

Proposal of the European Ombudsman for a solution in case 518/2014/JAS on the partial recovery of a grant by the Education, Audiovisual and Culture Executive Agency

Solution - 23/08/2015

Case 518/2014/KM - Opened on 17/04/2014 - Decision on 15/12/2017 - Institution concerned European Education and Culture Executive Agency (Solution partly achieved) |

The case concerned a grant awarded to the complainant, an Austrian association, and managed by the Education, Audiovisual and Culture Executive Agency (EACEA). After the project ended, the EACEA and the complainant engaged in a lengthy exchange concerning missing documents and eligibility of costs. At first, the EACEA planned to recover the entire pre-financing paid to the complainant. The EACEA eventually lowered the recovery to about 45%. As the complainant did not agree with the recovery, it turned to the Ombudsman.

The Ombudsman inquired into the issue and found that the EACEA had provided coherent and reasonable explanations concerning its refusal to reimburse most of the cost items. However, she noted that the EACEA had refused to reimburse other cost items without specifically identifying them and without an explanation of the reasons for the refusal to reimburse. The Ombudsman therefore made a solution proposal, asking the EACEA to reconsider these, as well as certain other costs for which the complainant had provided documentation in the course of the Ombudsman's inquiry.

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

The background to the complaint

1. In 2005, the complainant, an Austrian association, was awarded an EU grant for a project in the field of non-formal education [2] . The complainant received two pre-financing payments amounting to 125,785.60 EUR.

2. The Education, Audiovisual and Culture Executive Agency (EACEA, hereafter 'Agency') rejected the first and second versions of the final project report, submitted in October 2008 and February 2009, respectively. It argued that certain documents were missing and that the reports did not contain a correct breakdown of the costs. In April 2009, the Agency informed the



complainant that it was going to recover the entire pre-financing.

3. The complainant objected to the recovery and the Agency allowed the complainant to submit a third version of the report. In August 2009, the Agency requested additional information. In October 2009, the Agency informed the complainant that it would recover 61,090.64 EUR and not the entire pre-financing.

4. Following another objection by the complainant, the Agency again asked for additional information, in December 2009. Among the documents that the complainant sent in response, the Agency found a cost statement identical to one which had already been submitted, but with a different signature. In June 2010, the Agency informed the complainant that it would recover 56,225.34 EUR and closed the file. The Agency did not reply to additional objections made by the complainant.

5. In January 2014, the Commission took a decision to recover 56,225.34 EUR from the complainant.

6. In April 2014, the complainant turned to the Ombudsman.

The inquiry

7. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

Allegation:

The EACEA wrongly reclaimed 56,225.34 EUR plus interest from the complainant.

Claim:

The EACEA should reassess the final report submitted by the complainant and accept all eligible costs.

8. In the course of the inquiry, the Ombudsman received the opinion of the Agency on the complaint and, subsequently, the comments of the complainant in response to the Agency's opinion. The Ombudsman also inspected the Agency's file on the project. The Ombudsman's solution proposal takes into account the arguments put forward by the parties.

Allegation that the EACEA wrongly reclaimed 56,225.34 EUR plus interest from the complainant

Arguments presented to the Ombudsman



9. The complainant argued that it could not understand why the Agency considered that costs, which the complainant had incurred in good faith when carrying out the project, could not be covered by the EU grant. The complainant was of the view that these costs should be eligible for funding.

10. The complainant accepted that certain costs were not eligible, although it still considered that the related funds had been used for the project. It maintained, however, that the Agency was wrong to consider a number of individual cost items ineligible for funding: 34, 35, 41, 42 (personnel costs); 227 (board and lodging); 5, 22, 27, 35 (rental of rooms); 1 (translation); 5, 48, 83, 85, 86 (other costs). These costs added up to roughly 45,000 EUR.

11. In the course of the inquiry, the complainant provided the Ombudsman with a table that, in its view, showed discrepancies, in the Agency's final decision of October 2009, between the rejected amount *per heading* and the rejected *individual items* added together. The Agency gave its explanations on the matter.

