

Decision of the European Ombudsman on complaint 1625/2002/IJH against the European Anti-Fraud Office

Decision

Case 1625/2002/IJH - Opened on 20/09/2002 - Decision on 03/07/2003

Strasbourg, 3 July 2003

Dear Madam,

On 9 September 2002, you made a complaint to the European Ombudsman against the European Anti-Fraud Office (OLAF).

I would like to inform you that Mr Jacob Söderman, with whom you have previously corresponded concerning your complaint, has retired and that, from 1 April 2003, I am his successor as European Ombudsman.

On 20 September 2002, your complaint was forwarded to the Director General of OLAF. On 18 December 2002, OLAF sent its opinion in English, followed by a translation into French, which was received in the Ombudsman's office on 22 January 2003. The opinion was forwarded to you with an invitation to make observations, which you sent on 26 February 2003.

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

THE COMPLAINT

In September 2002, a former Commission official made a complaint to the European Ombudsman against the European Anti-Fraud Office (OLAF).

According to the complainant, the relevant facts are, in summary, as follows:

On 3 November 2000, whilst working as head of the Mediterranean Unit of the Commission Directorate General for Research, the complainant drew OLAF's attention to certain irregularities in the financing of project ICA-3-1999-10030 ("the water project").

On 23 July 2001, the complainant had an interview with two OLAF officials and signed a protocol of the interview. She was never informed of the outcome of OLAF's investigation. She subsequently learnt that the two officials who interviewed her had left OLAF, that the scientific



manager of the project had not been interviewed and that the contract for the project had been signed at the beginning of the year 2002, after very extensive changes to the technical annex. The complainant queries whether the OLAF unit that replied to the inter-service consultation on this project was aware of her complaint about the project.

The complainant alleges that OLAF has failed to carry out a proper inquiry into the matter and that it has never informed her of the outcome. She claims that OLAF should inform her whether it conducted an inquiry, what was the result and whether the OLAF unit which replied to the inter-service consultation before the water project was approved at the beginning of the year 2002 was aware of her complaint.

THE INQUIRY

The opinion of the European Anti-Fraud Office (OLAF)

The opinion received from OLAF contained, in summary, the following points:

The allegation that OLAF failed to carry out a proper inquiry

According to the complainant's note to OLAF of 3 November 2000:

- The scientific and technical evaluation of the water project proposal dated 24 July 2000 was negative;
- The Director-General of the Commission Directorate General for Research (DG RTD) had informed the responsible Commissioner's Chief of Cabinet by note of 25 October 2000 that negotiations under the authority of the complainant in September 1999 had led to unsatisfactory results. He had therefore decided to ask Mr B., Advisor to the Director, to reach an agreement with the project coordinator to conclude the project in a satisfactory manner by the end of November 2000.

The complainant's note stated that, in light of the contradiction between the two considerations mentioned above, the complainant was filing a complaint under Article 90 (2) of the Staff Regulations.

The Director General of OLAF acknowledged receipt of this information by note dated 11 December 2000, and requested the complainant to supply all available information regarding the alleged irregularities. On 22 January 2001, the complainant submitted numerous additional documents related to the negotiations and discussions on the water project. The information was inconclusive as to whether irregularities had occurred. Accordingly, on 27 February 2001, OLAF opened an internal investigation. The following information was thereafter collected:

- On 24 March 2001, the Director-General of DG RTD sent an extensive information note to OLAF;
- On 23 July 2001, OLAF investigators interviewed the complainant. She confirmed that to her knowledge there were no indications of fraud, but that the project had been allowed to proceed notwithstanding the shortcomings identified in the scientific evaluation;
- On 27 August 2001, the complainant sent a written supplement to her interview.

Based on this information, a final case report was adopted on 1 February 2002, which recommended closure of the case without follow-up. The Director-General of OLAF adopted this



recommendation. OLAF thus conducted an entirely proper investigation into the complainant's allegations, after which it concluded that no irregularities had occurred and no follow-up action was required.

The allegation that OLAF did not inform the complainant

Regulation 1073/1999 contains rules on who should be informed of the results of an OLAF investigation. Article 8 provides that information obtained in the course of an internal investigation is subject to professional secrecy and may not be communicated to persons other than those within the institutions of the European Communities or the Member States whose functions require them to know. Article 9 provides that the final case report, which contains a synopsis of the information gathered during the investigation, shall be sent to the judicial authorities of the Member State concerned and the institution, body, office or agency concerned, for follow up action.

On 12 July 2002, the complainant sent a note to OLAF requesting to be informed of the outcome of the investigation. On 5 August 2002, OLAF prepared a reply, but it was never sent because the complainant had retired from service as of 1 August 2002. On 9 August 2002, OLAF sent a note to the Head of Unit at DG RTD, setting forth the conclusions of the investigation.

The inter-service consultation

OLAF has no record of having been consulted as part of an inter-service consultation on this project. There is, however, an exchange of letters between the Directors General of DG RTD and OLAF on whether financing of the project should continue while the investigation was ongoing. The Director General of DG RTD sent a letter to the Director General of OLAF on 14 May 2001, explaining that he would propose financing of the project to the Commission, absent advice to the contrary. On 20 May 2001, the Director General of OLAF replied that the investigation was still ongoing, but that the information in OLAF's possession at that time did not suggest a reason for advising against continued financing for the project.

OLAF annexed copies of the relevant documents to its opinion.

