

Decision of the European Ombudsman on complaint 441/2000/(XD)LBD against the European Commission

Decision

Case 441/2000/LBD/MF - Opened on 23/05/2000 - Decision on 23/08/2001

Strasbourg, 23 August 2001

Dear Mr O.,

On 25 March 2000 you submitted a complaint to the European Ombudsman concerning the fact that the European Business and Innovation Centre Network replaced you on projects co-financed by the European Commission.

On 23 May 2000, I forwarded your complaint to the President of the European Commission. On 17 October 2000, the Commission sent me its opinion. I forwarded it to you with an invitation to make observations, which you sent on 22 December 2000.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

According to the complainant, the facts are as follows:

The complainant worked as a consultant for the European Business and Innovation Centre Network (hereinafter referred to as EBN), following the conclusion of contracts between himself and EBN in connection with projects co-financed by DG XVI (now DG REGIO) of the Commission. The complainant contributed as an economics expert towards the creation of the Business and Innovation Centres (BICs). Following internal problems within EBN, which according to the complainant resulted from changes in the DG, but also from the Commission's lack of vigilance regarding the award of contracts, the complainant was replaced on the projects in which he had worked and was thereby deprived of the fruit of his intellectual property.

On 17 December 1999, the complainant wrote to the responsible head of division, setting out his views about the procedures for the award of contracts. He also notified him of the difficulties he had encountered in the implementation of contracts co-financed by DG XVI, on which he had been replaced and in respect of which he had received no financial compensation for his work as an expert.



By letter of 3 March 2000, the Commission replied to the complainant that it deeply regretted the difficulties encountered in the implementation of projects. However, it pointed out that the final outcome of these projects and the consequent financial arrangements were dependent on the bodies to which the complainant had offered his services; it was only with these bodies that the Commission had any contact. It also stressed that, while it was of course concerned to know which staff the beneficiary bodies employed to carry out the co-financed projects, relations between those bodies and their staff members lay outside its sphere of responsibility.

Following this reply, which he found unsatisfactory, the complainant submitted a complaint to the European Ombudsman. In his complaint he claims financial compensation for his work towards the creation of BICs. The complainant also questioned the Commission's methods of awarding contracts.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission clarified its links with EBN and replied to the complainant's allegation regarding failings in the award of contracts.

As concerns its relations with EBN, the Commission first recalled that EBN is an independent association, with the aim of promoting the idea of establishing Business and Innovation Centres (BICs) in Member States in order to facilitate interregional cooperation between local authorities and innovative SMEs. The Commission also points out that, since 1985, it had concluded several project grant agreements with EBN and one service contract. However the Commission emphasised that there was no legal relationship between staff employed by EBN or its subcontractors and the Commission within the context of EBN projects, and that any employee must therefore address his grievances to the company in question and not to the Commission, which has no responsibility in the matter.

As regards the alleged failings in the system for the award of contracts, the Commission noted that, in the framework of the grant agreements and the contract between the Commission and EBN, the services of the Commission strictly applied the procedures that were in force at the time, as governed by the Manual of Operational Procedures (for the grant agreements) and by the CCAM provisions relating to tenders and the award of contracts (for the service contract).

The Commission also emphasised that it was responsible not only for the orderly award of grants, but also for ensuring that Community funds are used properly and that Community policies are respected in the framework of the co-financed action. In that context, the Commission noted that the audit service of DG Regio had examined EBN's management of certain payments and that no remarks had been put forward as a consequence of the audit.

The complainant's observations

Regarding the links between the Commission and EBN, the complainant drew attention to the statutes and operation of EBN. He pointed out that EBN had been set up by the Commission and that a representative of the Commission sits on the boards of directors as an observer. The



Commission was therefore perfectly aware of the quality of the management and financial statements of EBN. He also explains that, under the former Director-General of EBN, severe funding difficulties had arisen, and that the Commission therefore failed in its duty of prudent management.

To support these statements, the complainant takes as an example the 'Euroclusters' project, which he states that he conceived and coordinated for four years. The final drafting of the report on this project was awarded to another team and does not reflect the work carried out on the ground, which should have been the Commission's principal concern. The complainant also states that the Community funds intended for the conduct of this project were used by EBN to resolve its funding problems, but not to pay the consultants and the regions which had participated in the project. He therefore finds it hard to understand, in the light of these considerations, that the Commission is not responsible for the matter.