The Ombudsman's preliminary assessment leading to the solution proposal

Introductory remark

12. In cases concerning the interpretation of contracts signed by an EU institution, the role of the Ombudsman is necessarily limited [3] . It is not the role of the Ombudsman to determine whether there has been a breach of contract by either party. This question could be dealt with effectively only by a court, which would be better placed, for instance, to evaluate conflicting evidence. In cases concerning contractual disputes, the Ombudsman thus limits her inquiries to determining whether the institution has provided a coherent and reasonable explanation of its actions and of its understanding of the contractual situation. If the institution can provide such explanations, there has been no maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and settled by a court.

Assessment

13. According to the relevant call for project proposals, costs must, in order to be eligible for EU funding, be " *identifiable and verifiable and be backed up by original supporting documents. The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the project with the corresponding accounting statements and supporting documents* ". The grant agreement [4] , signed by the complainant in December 2005, has a similar wording.

14. The Ombudsman will thus assess whether the Agency has given a coherent and reasonable



explanation for not considering certain costs to be identifiable and verifiable and backed up by supporting documents.

Cost items 34, 35, 227 and 85

15. Cost items 34, 35 (personnel costs), 227 (travel costs) and 85 (other costs) can all be found on the same invoice from one of the complainant's project partners.

16. In August 2009, the Agency informed the complainant that the invoice was not numbered. The Agency therefore asked the complainant to show that there had been a bank transfer related to the invoice. The complainant provided the Agency with a cash disbursement slip [5] from its cash-book. It explained that the supplier mentioned in the invoice was a school which, in line with the rules of the relevant Member State, issued a single invoice with all items for the project. The money that the project owed to the school had been paid in cash by one of the complainant's staff members.

17. In October 2009, the Agency rejected items 34, 35 and 227, arguing that the cash disbursement slip was not numbered (items 34 and 35) and that the complainant had not shown that there had been a related bank transfer (item 227). The Agency did not mention item 85 in its decision. In December 2009, the Agency informed the complainant that it had "*exceptionally decided to reopen [the] file for a final assessment*". The Agency asked the complainant to send to it "*all documents, proofs of payment and clarifications*", that is, "*a complete file containing all necessary documentation*". The Agency also specifically asked for a proof of payment in relation to item 227. In its response, the complainant again submitted the cash disbursement slip and explained again that the money had been paid in cash.

18. In June 2010, when deciding to reduce the amount to be recovered, the Agency rejected cost items 34, 35, 227 and 85. It explained that the invoice was not numbered. Furthermore, the complainant had not provided any proof of payment or details of the costs. At the Ombudsman's inspection of the Agency's project file, the Agency explained that invoices are expected to have sequential numbers to allow for a proper internal audit trail. The invoice that the complainant had provided had no such number. According to the Agency, it might have accepted the invoice if the complainant had shown that it had paid the corresponding amount by providing a bank statement. However, the complainant had simply submitted a cash disbursement slip, which was not sufficiently precise.

19. The Ombudsman notes that a formal invoice normally requires a sequential number, must clearly show who has written it and must show to whom it has been issued (the customer) [6] .

20. The Ombudsman considers reasonable the Agency's requirement that an invoice should meet the basic formal criteria for an invoice if it is to be considered as a valid supporting document proving costs. Having inspected the invoice, the Ombudsman notes that it does not contain a sequential number and therefore does not meet the basic formal criteria of an invoice. As explained in paragraph 13 above, costs must be identifiable and verifiable.



21. The amount mentioned in the cash disbursement slip, applying a basic EUR-DKK exchange rate, does correspond to the invoice amount. However, the cash disbursement slip does not contain a number or date linking it to the invoice and does not refer to the complainant. Therefore, the Agency was entitled to consider that the cash disbursement slip was not sufficiently precise and that the costs were not identifiable and verifiable. The Agency has thus provided a coherent and reasonable explanation of why it rejected these costs.

22. The fact that item 85 was not mentioned in the Agency's decision from October 2009 does not change the above conclusion, as the Agency's concerns apply to the entire invoice.

Cost item 41

23. The Agency did not accept parts of cost item 41 (personnel costs), namely the part referred to as "overhead costs". The Agency argued that "*insurance costs have not been justified by an invoice. Not eligible under personnel costs*". A certain confusion concerning these costs seems to be based on a phone conversation between Agency staff and representatives from the complainant, which led the Agency to believe that the "overhead costs" were costs incurred for the insurance of office facilities. The complainant argued, however, that these costs constituted mandatory social security contributions for its staff and that this was shown on the invoice. The complainant could not provide an exact proof of payment, as the social security contributions were paid as a lump sum for all staff, that is, also for staff members that did not work on the project.

