

Decision of the European Ombudsman on complaint 883/99/(AA)ADB against the European Commission

Decision

Case 883/99/ADB - Opened on 11/08/1999 - Decision on 07/12/2000

Strasbourg, 7 December 2000 Dear Mrs M., On 9 July 1999, you lodged a complaint with the European Ombudsman concerning the significant decrease in the reimbursement of the monthly travel expenses for Detached National Experts (DNE) working for the European Commission. The problem only concerned flights between Luxembourg and Lisbon. On 11 August 1999, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 28 October 1999 and I forwarded it to you with an invitation to make observations, if you so wished. You sent me your observations on 14 December 1999. On 7 January 2000, I requested the Commission to provide me with further information, which I received on 7 March 2000 and forwarded to you on 10 March 2000. I received your additional observations on 12 April 2000. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

The complainant worked for the European Commission in Luxembourg as a Detached National Expert (DNE). According to the Commission's Decision *"Rules Applicable to National Experts on Detachment to the Commission"* (1) (hereafter the Decision): *Article 14 - Reimbursement of travel expenses 1 If a detached national expert has not moved his personal effects from his place of recruitment to his place of employment, he shall be entitled each month to the cost of a return journey from his place of employment to his place of recruitment. [...] Where the journey exceeds 500 km or involves a sea crossing, payment shall be based on the cost of a reduced-price (PEX or APEX) air ticket. The rate applied shall be that in force on 1 January of the current year at the Brussels travel agency approved by the Commission. This rate shall be reviewed on 1 July in respect of journey where the price has fluctuated by more than 5% since 1 January. [...] Accordingly the complainant was entitled to a monthly travel allowance based on a reduced-price PEX or APEX air ticket for a journey from Luxembourg to Lisbon. Before January 1998, the monthly travel allowance amounted approximately to 604 Ecu while in January 1998, it was reduced to approximately 216 Ecu. Between January 1998 and June 1999, the average travel allowance remained about the same. The complainant alleged that the reduction of the travel allowance caused her considerable financial loss because it did not correspond to the actual prices. To support her allegation, the complainant submitted a declaration issued by a BBL Travel Agency in Luxembourg according to which the PEX rate for a return flight to Lisbon amounted to 22.900 LUF (about 567 €). The complainant, together with other DNEs complained*



to their hierarchy and to Directorate General IX of the Commission. Finally the complainant, as well as two other DNEs travelling from Luxembourg to Lisbon, lodged a complaint with the European Ombudsman. The allegations were in summary the following : 1. The Commission had not informed DNEs of the changing of the travel allowance in January 1998. 2. DNEs had to suffer financial losses and the travel allowance did not correspond to actual PEX or APEX rates. On 7 September 1999, the Ombudsman was informed that in July 1999, the monthly travel allowance had changed and approximately amounted to 581 €, i.e. almost as much as before January 1998.

THE INQUIRY

The Commission's opinion The Commission quoted article 14 of the "Rules Applicable to National Experts on Detachment to the Commission" (2) and mentioned that these provisions are attached to the letters asking for a detachment of a national expert. The Commission also stressed that in respect of the principle of sound financial management, as contained in article 2 of the Financial Regulations, it has to take into consideration the lowest rates available for a given destination. These rates are approved by the Financial Controller and transmitted for information to the Liaison Committee of National Experts. The complainant as well as all the DNEs were informed of the changes in the travel allowance through the Newsletters of the Liaison Committee of National Experts N° 30 and 32. In the complainant's case, the travel allowance matched with the rates indicated for the relevant period of time by the travel agency approved by the Commission. The rates mentioned in a travel agency's declaration submitted by the complainant were not the lowest available. Furthermore this declaration was not issued by the Brussels travel agency approved by the Commission. The Commission reimbursed the complainant in accordance with the existing regulation. **The complainant's observations** The European Ombudsman forwarded the European Commission's opinion to the complainant with an invitation to make observations. In her reply, the complainant put forward that the rate indicated by the Commission's travel agency in Brussels was not a APEX or PEX rate as required by the Commission's Decision, but a "super-budget" rate subject to very restrictive conditions. In the complainant's view, the considerable rise in the travel allowance which took place in July 1999 (approx. 581 € instead of 216 €), further to the change of the Commission's travel agency, clearly indicated that the price previously approved was unrealistic. The complainant finally stated that as a national expert detached to Luxembourg she should not be penalised by the Commission's choice to approve two different agencies for Luxembourg and Brussels. The agency which issued the aforementioned declaration was at that time the agency approved by the Commission in Luxembourg.