The complainant's observations

The complainant's observations on OLAF's opinion contained, in summary, the following points:

The investigator in charge of the investigation asserts in his conclusions that no element in OLAF's possession demonstrates the existence of irregularities falling within OLAF's competence. Three elements, included in the file with supporting evidence, were not taken into account during the investigation:

(a) The evaluation of the proposal was irregular because:

- the procedure in force was not followed,
- concerning the eligibility form which explicitly mentioned the request for the proposal to be anonymous, two experts out of four replied in the negative to one substantive eligibility criterion and the expert from the beneficiary country did not sign the form guaranteeing anonymity,



- the expert from the beneficiary country was also involved in both steps of the evaluation, scientific and regional.

(b) The instruction from the Head of Cabinet of the responsible Commissioner to the services, to close the file positively, is also irregular and perhaps illegal.

(c) It is surprising, if not irregular, that the granting of a subsidy depends solely on a temporary agent. In fact, a temporary agent who was responsible for the file at the time of the evaluation mentioned under (a) above, also followed up the file, despite the change in her duties within the unit, to the detriment of the complainant's former duties as Head of Unit. At present, the same temporary agent is again responsible for operational aspects of the project, although the unit to which she is allocated does not carry out operational tasks and should not manage projects.

THE DECISION

1 The allegation that OLAF failed to carry out a proper inquiry

1.1 The complainant was Head of the Mediterranean Unit of the Commission Directorate General for Research. In November 2000, she drew the attention of the European Anti-Fraud Office (OLAF) to certain irregularities in the financing of project ICA-3-1999-10030 ("the water project"). The complainant alleges that OLAF failed to carry out a proper inquiry into the matter and identifies three elements which, she argues, were not taken into account, although they were included in the file with supporting evidence.

1.2 According to OLAF, its Director General requested the complainant to supply all available information regarding the alleged irregularities. Since the information provided was inconclusive as to whether irregularities had occurred, OLAF opened an internal investigation. The investigation collected information from the Director-General of DG RTD and from the complainant. The Director-General of DG RTD sent an extensive information note. The OLAF investigators interviewed the complainant, who confirmed that to her knowledge there were no indications of fraud, but that the project had been allowed to proceed notwithstanding the shortcomings identified in the scientific evaluation. The complainant later sent a written supplement to her interview. Based on this information, a final case report was adopted on 1 February 2002, which recommended closure of the case without follow-up. The Director-General of OLAF adopted this recommendation. OLAF annexed copies of the relevant documents to its opinion.

1.3 The Ombudsman points out that the present complaint is against OLAF. The Ombudsman has not, therefore, carried out an inquiry into the European Commission's handling of the water project. The Ombudsman's inquiry concerns the question whether there was maladministration by OLAF in relation to the administrative investigation which it launched following the information supplied to it by the complainant.

1.4 The Ombudsman notes that Article 1 (3) of Regulation 1073/1999 (1) provides for OLAF to conduct internal administrative investigations for the purpose of:



"- fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community,

- investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings, (...)"

1.5 The Ombudsman considers that principles of good administration require administrative investigations by OLAF to be carried out carefully, impartially and objectively. The Ombudsman finds nothing in the documentary evidence supplied by the complainant and by OLAF to suggest that OLAF's investigation in the present case failed to comply with the principles of good administration. Furthermore, the Ombudsman considers that it was reasonable for OLAF to conclude that the information available to it did not demonstrate the existence of irregularities falling within OLAF's competence. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

2 The allegation that OLAF did not inform the complainant

2.1 The complainant alleges that OLAF never informed her of the outcome of its inquiry. She claims that OLAF should inform her whether it conducted an inquiry and of the result.

2.2 OLAF argues that Regulation 1073/1999 contains rules on who should be informed of the results of an OLAF investigation. Article 8 of the Regulation provides that information obtained in the course of an internal investigation is subject to professional secrecy and may not be communicated to persons other than those within the institutions of the European Communities or the Member States whose functions require them to know. Article 9 provides that the final case report, which contains a synopsis of the information gathered during the investigation, shall be sent to the judicial authorities of the Member State concerned and the institution, body, office or agency concerned, for follow up action. On 12 July 2002, the complainant sent a note to OLAF requesting to be informed as to the outcome of the investigation. On 5 August 2002, OLAF prepared a reply, but it was never sent because the complainant had retired from service as of 1 August 2002. On 9 August 2002, OLAF sent a note to the Head of Unit at DG RTD, setting forth the conclusions of the investigation.

2.3 The Ombudsman points out that OLAF annexed a copy of the final case report to its opinion on the complaint, in the knowledge that the opinion and its annexes would be forwarded to the complainant as part of the Ombudsman's normal inquiry procedure. The Ombudsman does not therefore understand OLAF to argue that the provisions of Regulation 1073/1999 prevented it from communicating the results of its investigation to the complainant. The Ombudsman concludes that OLAF has taken appropriate action to settle this aspect of the complaint, by informing the complainant of the results of its investigation during the Ombudsman's inquiry. No further inquiries by the Ombudsman are therefore necessary.

3 The claim to be informed of the inter-service consultation

3.1 The complainant claims that OLAF should inform her whether the OLAF unit which replied to the inter-service consultation before the water project was approved at the beginning of the year 2002 was aware of her complaint.



3.2 According to OLAF, it has no record of having been consulted as part of an inter-service consultation on this project. However, the Director General of DG RTD sent a letter to the Director General of OLAF, explaining that he would propose financing of the project to the Commission, absent advice to the contrary. The Director General of OLAF replied that the investigation was still ongoing, but that the information in OLAF's possession at that time did not suggest a reason for advising against continued financing for the project.

3.3 The Ombudsman considers that OLAF's opinion provides the information claimed by the complainant and that no further inquiries by the Ombudsman are therefore necessary.

4 Conclusion

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

The Director General of the European Anti-Fraud Office will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office OJ L 136, 31.5.1999, p. 1.