

Decision in complaint 2048/2014/JAP against the European Commission's handling of the audit of a research institute based in country Z

Decision

Case 2048/2014/JAP - Opened on 30/01/2015 - Decision on 22/05/2017 - Institution concerned European Commission (Solution achieved) |

The complainant, a research institute based in country Z, took part in an EU-funded project under the Seventh Framework Programme for Research and Technological Development.

An audit revealed irregularities with the project, leading the Commission to seek the recovery of more than 300,000 Euro from the complainant, despite clarifications for the irregularities it had provided. The complainant was not satisfied with the outcome and lodged a complaint with the European Ombudsman.

The Ombudsman inquired into the issue and found that some of the auditors' findings were flawed. Since the most crucial issue was to determine the actual start date of the project, the Ombudsman proposed as a solution that the Commission consult an expert to verify the auditors' finding in that regard or order a 'technical audit', as provided for in the 'Grant Agreement'. The Commission accepted the solution, provided the costs of contracting the expert would be borne jointly by both parties. The Ombudsman asked the Commission and the complainant to agree between themselves on selecting the expert to be appointed and closed the case.

The background to the complaint

1. The complainant, a research institute, took part in a collaborative project funded by the EU under the Seventh Framework 2008-12 Programme (FP7) for Research and Technological Development. The complainant was a member of the consortium running the project.
2. After audits of certain members of the consortium had identified a number of problems, the European Commission extended the scope of the audit to other consortium partners, including the complainant. That audit by financial auditors, between 21 and 24 January 2013, revealed errors in the eligible costs claimed by the complainant, amounting to more than 500,000 EUR. The Commission sent the complainant its 'draft audit report' in June 2013, and asked the complainant to submit comments. The complainant challenged the auditors' findings and



provided extensive clarifications and additional evidence. The Commission subsequently revised its report and reduced the amount it sought to recover by nearly 200,000 EUR. The 'final audit report', reflecting these changes, was sent to the complainant on 8 January 2014. The complainant was not satisfied and turned, in December 2014, to the Ombudsman.

3. The Ombudsman opened an inquiry into the complaint and identified the following issue:

The audit findings presented in the final audit report are flawed.

4. In the course of the inquiry, the Ombudsman received the Commission's opinion and the complainant's comments. When proposing the solution, the Ombudsman took into account the arguments put forward by the parties.

The Ombudsman's proposal for a solution

5. At the outset, the Ombudsman explained that she could not conduct an alternative audit of the financial management of the complainant's project. It is the Commission's task to carry out a financial audit and decide how the recommendations of the auditors should be followed. As in previous similar cases [1], the Ombudsman's assessment is therefore focused on establishing whether the Commission's stance was reasonable, whether the procedures in place were complied with and whether the complainant received satisfactory explanations.

6. Having analysed all of the arguments put forward by the complainant and the Commission, the Ombudsman adjudged that the auditors' conclusions were not based on clear-cut evidence and made unreasonable assumptions. This is at odds with the principles set out in the European Code of Good Administrative Behaviour as regards lawfulness and fairness [2].

7. The Ombudsman maintained that the auditors could have averted this uncertainty if the actual start date of the project had been determined without doubt. To this end, she encouraged the Commission to consult an independent expert on this issue.

8. She thus proposed as a solution that "*the European Commission uses its powers, pursuant to Article II.23 of the General Conditions to the FP7 Grant Agreement, to consult an independent expert to determine the actual start date of the project or to order a technical audit; the cost of contracting the expert could be borne jointly by the Commission and the complainant [3]*". The Ombudsman also noted that her "*proposal applies without prejudice to the principle that the burden of proof, to demonstrate that the start date of the project in fact predates 11 May 2010, rests with the complainant*".

9. The Commission replied that, in the spirit of compromise, it accepted the Ombudsman's proposal "*to consult an independent expert to determine the actual start date of the project*", provided the costs were shared by the Commission and the complainant. The Commission suggested nominating the Joint Research Centre to provide the necessary expertise, as it has the capacity to provide independent, evidence-based scientific and technical support for such a complex investigation.



10. The complainant agreed in principle to the Ombudsman's solution. However, it considered that it would be better to nominate “ *a committee of two experts: one nominated by the Commission and [the] other nominated by the [complainant]*” by mutual consent, and suggested that each party bear the costs of the expert it nominated.

The Ombudsman's assessment after the proposal for a solution

11. The Ombudsman welcomes the parties' readiness to find a solution to the dispute. She expects that the Commission and the complainant will make the necessary arrangements to give effect to her solution proposal and agree on the relevant details. The parties should inform her of any steps taken and of the final outcome.

Conclusion

On the basis of the inquiry into this complaint and given that the Commission has accepted the Ombudsman's proposal for a solution, the Ombudsman closes it with the following conclusion:

A solution to this case has been found.

Emily O'Reilly

European Ombudsman

Strasbourg, 22/05/2017

[1] Decision of the European Ombudsman closing the inquiry into complaint 2431/2011/MMN against the European Commission; Decision of the European Ombudsman closing the inquiry into complaint 1325/2008/(BEH)VL against the European Commission

[2] The European Code of Good Administrative Behaviour:

https://www.ombudsman.europa.eu/rest/medias/byPath?path=1456414129796_code_2015_EN.pdf&type=pdf&dow
[Link]

[3] <https://www.ombudsman.europa.eu/cases/solution.faces/en/79434/html.bookmark>