

Decision of the European Ombudsman on complaint 2368/2003/GG against the European Commission

Decision

Case 2368/2003/GG - Opened on 15/12/2003 - Decision on 25/10/2004

Strasbourg, 25 October 2004

Dear Mrs B.,

On 10 December 2003, you made a complaint to the European Ombudsman against the European Commission concerning the setting-up of supplementary insurance coverage for the Commission's local agents in Vienna.

On 15 December 2003, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 13 April 2004. I forwarded it to you on 14 April 2004 with an invitation to make observations, which you sent on 26 May 2004.

On 16 June 2004, I asked the Commission to provide me with further information in relation to your complaint. The Commission sent its reply on 4 August 2004. I forwarded it to you on 16 August 2004 with an invitation to make observations, which you sent on 29 September 2004.

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

THE COMPLAINT

Complaint 367/98/(VK)/GG

In 1998, two representatives of the Commission's local agents in Austria (the complainant and Mr. L.) lodged a complaint with the Ombudsman (complaint 367/98/(VK)/GG). The complaint concerned the Commission's failure to provide its local staff working in the representation in Vienna with supplementary insurance coverage in respect of sickness, accident, invalidity and pension. In the course of his inquiry into this complaint, the Ombudsman made a draft recommendation to the Commission to set up such insurance schemes with retroactive effect. The Commission accepted this draft recommendation and informed the Ombudsman that it would do so with effect from 1 January 1995.

The Ombudsman therefore closed his inquiry in April 2001. The complainants (and the Commission) were however informed by the Ombudsman that a new complaint could be lodged if the Commission should fail to live up to its promises.



Complaint 971/2001/GG

In June 2001, Mr L. submitted a further complaint concerning the same issue, alleging that the Commission had still failed to set up supplementary insurance schemes for its local staff in accordance with the relevant rules.

In the course of the inquiry opened by the Ombudsman, the Commission reiterated its commitment to set up the relevant insurance coverage. The case was therefore closed in May 2002. However, in his decision closing the inquiry the Ombudsman noted that "particularly in the light of the background of this case that ultimately dates back to 1994, the Commission should now act as quickly as possible in order to set up the supplementary insurance schemes."

The present complaint

In December 2003, the complainant renewed the complaint, alleging that as far as she was aware, the Commission had still not yet set up supplementary insurance coverage.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission referred to the information it had provided in the context of the Ombudsman's inquiries into complaints 367/98/(VK)/GG and 971/2001/GG and made the following further comments:

After the failure of a call for tenders in 2002, it had been decided to use the negotiated procedure in order to award the contract. Eight insurance companies had been invited to submit a proposal. However, only one offer had been received (from Gothaer Versicherung), and this offer had not been in conformity with the conditions that had been set. Further negotiations with this company had been unsuccessful. In May 2003, the Commission had therefore instructed the Representation in Vienna to undertake a new negotiated procedure. In July 2003, 13 insurance companies had been invited to submit a proposal by 30 September 2003. The Commission's local agents in Vienna had been informed accordingly. Given that no offer had been received by 30 September 2003, the Commission contacted the only company that had asked for further information during the procedure (Allianz). Two letters had been sent to this company on 30 October and 18 December 2003. However, these letters had not been answered according to the Commission.

In January 2004, another company had been contacted. By letter dated 26 January 2004, however, this company had informed the Commission that it did not wish to submit an offer.

The Commission's services had acted diligently and with the sole aim of procuring the supplementary insurance coverage as soon as possible, in conformity with its commitments towards the Ombudsman, whilst strictly respecting the rules on public procurement. The difficulties to find a contractor were probably due to the divergences between the contractual needs that had to be satisfied and the specific nature of the market for insurances in Austria.

As regards the approach to be adopted from now on, the Commission had decided to approach another company with a view to finalising the negotiated procedure. If this should prove to be



unsuccessful, the current procedure would have to be formally closed and a new procedure would be launched on the basis of modified conditions.

The complainant's observations

In her observations, the complainant submitted that she had been informed by the person in charge at Allianz that the latter had replied to the Commission's letter of 30 October 2003 and had only refrained from submitting an offer because the Commission had asked, in its letter of 18 December 2003, that the offer should be submitted within one week. According to the complainant, Allianz had considered that this did not give it sufficient time to prepare a completely new offer.

