

Decision in case 1688/2015/JAP on the European Commission's decision to recover funds from a participant in an EU project on older people and ICT (SENIOR)

Decision

Case 1688/2015/JAP - Opened on 13/01/2016 - Recommendation on 02/06/2017 - Decision on 06/10/2017 - Institution concerned European Commission (Recommendation agreed by the institution) |

The complainant, a Belgian-based non-profit organisation, took part in an EU-funded project that aimed to address issues faced by older people in using ICT solutions. A financial audit found that the system used by the complainant for recording working time was unreliable. As a consequence, the Commission sought to recover more than EUR 85 000 from the complainant.

The Ombudsman inquired into the issue and found that the auditors had recognised that the work done by the complainant on two specific 'deliverables' was legitimate, as was the working time involved. She thus considered that the Commission had not been justified in rejecting the personnel costs linked to this work. To address this, she made a recommendation to the Commission to reduce the amount it was seeking to recover accordingly.

The Commission fully accepted the Ombudsman's recommendation and agreed to reduce the amount to be recovered by nearly EUR 37 000. Against that background, the Ombudsman closed the case. However, the Ombudsman continues with a separate inquiry regarding the recovery of funds in relation to the other "deliverables".

The background

1. The complainant, a Belgian-based non-profit organisation, took part in an EU-funded project, SENIOR [1] , which aimed to address the issues faced by older people in using ICT solutions. The project was funded through the Seventh Framework Programme (FP7) for Research and Technological Development. The complainant's role in the project was to provide expert reports on ethical issues.
2. During a subsequent financial audit, the auditors found that the time recording system used by the complainant was "*entirely unreliable*" as a basis for claiming personnel costs for its



work. However, the auditors accepted as legitimate some of the work ('deliverables') carried out by the complainant in the first year of the project and the working time claimed for this. This was the case for 'deliverable A', a document of 76 pages, and 'deliverable B', separate work on "dissemination activities".

3. The Commission, however, rejected **all** of the complainant's personnel costs, including the costs for deliverables A and B. Subsequently, it sought to recover more than EUR 85 000 from the complainant.

4. Dissatisfied with the Commission's handling of the situation, the complainant turned to the Ombudsman [2] .

5. In the course of her inquiry, the Ombudsman decided to split this case into two parts. The first (present) case is about the complainant's work on, and costs related to, deliverables A and B. The second case [3] deals with the remaining deliverables. In relation to the first part of the complaint, the Ombudsman found that the Commission had wrongly rejected **all** of the complainant's personnel costs and declared them ineligible, as the time spent on deliverables A and B was deemed to be legitimate by the auditors . She made a recommendation to the Commission to address this.

Rejection of the complainant's personnel costs related to 'deliverables' A and B

The Ombudsman's recommendation

6. When addressing the recommendation to the Commission, the Ombudsman took into account the arguments and views put forward by the parties.

7. The Ombudsman pointed out that, despite the auditors' conclusion that the complainant's time-recording system was generally flawed, the work related to deliverables A and B was recognised and accepted by the auditors. The Commission confirmed the auditors' conclusion that the hours recorded in the timesheets relating to deliverables A and B were justified.

8. In these circumstances, the Ombudsman found it unfair and disproportionate that the Commission would seek to recover funds related to personnel costs for deliverables A and B. As such, the Ombudsman considered that the Commission's proposal to recover all funds related to personnel costs would be against the 'principle of proportionality' [4] .

9. Therefore, the Ombudsman recommended that " *the Commission should revise its decision and not seek to recover funds for those working costs related to deliverables A and B* ".

10. The Commission has fully accepted the Ombudsman's recommendation, stating that it would " *proceed to partially annul the debit note issued and the proportion of the late payment interests linked to this amount by issuing a credit note for such amount* ".



11. The complainant did not make any comments on the Commission's response to the Ombudsman's recommendation.

The Ombudsman's assessment after the recommendation

12. The Ombudsman welcomes the Commission's readiness to accept her recommendation.

Conclusion

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

The Commission has accepted the Ombudsman's recommendation.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 06/10/2017

[1] Social Ethical and Privacy Needs in ICT for older people: a dialogue roadmap - SENIOR, which initiated an ethical debate on ICT for the elderly, available at:
http://cordis.europa.eu/news/rcn/29203_en.html [Link]

[2] 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 recommendation available at:
<https://www.ombudsman.europa.eu/cases/recommendation.faces/en/84352/html.bookmark> [Link]

[3] Complaint 646/2017/JAP - the inquiry into this is still on-going.

[4] Principle of proportionality seeks to set actions taken by EU institutions within specified bounds. Under this rule, the action of the EU must be limited to what is necessary to achieve the objectives of the Treaties. In other words, the content and form of the action must be in keeping with the aim pursued.