24. The Ombudsman notes that the invoice in question simply states "overhead costs". Contrary to what the complainant argues, the invoice does not indicate that the costs are related to social security contributions. In the Ombudsman's view, overhead costs can mean all types of different operating expenses, costs not even necessarily related to personnel.

25. On the basis of the above, the Agency has provided a coherent and reasonable explanation of why it did not accept these costs as identifiable and verifiable personnel costs.

Cost item 42

26. The Agency did not accept cost item 42 (personnel costs), arguing that the "*invoice [was] not eligible*" and later clarifying that the "*invoice has no number and doesn't provide the mandatory requirement of an invoice*". The Agency asked the complainant to show that a bank transfer had been made for these costs. The complainant did not provide the Agency with any evidence of a bank transfer.

27. The complainant disagreed with the Agency's view that the invoice lacked the basic formal criteria of a proper invoice. According to the complainant, the invoice stated both the name of the seller and the buyer.



28. The Ombudsman finds, having inspected the invoice, that it seems like it was the complainant who wrote the invoice, without setting out to whom it was addressed. The complainant might even have billed itself. For costs to be covered by the EU grant, they need to be *incurred* by the complainant. The complainant has not shown that it made any payment on the basis of the invoice. Therefore, the Agency has provided a coherent and reasonable explanation of why these costs could not be covered by the EU grant, stating that "*invoices issued by [the complainant] without any justification of the costs are not eligible*".

Cost item 5 and 22

29. The Agency did not accept cost item 5 (rental of rooms), stating "*invoice is missing*" and "*supporting documents of the costs declared have not been provided*". The Agency asked the complainant to provide proof of payment. The complainant replied that the entire amount for the part of the project carried out in Italy, 8,425 EUR, had been paid in two instalments, including cost item 5. It is unclear whether the complainant submitted proof of payment.

30. In its observations, the complainant argued that cost items 5 and 6 had been transferred together but accepted that the Agency considered ineligible half of the amount of cost item 5.

31. Similarly, the Agency did not accept cost item 22 (rental of rooms), stating "*invoice is missing*" and "*proof and detail of the costs have not been provided*". The Agency asked the complainant to provide proof of payment. The complainant replied that the entire amount for the part of the project carried out in Poland had also been paid in two instalments. The complainant does not seem to have provided the Agency with any additional documentation at that point in time.

32. In its observations, the complainant argued that the Polish project partner had provided all invoices and that all costs had been paid.

33. The Ombudsman does not find any evidence to suggest that the complainant provided the Agency with the supporting documents necessary to identify and verify the costs in cost items 5 and 22. The Agency has thus provided a coherent and reasonable explanation of why these costs could not be covered by the EU grant.

Cost items 27 and 35

34. The Agency did not accept cost items 27 and 35 (rental of rooms), stating "*invoices not eligible*" and "*proof and detail of the costs have not been provided*". The Agency asked the complainant to provide proof of a bank transfer for these costs.

35. The complainant argued that there was a detailed invoice for cost item 27 and that the Agency had eventually accepted cost item 35. The complainant sent the Ombudsman an



extensive collection of individual receipts that, it argued, proved the payment of cost items 27 and 35.

36. Similar to cost item 42, the Ombudsman finds that it seems that it was the complainant who wrote the invoices submitted for cost items 27 and 35. It is not clear to whom the invoices are addressed. The complainant has provided no evidence of bank transfers having been made for these cost items. The invoices are not detailed; in both cases they contain just one amount for undefined "material costs".

37. The Ombudsman notes that the Agency did not mention cost items 27 and 35 when requesting additional information from the complainant in December 2009. However, the complainant could not have assumed that the Agency had thereby accepted these cost items, as it had clearly stated, in its October 2009 decision, that these costs were not accepted. The complainant had the opportunity to provide additional evidence when the Agency asked it about these cost items in August 2009.

38. The complainant has not explained why it had not submitted to the Agency the receipts that it later submitted to the Ombudsman. This omission cannot be attributed to the Agency. However, as explained below in paragraph 62, the Ombudsman will suggest to the Agency that it reassess these cost items, taking into account these receipts.