Regarding the procedures for the allocation of contracts, the complainant claims that they leave the signatory of the contract full discretion to modify the scale of the projects. The complainant also stated that the Commission merely confirms its own failings, in that it did not take the precaution of finding out to whom the funds had been allocated at the level of implementation of the projects it co-financed, and that it had not been concerned about the development of the projects, or about the concrete results obtained.

THE DECISION

1 The complainant's claim to financial compensation

1.1 In his complaint to the Ombudsman, the complainant claims financial compensation for his work, as an expert consultant, towards the creation of Business and Innovation Centres (BICs). According to the complainant, he was replaced by EBN on a number of projects co-financed by the Commission and was thereby deprived of the fruit of his intellectual property.

1.2 In its opinion, the Commission notes that there is no legal relationship between staff employed by EBN or the subcontractors which EBN uses to meet its obligations to the Commission. It considers that any employee must address his grievances to EBN and not to the Commission, which is not responsible in the matter.

1.3 On the basis on the documents brought to his attention during the inquiry, the Ombudsman notes that in the complainant's view there are two points to take into consideration. The first concerns internal problems in EBN. The second is that, in the complainant's view, there is a cause-and-effect relationship between the Commission's procedures for awarding contracts and the subject of his claim.

1.4 On the first point, the Ombudsman does not consider that the documents in the case show that the Commission bears liability for possible management problem within EBN. Moreover, in accordance with his Decision 947/97/HMA (1) , the Ombudsman recalls that EBN is not a Community institution or body and that he is not therefore competent to deal with complaints against it. The Ombudsman notes, however, that there is nothing to prevent the complainant



from bringing its dispute with EBN before a court of competent jurisdiction.

1.5 The Ombudsman therefore considers that he can deal with the complainant's grievances only in relation to the second point above, insofar as it concerns an allegation of maladministration by the Commission. This allegation is considered in point 2 of the decision.

2 Alleged failings in the procedures for the award of contracts

2.1 The complainant calls into question the Commission's methods for the award of contracts. In his view, the body which signs the contract has full discretion, once the contract has been signed, to modify the substance of the projects, change the destination of funds, or recruit staff without any supervision of whether they are appropriate to the objectives of the contract. The complainant considers that, if the Commission had drafted stricter rules on the protection of project designers and required that the relevant abilities form part of the contracts it awards, problems of this nature would not have arisen. He therefore condemns these methods which, in his view, led to his being completely deprived of the fruits of his intellectual work.

2.2 In its observations, the Commission notes that, as concerns the attribution of the grant agreements and the contract between the Commission and EBN, the Commission services strictly applied the procedures that were in force at the time, as governed by the Manual of Operational Procedures and by the CCAM provisions relating to tenders and the award of contracts. The Commission also acknowledges that it assumes responsibility not only for the orderly attribution of the grants but also for ensuring that Community funds are used properly and that Community policies are respected in the framework of the co-financed action. In this context, the Commission point out that the audit service of DG Regional Policy has examined EBN's management of certain payments and that no remarks have been put forward as a consequence of the audit.

2.3 Regarding the Commission's compliance with procedures, the Ombudsman notes that the complainant has not provided any evidence which would be sufficient to justify an additional inquiry on this aspect of the case.

2.4 On the Commission's supervision of the use of Community funds, the complainant observes that the Commission has merely underlined its own failings since it did not take the precaution of ascertaining to whom the funds for implementation of the projects were allocated. He maintains that the Commission did not concern itself with the development of the projects and the concrete results obtained. Furthermore, he draws attention to the budget allocated by the Commission for certain projects which, in his view, was not allocated properly. He also mentions certain practices which he claims reveal these failings.

2.5 The Ombudsman notes that the Commission's services carried out an audit on certain expenditure and that no particular remarks were made following this audit. The evidence available to the Ombudsman does not suggest any maladministration in the supervision carried out by the Commission. The Ombudsman also notes, that the Court of Auditors, as a specialised body, has the power to evaluate the financial supervision of the Community institutions.

Conclusion



On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) Decision 947/97/HMA: See 1997 Annual Report of the European Ombudsman, p. 19.