

Decision in case 643/2018/MDC on the European Investment Bank's failure to reply to correspondence and its refusal to initiate a harassment procedure

Decision

Case 643/2018/MDC - Opened on 27/04/2018 - Decision on 17/06/2019 - Institution concerned European Investment Bank (No maladministration found) |

The case concerned the European Investment Bank's (EIB) failure to reply to correspondence and its refusal to initiate an investigation procedure into a harassment complaint.

After the Ombudsman got involved, the EIB replied and thereby settled the first aspect of the complaint. The Ombudsman also found that, despite two shortcomings that she identified, overall the EIB dealt with the complainant's harassment allegation in a reasonable way.

The Ombudsman also welcomes the fact that the EIB has adopted a new Dignity at Work policy.

Background to the complaint

1. The complainant is a staff member of the European Investment Bank (EIB). On 19 June 2017, he asked the EIB's Personnel Directorate to launch an investigation procedure under the Dignity at Work Policy [1] against another staff member, Mr X, in respect of alleged defamatory statements made by the latter.

2. The President of the EIB decided that the Office of the Chief Compliance Officer (OCCO) would handle the procedure.

3. Following a preliminary assessment of the complaint, OCCO concluded that the alleged behaviour of Mr X did not qualify as psychological harassment. In particular, OCCO noted that an interval of one year between the occurrence of the alleged facts and the lodging of the complaint without any proper justification was difficult to reconcile with the typical negative impact of harassment on the alleged victim. On this basis, OCCO deemed the complaint to be 'inadmissible'. However, it asked the complainant to substantiate his accusations further in order to verify whether the alleged behaviour of Mr X could constitute a breach of professional duties under the Staff Code of Conduct.



4. The complainant wrote to the President of the EIB on 11 August and 20 October 2017. He contested OCCO's rejection of his complaint under the Dignity at Work Policy. He claimed that OCCO's conclusions were based on a draft proposal to modify the Dignity at Work Policy, which was never approved. The complainant referred notably to the fact that the Dignity at Work Policy in place at the EIB at the time did not lay down a time limit for bringing a harassment complaint. Moreover, he argued that OCCO did not have the authority to decide on the validity of complaints under the Dignity at Work Policy and that its decision to reject his complaint lacked neutrality.

5. In his letter of 20 October 2017, the complainant also complained about a separate issue: the launching by OCCO of an administrative inquiry against him [2] . He complained about that administrative inquiry again in a letter which his lawyer sent to the President of the EIB on 17 November 2017.

6. Since the EIB allegedly did not reply to his correspondence, the complainant turned to the Ombudsman on 20 March 2018.

The inquiry

7. The Ombudsman opened an inquiry into the EIB's alleged failure to reply to the complainant's correspondence of 11 August and 20 October 2017 and to his lawyer's correspondence of 17 November 2017. The Ombudsman informed the EIB that, once she received a copy of its reply to the complainant's correspondence, she would decide if it was necessary to inquire further.

8. The Ombudsman received a copy of the reply that the EIB sent to the complainant in response to his correspondence of 11 August and 20 October 2017 concerning the EIB's alleged failure to initiate a harassment investigation procedure and, subsequently, the comments of the complainant on the EIB's reply. The EIB also informed the Ombudsman that on 11 December 2017, the EIB had replied to the letter sent by the complainant's lawyer.

Arguments presented to the Ombudsman

9. In its reply of 24 July 2018, **the EIB** apologised for the delay in responding to the complainant's letters.

10. On the substance, the EIB pointed out that the Dignity at Work Policy provides for a preliminary assessment [3] of harassment complaints by the Director General of Personnel or, exceptionally, another Director General. The Director General assesses whether, in view of the circumstances surrounding the case, "*the latter can be classified as an allegation of harassment as defined in the EIB Staff Code of Conduct*". This preliminary assessment serves to ensure that investigations under this procedure are not initiated for manifestly unfounded cases. The EIB stated that OCCO had carried out such a preliminary assessment based on the information provided in the complainant's harassment complaint and had concluded that, in view



of the circumstances surrounding the case, it could not be classified as harassment.

11. The EIB clarified that the one year interval between the alleged events and the date when the complaint was submitted had not been taken into consideration as an admissibility criterion, as argued by the complainant. The delay in reporting the incident, the lack of justifications for this delay as well as the absence of further incidents had instead been taken into consideration as factors to assess whether the alleged facts could be classified as harassment and could justify the launch of a fully-fledged investigation.

