

Decision in case 968/2017/JN on the European Commission's decision to recover funds granted to an NGO for its work on corporate environmental transparency and accountability

Decision

Case 968/2017/JN - Opened on 27/07/2017 - Decision on 23/05/2018 - Institution concerned European Commission (Settled by the institution) |

The case concerned the European Commission's decision to recover funds, which had been granted to a non-governmental organisation under the EU's LIFE+ programme for its work on corporate environmental transparency and accountability. The Commission considered that the funds in question constituted profit for the NGO, which was at odds with the rules governing the grant agreement. The complainant contested the Commission's position and argued that it was wrongfully seeking to recover EUR 214 707.

In the context of the Ombudsman's inquiry, the Commission agreed to withdraw its attempt to recover the contested funds. The Ombudsman therefore closed her inquiry.

Background to the complaint

1. The complainant is a non-governmental organisation focusing on corporate environmental transparency and accountability. It received a grant under the EU's LIFE+ programme [1] for its activities in this field.
2. Following an audit in June 2015, the European Commission decided to recover EUR 235 449.89 from the complainant. It considered that the funds in question were ineligible under the rules governing the grant agreement.
3. The complainant contested the Commission's decision. It argued that EUR 214 707 of the funds in question, which the Commission had considered to be undeclared income, corresponded to funds committed to its budget by its parent organisation for prudential reasons. As such, this was not at odds with the grant agreement.
4. The complainant turned to the Ombudsman in June 2017, after the Commission refused to reconsider its decision.



The inquiry

5. The Ombudsman opened an inquiry into the complainant's concern that the Commission was unfairly seeking to recover the disputed funds.

6. In the course of the inquiry, the Ombudsman received the Commission's reply on the complaint and, subsequently, the comments of the complainant in response to the Commission's reply.

Arguments presented to the Ombudsman

7. In its reply, the Commission agreed to waive the recovery order and to recalculate the balance of the grant. It accepted the complainant's explanation that an income of EUR 328 021.78 had been included in its accounts for the year in question for prudential accounting reasons.

8. According to the grant agreement (Articles II.15.4 [2] and II.13.4 [3]) only income that is “ *established, generated or confirmed, during the eligibility period (1/04/2012 -30/03/2013) independently of the period when the money is received* ” should be considered. Similarly, the costs to be taken into account are those “ *incurred during the eligibility period ... independently of the date on which the actual payment is done* ”. [4]

9. Thus, the Commission accepted that the income of EUR 328 021.78 was not, in fact, relevant for the 'eligibility period', since it had been received before this period and it is the time when the donation is generated or confirmed that counts.

10. In response to the Commission's reply, the complainant said that it agrees with the Commission's decision and expects a revised debit note for the amount of EUR 20 743, which was undisputed.

The Ombudsman's assessment

11. The Ombudsman considers that by agreeing to waive the recovery of the amount claimed and to exclude from the calculation of the balance the booked income in question, the Commission has settled the complaint. Accordingly, the Ombudsman closes her inquiry.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :



The European Commission settled the complaint.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 23/05/2018

[1] The LIFE+ programme is part of the LIFE programme under the EU budget, which finances activities in the field of environmental protection. More information:
ec.europa.eu/environment/life/funding/lifeplus.htm

[2] Article II.15.4 reads as follows:

“ The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the receipts and expenditure in the operating budget which allows the work programme to be implemented and that it may not in any circumstances produce a profit for him.

Profit shall mean any surplus of the beneficiary's total actual operation receipts over his total actual operating costs. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this article. For the purpose of this article, only operating costs shown in the beneficiary's financial statements and falling within the categories set out in the estimated budget referred to in Article I.3.1 and contained in annex II shall be taken into account; non-eligible costs shall always be covered by non-Union resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant. ”

[3] The Commission said that, in accordance with Article II.13.4, the payment of the balance is made upon presentation of “ *a full summary of the receipts and expenditure in the beneficiary's accounts for the period of eligibility covered by the agreement* ” (emphasis added by the Commission).

[4] The Commission referred to Article II.12.1 of the grant agreement.

