



Decision in case 1235/2019/JF on the European Commission's handling of concerns about an EU co-funded project in Malawi

Decision

Case 1235/2019/JF - Opened on 24/07/2019 - Decision on 26/03/2020 - Institution concerned European Commission (No maladministration found) |

The case was about a project developed by a local organisation and co-financed by the EU in Africa.

The complainant raised concerns with the Commission about the local organisation. The Commission then contracted an auditor, who made a number of recommendations to improve the organisation's governance. The complainant then turned to the Ombudsman alleging that the Commission had failed to ensure that the organisation implemented the auditor's recommendations.

The Ombudsman found that the Commission had in fact followed up on how the organisation implemented the recommendations and that there was no maladministration. She invited the Commission to update the complainant on the implementation of the recommendations.

Background to the complaint

- 1.** The EU co-funded a telecommunications project (the 'project') in Africa, which was developed by a local organisation (the 'organisation'). Following an international call for expression of interest, the organisation recruited the complainant, an EU national, to work as its Chief Executive Officer ('CEO') in Malawi from January 2015 to December 2018.
- 2.** During the project, the complainant alerted the Commission to the problems he had experienced because of the organisation's legal status. For example, the complainant was unable to obtain a work permit in Malawi despite being employed by the organisation. This would not have happened had the organisation been an international organisation or enjoyed privileges similar to those of a diplomatic service. The complainant also drew attention to what he perceived to be a situation of a conflict of interests within the organisation [1].
- 3.** The Commission subsequently contracted an external auditor to audit the project.
- 4.** On 12 October 2018, the auditor issued its report (the 'audit report'). The Commission then asked the organisation to inform it about progress with the "*roadmap to fast track the*



implementation of the recommendations " made in the audit report (the 'roadmap'). In the meantime, the organisation decided not to renew the complainant's employment contract.

5. On 26 June 2019, the complainant turned to the Ombudsman alleging that the Commission had failed to ensure that the organisation was able to implement the project properly and to comply with the recommendations made in the audit report.

The inquiry

6. The Ombudsman opened an inquiry into the complainant's concern that the Commission had failed to ensure that the organisation fulfilled the necessary requirements to implement the project, in particular those relating to its legal status. She also looked into the complainant's claim that the Commission should ensure that the organisation implements the recommendations contained in the audit report, in particular those relating to its legal status, transparency of its public procurement procedures, and relations between its Board of Trustees and its CEO.

7. The Ombudsman's inquiry team met the Commission staff responsible for this case and inspected the Commission's file. The complainant subsequently commented on the Ombudsman's report on the meeting and inspection.

The Commission's handling of the complainant's concerns

Arguments presented to the Ombudsman

8. The Commission explained that the organisation had a monopoly position in the relevant market, which made it effectively the only applicant able to deliver the objectives of the project. The organisation was not an international organisation, it has never claimed to be one, and this was not a condition to be granted EU funds.

9. The Commission also said that the organisation had successfully implemented the project. This notwithstanding, the audit report sets out a number of recommendations to improve the organisation's governance. As a result, the Commission decided to make the organisation's implementing of the recommendations a condition to be awarded future projects. The Commission is following progress in respect of the organisation's implementation of the auditor's recommendations, namely on the "*new Constitution*", "*Legal Status*", and "*Board Charter*".

10. In his comments, the complainant essentially, repeated his concerns. He emphasised that, according to the audit report, the "*procedures for amending the legal status of [the organisation] have been ongoing since 2015 and have never been finalised*".

The Ombudsman's assessment

11. The Ombudsman's inquiry team inspected the documents obtained during the meeting with the Commission [2]. These documents confirm that the Commission was aware that the organisation was registered as a non-profit association in an EU Member State and as a non-profit trust in Malawi. These documents also confirm that the Commission is following



up on the organisation's implementation of the recommendations made in the audit report. The Ombudsman finds, therefore, no maladministration by the Commission in this case.

12. The Commission has, moreover, made the award of new projects to the organisation conditional on it implementing the recommendations made in the audit report.

13. The Ombudsman invites the Commission to provide the complainant with an update on the state of play of the organisation's implementation of the actions set out in the roadmap.
Conclusion

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

The Ombudsman finds no maladministration by the Commission in this case.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 26/03/2020

[1] The Ombudsman notes the complainant's numerous grievances about the organisation. Since the Ombudsman's mandate is limited to investigating allegations of maladministration in the activities of the EU institutions, bodies, offices and agencies, the Ombudsman did not investigate those grievances and they are not reproduced in this decision.

[2] The documents in question have been declared confidential by the Commission and, therefore, have not been shared with the complainant.