

Decision in case 522/2017/JN on the Research Executive Agency's recovery of personnel costs incurred in the context of an EU funded project

Decision

Case 522/2017/JN - Opened on 21/12/2017 - Decision on 03/07/2018 - Institution concerned European Commission (No further inquiries justified) |

The case concerned the Research Executive Agency's (REA) attempt to recover a part of its contribution paid to the complainant in the context of an EU funded project.

Following the Ombudsman's intervention, the REA explained in fuller detail why it was seeking to recover some of the contribution already paid to the complainant. It admitted that its earlier explanation may not have been entirely clear and offered the complainant a further opportunity to provide additional supporting evidence and explanations on matters identified by the REA. The REA said that it will not proceed with the recovery until its authorising officer has decided on the additional information from the complainant.

The Ombudsman welcomed the REA's position and closed her inquiry, given that her further involvement at this stage would not be justified.

Background to the complaint

1. The complainant, a business company, participated in an EU funded project. [1] In 2015, following an external audit, the Research Executive Agency (REA), which was in charge of the project, considered that the complainant had overstated the personnel costs and sought to recover EUR 32 836,16 plus liquidated damages [2] .

2. Considering that the recovery was unjustified, the complainant turned to the Ombudsman in March 2017.

The inquiry

3. The Ombudsman opened an inquiry into the complainant's concern that the recovery was unjustified in that the REA had failed to explain sufficiently why it considered that the costs were



overstated and not justified by the evidence provided by the complainant.

4. In the course of the inquiry, the Ombudsman received the reply of the REA on the complaint.

Arguments presented to the Ombudsman

5. In its reply, the REA provided detailed explanations of the reasons why it considered that the complainant had overstated its personnel costs. The REA referred to the audit report which had found that:

Ø The complainant provided a breakdown of the personnel costs for two owners and four employees (EUR 101 226,96), which did not correspond to the costs claimed in the relevant statement (Form C: EUR 40 757,65).

Ø The complainant provided the relevant timesheets but had failed to explain how it had determined the employees' hourly rates and had failed to provide relevant evidence in that regard.

Ø Regarding the two owners, the complainant used one hourly rate covering more than one accounting year instead of hourly rates per calendar year. The complainant did not provide evidence in support of the experience of the "research category" [3] used with regard to the owners.

Ø The complainant did not explain how the staff declared in the project were involved in the research activities as, from the work contract, it appeared that their positions were merely secretarial.

6. The REA said that it agrees with the audit report but also "*recognises that the justification provided in the Report, for the rejection of costs, may not be detailed enough*". Therefore the REA considered that the complainant "*may not have been able to fully understand what evidence needed to be submitted ...*". Consequently, the REA said that it was "*willing to further examine evidence provided by the complainant in order to prove the eligibility of the personnel costs*". The REA listed the specific explanations and evidence the complainant should submit so that the REA can reconsider the eligibility of the costs at issue.

7. The REA said that it would inform the complainant both of the above reasons for the rejection of the costs and of the documents and information the complainant needs to provide. The REA further said that it would suspend the recovery until the authorising officer has decided on the additional information from the complainant.

The Ombudsman's assessment

8. The Ombudsman welcomes the REA's reply and willingness to reconsider the eligibility of the



costs based on additional evidence from the complainant. The Ombudsman considers that her further involvement, at this stage, is not justified.

Conclusion

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

No further inquiries are justified.

The complainant and the Research Executive Agency will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 03/07/2018

[1] Project n° 232070 OptoCO2Fish - Development of an Opto-Chemical Carbon Dioxide Sensor for Aquaculture and Oceanography Applications.

[2] Liquidated damages represent a compensation, which is calculated based on the overstated costs and the amount of unjustified EU contribution.

[3] The REA said that “research category” refers to the physical persons and owners who do not receive a salary under the FP7. The grant agreement allows for charging unit costs corresponding to certain rates according to the level of seniority of the researcher.