Cost item 1

39. The Agency did not accept cost item 1 (translation costs), stating "[cash disbursement slip] *without number - Bank statement has not been provided* " and " *the document provided cannot be considered as a proof of payment* ". The Agency had asked the complainant to provide proof of a bank transfer made for these costs.

40. The complainant provided the Ombudsman with a bank statement that, it argued, proved the payment of cost item 1.

41. The Ombudsman's inquiry team asked the complainant for a copy of its response to the Agency's letter asking for such proof. The documents that the complainant provided did not contain this bank statement. Therefore, the Ombudsman cannot determine whether the complainant provided the Agency with the requested bank statement. The Agency has thus provided a coherent and reasonable explanation of why these costs could not be covered by the EU grant. However, as explained below in paragraph 62, the Ombudsman will suggest to the Agency that it reassess this cost item, taking into account the bank statement. In this context, the Ombudsman notes that the related invoice seems to contain all mandatory requirements, including a sequential number.

Cost item 5



42. The Agency accepted cost item 5 (other costs) in October 2009, but partly rejected it in June 2010, stating that "*the official EC rate (0.22€/km) for transport using a private car has been applied*".

43. The complainant accepted that the Agency had relied on the official rate when not fully accepting the cost claim. It argued, however, that it was not possible to know from the Agency's decision how much of the costs were not accepted. Following the inspection, the Agency explained to the Ombudsman's inquiry team that it had rejected 135.69 EUR of that cost item. The complainant did not question this amount.

44. The Ombudsman finds that the Agency has settled this aspect of the complaint.

Cost item 48

45. The Agency did not accept cost item 48 (other costs), stating that supporting documents were missing. Before its decision in October 2009, the Agency had already asked the complainant to provide an invoice for this cost item. The complainant replied that the invoice was missing.

46. In the context of the Ombudsman's inquiry, the complainant stated that it was in possession of the relevant supporting documents, without providing them.

47. The Ombudsman notes that when the Agency asked the complainant to provide an invoice to support this cost item, the complainant replied that the invoice was missing. Given that the complainant did not submit any supporting document for this cost item, the Agency has provided a coherent and reasonable explanation of why these costs could not be covered by the EU grant.

Cost item 83

48. The Agency seems first to have accepted cost item 83 (other costs) and later to have rejected it, stating "*invoice has no number and doesn't provide the mandatory requirement of an invoice. The proof of payment and the details of the costs have not been provided*".

49. The Ombudsman notes that the Agency decided not to accept this cost item in its very last decision only. It was therefore impossible for the complainant to provide additional supporting documents before the Agency took its final decision. As explained in paragraph 62, the Ombudsman will propose to the Agency that it consider asking the complainant for additional documents to reassess this cost item.

Cost item 86



50. The Agency seems first to have accepted cost item 86 (other costs) and later rejected it, stating "*supporting documents are missing*". Before its decision in October 2009, the Agency had already stated that supporting documents were missing. The complainant confirmed that the invoice was missing. It is likely that the Agency first accepted cost item 86 by mistake, despite the fact that the invoice was missing.

51. In the context of the Ombudsman's inquiry, the complainant stated that the Polish project partner had provided receipts for all invoices and that all invoices had been paid. The complainant sent the Ombudsman an extensive collection of individual receipts that, it argued, proved the payment of the cost item.

52. The complainant has not shown that it provided the Agency with the documentation necessary to identify and verify the cost item. The complainant itself explained to the Agency that the relevant invoice was missing. It is unclear why the complainant did not send the Agency the receipts that it later submitted to the Ombudsman. This omission cannot be attributed to the Agency. However, as explained in paragraph 62, the Ombudsman will propose to the Agency that it reassess this cost item, taking into account these receipts.

Alleged discrepancies in rejected costs

53. According to the complainant, the overall amount of the rejected costs per heading (that is, personnel costs, travel costs, other costs, etc.) was, under certain headings, higher than the individual rejected cost items added together.

54. The Agency explained that the difference regarding "personnel costs" was due to the fact that it had only accepted part of cost item 32. It had rejected 100 EUR. The Ombudsman considers that this satisfactorily explains the difference.