FURTHER INQUIRIES

The Ombudsman asked the Commission whether the rate on which the travel allowance was based met the requirements of the Commission's Decision or if it corresponded to negotiated promotional prices which can't be considered as PEX or APEX prices. The Commission informed the Ombudsman that as requested and approved by the Financial Control the travel allowances were based on the lowest PEX/APEX rates communicated to the Commission by the approved travel agent. The complainant once again mentioned that the PEX/APEX fares before and after the revision were identical but were still not applied to the period of time preceding the revision.



THE DECISION

1 The Commission's failure to inform the detached national experts (DNEs) 1.1 The complainant alleged that the Commission had failed to inform the DNEs of the travel allowance's reduction after 1 January 1998. 1.2 The Commission considered that the DNEs had been informed through two internal newsletters for detached national experts at the European Commission : "EXPERT *info* ". 1.3 The Ombudsman notes that the reduction of the monthly travel allowances had indeed at length been mentioned in "EXPERT *info* " in particular on 20 March 1998 and 20 May 1998. The complainant has not questioned the Commission's position regarding the present allegation. The Ombudsman has therefore found no instance of maladministration as regards this aspect of the case. **2 The determination of the monthly travel allowance** 2.1 The complainant considered that between January 1998 and June 1999, the rates on which her monthly travel allowance was based did not meet the criteria set out in the article 14 of the Commission's Decision "*Rules Applicable to National Experts on Detachment to the Commission*" . Allegedly the rate for the return flight Luxembourg-Lisbon, indicated by the Brussels travel agency approved by the Commission, was unrealistic and did not correspond to a PEX or APEX rate. 2.2 The Commission held that its services followed the applicable procedure to determine the travel allowance. Following the Financial Regulation it had to take into consideration the lowest PEX/APEX rates available. 2.3 The Ombudsman notes that there is no precise definition of PEX or APEX rates. These rates appear to vary from one flight company to another, from one travel agency to another and are submitted to restrictive conditions as regards payment and reservation. 2.4 To determine the monthly travel allowance the Commission referred to the provisions set out in the "*Rules Applicable to National Experts on Detachment to the Commission*" (3) and in the Financial Regulation (4) . The payments were made on the basis of the rates indicated by the Brussels travel agency approved by the Commission. There is no evidence that the rate indicated by this agency did not correspond to reality or that it was not a PEX/APEX rate which could be obtained by the clients of the agency. 2.5 The Commission appears to have followed the applicable procedure to determine the monthly travel allowance for the disputed period of time. As regards this aspect of the case, on the basis of the information collected by the European Ombudsman, no instance of maladministration has been found. **3 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely
Jacob Söderman

(1) Commission Decision of 7 January 1998 [C(97)3402] amended by Commission Decision of 3 February 1999 [C(99)220]

(2) Commission Decision of 7 January 1998 [C(97)3402] amended by Commission Decision of 3 February 1999 [C(99)220].

(3) [...] *The rate applied shall be that in force on 1 January of the current year at the Brussels travel agency approved by the Commission. [...]*

(4) Financial Regulation of 21 December 1977 (OJ L 356, 31.12.1977, p.1) applicable to the



General Budget of the European Communities, as amended.