days (plus the review meeting) ”.*

[8] Article 5 ‘Allowances and reimbursement of expenses’: “ 1... [T] *he contracting party will also reimburse travel expenses directly connected with the work ... ”*

[9] Information on the Ombudsman's review procedure can be found on the [website](#) [Link].