55. The Agency explained that the difference regarding "other costs" was due to the fact that the complainant had mistakenly added 3,715 EUR instead of 3,715 DKK for cost item 85. The Ombudsman considers that this satisfactorily explains the difference.

56. The Agency explained that the difference regarding "travel and board & lodging costs"—439.20 EUR—was because it had rejected cost items 116, 224, 225 and 226. It stated that these cost items had not been clearly mentioned in its letters. This was due to the difficulties in obtaining the missing supporting documents and corrections from the complainant during the assessment of the final report.

57. As far as the Ombudsman can see, the Agency never informed the complainant that it did not accept cost items 116, 224, 225 and 226. It was thus impossible for the complainant to know that it would have to provide additional supporting documents to prove these costs. The Ombudsman will therefore make a proposal for a solution to this issue below.



Concluding remarks

58. This case illustrates the difficulties which can arise in the case of publicly funded projects. While it is in the interest of the EU institutions to enable small associations and enterprises to participate in such projects, strict accounting standards are sometimes difficult for these small associations to meet, despite their best efforts. At the same time, strict accounting standards are necessary to ensure that no public money is used for purposes other than the projects. The Ombudsman is of the opinion that, in the present case, the Agency justifiably argued that these standards had not been met in several instances.

59. Had the Agency not failed to inform the complainant that it had rejected cost items 116, 224, 225 and 226 (board & lodging costs), and had it not informed the complainant only very late of its rejection of cost item 83 (other costs), the Ombudsman would have considered no further inquiries to be necessary.

60. However, it is good administration for public authorities to give reasons for decisions that affect negatively the rights of citizens and to allow them the right to be heard before such decisions are taken [7]. By not informing the complainant that certain cost items had been rejected, and by not allowing the complainant to comment on the Agency's conclusions or to provide supporting material in that regard, the Ombudsman considers that the Agency failed to adhere to these principles of good administration.

61. Therefore, the Ombudsman proposes that the Agency reconsider its decision to reject cost items 116, 224, 225 and 226 (board & lodging costs) and 83 (other costs) after having asked the complainant to submit its observations and possibly additional supporting documents. The Ombudsman does not take any position on the eligibility of these cost items.

62. Despite the Agency's failure to inform the complainant of the ineligibility of certain costs, the Ombudsman recognises the Agency's repeated efforts to try to clarify the eligibility of many of the other costs claimed by the complainant. The fact that the complainant sometimes did not manage to provide supporting documents when given the opportunity to do so is certainly not the fault of the Agency. Before the complainant turned to the Ombudsman, the Agency had already asked the complainant to provide supporting documents for cost items 27 and 35 (rental of rooms), 1 (translations) and 86 (other costs). However, these supporting documents emerged only during the Ombudsman's inquiry. Although the complainant thus had been given ample time to provide these documents to the Agency already at an earlier stage, it would clearly be appropriate for the Agency to cover costs actually incurred, even if these costs are proven at a late stage. The Ombudsman therefore suggests that the Agency also take the opportunity to reconsider the eligibility of these cost items, taking into account the supporting documents provided by the complainant in the context of the Ombudsman's inquiry. Such an approach would indeed be commendable citizen-friendly behaviour by the Agency.

The proposal for a solution



The Ombudsman proposes that the EACEA reconsider its decision to reject cost items 116, 224, 225 and 226 (board & lodging costs) and 83 (other costs) after having asked the complainant to submit its observations and possibly additional supporting documents.

The EACEA could also take the opportunity to reconsider the eligibility of cost items 27 and 35 (rental of rooms), 1 (translations) and 86 (other costs) taking into account the supporting documents provided by the complainant in the context of the Ombudsman's inquiry.

Strasbourg, 23/08/2015,

Emily O'Reilly European Ombudsman

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] Call for proposals DG EAC 85/04, [published \[Link\]](#) in the Official Journal of the European Union C 30, p 23, on 5 February 2005.

[3] See, for instance, the Decision of the European Ombudsman closing his inquiry into complaint 53/2010/OV against the European Commission and cases cited.

[4] Article II.14.1 of the grant agreement.

[5] A "Kassa-Ausgang".

[6] See, for example, Article 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

[7] Article 41 of the Charter of Fundamental Rights of the European Union and Articles 16 and 18 of the European Code of Good Administrative Behaviour.