

Decision of the European Ombudsman in case 674/2020/KT on how the EU Agency for Law Enforcement Cooperation (Europol) dealt with a procurement procedure for staff accommodation in Greece

Decision

Case 674/2020/KT - Opened on 23/10/2020 - Decision on 23/10/2020

Dear Ms X,

In April 2020, you complained to the European Ombudsman about how the Europol dealt with a procurement procedure to rent two accommodations for its staff in Samos Island (Greece) for the year 2018. You participated in the procurement procedure.

Europol initially awarded the contract to a tenderer who did not meet all requirements in the call for tenders. When Europol had investigated the matter, it awarded the contract to you. In your complaint, you claim that you suffered a loss of income because of Europol's initial award decision. You contend that it took Europol too long to rectify the situation and to award the contract to you only as of May 2018 when it should have awarded it to you as of January 2018. You claim that Europol should pay you EUR 15 860, which corresponds to the income that you consider you lost during the first four months of 2018 ('first claim').

You also argue that Europol breached the rules of the procurement procedure. While your accommodations were the only ones that met all requirements in the call for tenders, Europol used other accommodations to cover its short-term accommodation needs for 2018 and 2019. You claim that Europol should pay you EUR 103 280, which corresponds to the rental income that you consider you would have received if Europol had used your available accommodations ('second claim').

After a careful analysis of all the information you provided with your complaint, **we find no maladministration by Europol**.

On your first claim

The call for tenders required tenderers to have "*legal and regulatory capacity*". According to the financial rules in place at the time [1], for contracts of a value not exceeding EUR 135 000,



Europol was not required to request official proof of the tenderers' legal and regulatory capacity. Instead, tenderers could submit a declaration of honour. As there is nothing to suggest that the value of this contract exceeded the above threshold, Europol was entitled to accept, as adequate evidence, a declaration of honour and to award the contract on that basis.

After you raised the issue with Europol that the initial contractor did not meet all the requirements in the call for tenders, Europol immediately investigated the matter. Europol requested the initial contractor to provide documentation and engaged in extensive correspondence with the relevant Greek public authorities. There is nothing to suggest that the time it took Europol to investigate the matter was unreasonable, given all the investigatory steps it took. In addition, Europol kept you fully informed of the steps that it took. As soon as it had finalised its investigation of the issue, Europol terminated the contract with the initial contractor and signed a contract with you for the remaining period.

On the basis of the above, we find no wrongdoing in how Europol handled the matter .

On your second claim

The procurement procedure concerned *long-term* accommodation only [2] . To cover its *short-term* accommodation needs, Europol had the right to make use of the reserve list drawn up in the context of the procurement procedure. That reserve list included only two accommodations proposed by you.

After Europol terminated the contract with the initial contractor, it concluded a long-term contract with you for *both* those accommodations. Accordingly, there was no accommodation of yours left on the reserve list. There was thus no obligation for Europol to cover its short-term accommodation needs with any *extra* accommodation that you had available at the time (but which was not on the reserve list). Europol explained this to you on several occasions [3] .

We thus find no breach of the rules of the procurement procedure by Europol.

In light of the above, your request for compensation cannot be upheld and the Ombudsman has closed the case [4] .

While you may be disappointed with the outcome of the case, we hope

that you will find the above explanations helpful. Thank you for having contacted the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit



Strasbourg, 23/10/2020

[1] Europol analytically explained these rules to you in its letter of 25 May 2018 (EDOC # 962416).

[2] Document EDOC # 929671 ("Europol Terms and Conditions applicable to Accommodation Contracts"), Clause 1(3): *"The Contract shall be concluded for 12 months with the possibility for Europol to extend one time for a maximum period of 12 months"*.

[3] See, for example, Europol's letter of 8 January 2019 (EDOC # 1017057).

[4] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link].