12. In his comments on EIB's reply, **the complainant** mainly repeated his initial concerns and argued that the EIB had not addressed most of them. He argued that OCCO's role is limited to the administrative handling of harassment complaints only, such as the setting up of the investigation panel. In his view, it was not entitled to decide on the outcome of his complaint. Moreover, the complainant claimed that the EIB had failed to explain what rules and case law OCCO's decision was based on and that OCCO had applied assessment criteria which are not provided for under the applicable procedure.

The Ombudsman's assessment

13. Since the EIB has replied to the complainant's correspondence and has apologised for the delay in doing so, this aspect of the complaint is resolved.

14. With regard to the EIB's failure to initiate a harassment investigation procedure, the Ombudsman is of the view that it was reasonable for the EIB to conduct a preliminary assessment before launching a full harassment investigation. The preliminary assessment serves to ensure that the procedure is not used for manifestly unfounded cases [4] and to ascertain that the allegations made relate to behaviour that may be classified as harassment as defined in the EIB Staff Code of Conduct.

15. Once OCCO had concluded that the alleged behaviour could not be classified as harassment, it rightly asked the complainant to substantiate his accusations in order to allow it to verify whether a breach of professional duties under the EIB Staff Code of Conduct had occurred. [5]

16. While it was therefore reasonable for OCCO to conduct a preliminary assessment, the provision in the Dignity at Work Policy that OCCO relied on to carry out this preliminary assessment is difficult to understand. While the EIB has clarified its meaning in the course of this inquiry (see paragraph 10 above), it is understandable that the complainant raised concerns in this regard.

17. Regarding the complainant's argument that OCCO's role is limited to the administrative handling of harassment complaints, such as the setting up of the investigation panel, the Ombudsman reiterates that it was reasonable for the entity, entrusted by the EIB President to deal with the matter, to carry out a preliminary assessment.



18. Regarding the complainant's argument that OCCO's preliminary assessment lacked neutrality, the Ombudsman has not identified any evidence in the file to suggest that this is the case. Moreover, she notes that the President of the EIB (against whom the complainant makes no allegations of lack of neutrality) reviewed and endorsed OCCO's conclusions in his reply to the complainant.

19. Regarding the argument that OCCO erred when it applied a time limit for bringing the harassment complaint, the Ombudsman accepts the explanation provided by the EIB that the delay in submitting the complaint was not taken into account by OCCO as an admissibility criterion, but rather as a factor enabling it to carry out the preliminary assessment of whether "*in view of the circumstances surrounding it, ... the case can be classified as harassment*" (see footnote 3 above). Specifically, OCCO was of the view that the time it took the complainant to submit the harassment complaint and the fact that he did not put forward what it saw to be sufficient justifications for the delay suggested that the impact of the alleged behaviour was not as severe as the impact of harassment tends to be. It would, however, have been preferable had OCCO not used the term 'inadmissible' which was not used in the Dignity at Work policy that was applicable at the time.

20. Despite the two shortcomings identified, the Ombudsman finds that, overall, the EIB dealt with the complainant's harassment allegation in a reasonable way and that it is not necessary to make a finding of maladministration.

21. The Ombudsman further notes that the EIB has now adopted a new Dignity at Work Policy that includes an article entitled "Pre-assessment of the Complaint". [6] This article clearly sets out how the pre-assessment is to be carried out. It is therefore, at this stage, not necessary for the Ombudsman to make any suggestions for improvement to the EIB.

Conclusion

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

Despite the two shortcomings identified, the Ombudsman finds that, overall, the EIB dealt with the complainant's harassment allegation in a reasonable way and that it is not necessary to make a finding of maladministration.

The Ombudsman welcomes the fact that the EIB has adopted a new Dignity at Work policy.

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

Emily O'Reilly European Ombudsman



Strasbourg, 17/06/2019

[1] The EIB Policy on Dignity at Work lays down the procedure for investigating allegations of harassment and bullying within the EIB.

[2] The substantive issues raised by the complainant with regard to the administrative inquiry launched by OCCO do not form part of the Ombudsman's inquiry.

[3] The Dignity at Work policy stipulates that, “[t] he staff member shall bring the case to the attention of the Director General of the Personnel Directorate, verbally or in writing. If [s/] he does not consider it to be an immediate case that clearly calls for disciplinary sanctions and, in view of the circumstances surrounding it, deems that the case can be classified as harassment, the staff member concerned may initiate the investigation procedure [...]” (emphasis added by the President of the EIB).

[4] This is in line with the approach adopted by other EU institutions, which also carry out a ‘pre-assessment’ of requests for harassment investigations.

[5] The complainant points out that any such investigation would necessarily be carried out by OCCO. He expresses reservations about its independence if it were to undertake such an investigation. However, this is a separate matter that falls outside the scope of this inquiry.

[6] Article 22 of the new Dignity at Work Policy.