

Decision in case 1052/2019/MMO on how the European Commission dealt with a complaint concerning the European Molecular Biology Laboratory

Decision

Case 1052/2019/MOM - **Opened on** 04/07/2019 - **Decision on** 23/01/2020 - **Institution concerned** European Commission (No further inquiries justified) |

The complainant had contacted the European Commission to raise concerns about what he saw as the failure of the European Molecular Biology Laboratory (EMBL) to comply with health and safety rules. The complainant argued that the Commission had a responsibility to monitor EMBL activities, as the Commission is an 'observer' on the council of the EMBL, which also receives EU funding. The Commission, for its part, said that it was not responsible for the activities of the EMBL.

In the context of her inquiry, the Ombudsman asked the Commission to provide a more comprehensive reply to the complainant. The Commission replied that organisations in receipt of EU funds must adhere to ethical principles and all national and international law, including health and safety regulations. The Commission invited the complainant to identify the grant agreement under which the EMBL received funding for the activities at issue and provide more information on the alleged breaches.

The Ombudsman found the Commission's reply to be reasonable and closed the case.

Background to the complaint

1. The complainant worked as a researcher at the European Molecular Biology Laboratory (EMBL) [1] in Germany. He claims that he suffered health issues and had to undergo treatment due to his exposure to radiation in excess of the legal levels while he was working at the EMBL.
2. The complainant contacted the European Commission to raise his concerns. He contended that, as the Commission is an 'observer' on the council of the EMBL, which also receives EU funding, it should be responsible for monitoring the EMBL's activities.
3. The Commission replied essentially that it was not responsible for the activities of the EMBL, which is an international organisation.



4. Dissatisfied with the Commission's response, the complainant turned to the Ombudsman.

The inquiry

5. The Ombudsman opened an inquiry in an attempt to secure a better response from the Commission as regards its role vis-à-vis the EMBL. In particular, the Ombudsman asked the Commission to explain whether:

1) apart from the Memorandum of Understanding between the Commission and the EMBL [2] , there are other instruments that set out concretely the terms of its cooperation with the EMBL;

2) the Commission has any mechanisms in place to monitor how the EMBL complies with health and safety and labour standards.

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

Arguments presented to the Ombudsman

7. In its reply, the Commission noted that the EMBL is an international organisation distinct from the EU. Since the Commission is simply an observer in the Council of the EMBL, and not one of the 'member states', it has no say over the activities of the EMBL. The Commission also clarified that its relationship with the EMBL is governed by a Memorandum of Understanding and is implemented through a work plan [3] .

8. The Commission explained that, while the EMBL receives funding under the Horizon 2020 programme [4] , it does not have a mechanism to monitor, on the ground, the activities of organisations receiving such funds. However, all Horizon 2020 research actions are subject to an ethics appraisal scheme. This means that proposals that raise more serious ethical issues, including those arising from health and safety concerns, can be subject to an ethics assessment or ethics check at any time during the project and for a period of up to two years after the end of the project. In serious cases, the ethics assessment can lead to the project being suspended.

9. In addition, the Commission pointed out that, according to the applicable rules, organisations receiving funding must adhere to "*all ethical principles and all national and international legislation, including environmental and safety regulations*" [5] .

10. Against this background, the Commission invited the complainant to identify the grant agreement under which the EMBL received funding for the activities at issue in his complaint, describe his involvement in relation to these activities, and give a brief description of the breaches which he believes to have occurred.



11. The complainant argued that the fact an ‘ethics committee’ [6] exists is not sufficient to address “ *the practical reality in the laboratories* ”. Moreover, it is unlikely that the ethics committee would work properly without a genuine, independent and impartial system of legal enforcement. Furthermore, the complainant argued that the Commission, as a body that manages funding for the EMBL’s activities, should be held accountable for the harm caused to his health (‘whoever is paying is responsible’, he said).

The Ombudsman's assessment

12. The Ombudsman considers that the Commission provided a reasonable explanation about the rules that apply to ensure compliance with health and safety standards. Moreover, the Commission explained its responsibilities in relation to the EMBL.

13. The Commission also invited the complainant to identify the grant agreement under which the EMBL received funding for the activities at issue in his complaint, and provide more information on the alleged breaches. This seems reasonable since, in accordance with the applicable rules, the Commission must check the implementation of, and compliance with, the obligations under a grant agreement [7] . Specifically, “*after receiving information about misconduct concerning a certain beneficiary that participates in EU actions, the Commission checks all the grant agreements in order to see if it needs to take action* ” [8] .

14. The Ombudsman understands that the EMBL has obtained EU funding for over 100 projects. As such, it is reasonable for the Commission to invite the complainant to identify the grant agreement in question.

15. In light of the above, the Ombudsman finds that the Commission’s reply is reasonable.

Conclusion

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

The European Commission provided a reasonable reply. The case is settled.

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

Marta Hirsch-Ziembińska

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Strasbourg, 23/01/2020



[1] The European Molecular Biology Laboratory (EMBL) is a molecular biology research institution. 25 countries are currently full members, contributing to funding its work and enjoying full access to its services. The EU is not a member, however the European Commission does have the status of 'observer' on the EMBL council. The EMBL also receives EU funding.

[2] Memorandum of Understanding between the European Commission and the European Molecular Biology Laboratory, 2012/C 271/01), available at:
[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22012X0908\(01\)&rid=2](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22012X0908(01)&rid=2) [Link].

[3] Work Plan for the Implementation of the Memorandum of Understanding between the European Commission (EC) and the European Molecular Biology Laboratory (EMBL) for the period 2019-2020.

[4] Horizon 2020 is the EU programme for funding research and innovation.

[5] Article 34 of the European Commission, Horizon 2020 - H2020 Programme Multi-Beneficiary General Model Grant Agreement, 18 October 2017, available at:
https://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf [Link]

[6] The complainant seems to be referring to Article 34.2(a) of the Model Grant Agreement Horizon 2020-H2020 which provides that before the beginning of an activity raising an ethical issue, each beneficiary must have obtained any ethics committee opinion required under national law.

[7] Article 22 of the Model Grant Agreement stipulates that “ *the Commission will - during the implementation of the action or afterwards - check the proper implementation of the action and compliance with the obligations under the Agreement [...].*”

[8] Article 22 of the Annotated Model Grant Agreement.