The complainant expressed the view that the Commission was deliberately procrastinating.

Further inquiries

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary.

The request for further information

On 16 June 2004, the Ombudsman therefore asked the Commission to comment on the complainant's observations and to submit a copy of its letter to Allianz of 18 December 2003.

The Commission's reply

In its reply, the Commission made the following comments:

The complainant's understanding both of the relevant facts and of the procedure was clearly mistaken. After having invited 13 insurance companies to submit a proposal by letter of 24 July 2003, the Commission had received a request for additional information. According to the rules on public procurement, the reply to such requests has to be sent to all companies that have been invited to submit a proposal. However, before the formal reply to this request had even been sent to the 13 companies concerned, the Commission had received, in a sealed envelope, an offer from Allianz. In conformity with the relevant rules, this offer had been returned to Allianz unopened, given that all the potential bidders needed to have received the additional information before any offers could be opened. These facts were clearly set out in the Commission's letter to Allianz of 30 October 2003.

The Commission had not received any reply to this letter. Its services had therefore written to Allianz again on 18 December 2003. This letter had also remained unanswered.

The period for submitting proposals had not been limited to one week.

Given that the relevant procedure had failed, it would now have to be closed. A new open procedure based on modified conditions would be launched as soon as possible. The Commission could only confirm its commitments in the matter whilst stressing that the various problems it had encountered could not be attributed to itself.

With its reply, the Commission submitted copies of its letters to Allianz of 30 October and 18 December 2003.

The complainant's observations

In her observations, the complainant noted that she had based herself on information that had



been provided by the person in charge at Allianz. The complainant took the view that it would make little sense to continue to argue over the relevant procedure that had since been closed, given that the Commission had decided to launch a new open procedure. According to her, what was important now was to ensure that the supplementary insurance coverage was set up as soon as possible, given that more than ten years had lapsed and that several local agents had left the Commission in the meantime. The complainant added that she would be grateful if the Ombudsman could ask the Commission to submit a progress report to him every six months and if this report could then be forwarded to her.

THE DECISION

1 Alleged failure to set up supplementary insurance schemes

1.1 In December 2003, the complainant renewed a complaint that she had (together with another complainant) lodged five years previously (complaint 367/98/(VK)/GG) against the European Commission concerning the latter's alleged failure to set up supplementary insurance schemes for its local staff in Vienna.

1.2 In the course of his inquiry into complaint 367/98/(VK)/GG, the Ombudsman had made a draft recommendation to the Commission to set up such insurance schemes with retroactive effect. The Commission had accepted this draft recommendation and informed the Ombudsman that it would do so with effect from 1 January 1995. The Ombudsman had therefore closed his inquiry in April 2001. The complainants (and the Commission) were however informed by the Ombudsman that a new complaint could be lodged if the Commission should fail to live up to its promises. A further complaint (complaint 971/2001/GG) concerning this subject had been lodged in 2001 by the second complainant in the above-mentioned case. In the course of the inquiry into this complaint opened by the Ombudsman, the Commission had reiterated its commitment to set up the relevant insurance coverage. The case had therefore been closed in May 2002. However, in his decision closing the inquiry the Ombudsman had noted that "particularly in the light of the background of this case that ultimately dates back to 1994, the Commission should now act as quickly as possible in order to set up the supplementary insurance schemes."

1.3 In its opinion on the present complaint and in its reply to a request for further information, the Commission explained that after the failure of a call for tenders in 2002, it had decided to use the negotiated procedure in order to award the contract. Eight insurance companies had been invited to submit a proposal. However, only one offer had been received (from Gothaer Versicherung), and this offer had not been in conformity with the conditions that had been set. Further negotiations with this company had been unsuccessful.

In May 2003, the Commission had therefore instructed the Representation in Vienna to undertake a new negotiated procedure. In July 2003, 13 insurance companies had been invited to submit a proposal by 30 September 2003. The Commission's local agents in Vienna had been informed accordingly. Given that no offer had been received by 30 September 2003, the Commission had contacted the only company that had asked for further information during the procedure (Allianz). Two letters had been sent to this company on 30 October and 18



December 2003. However, these letters had not been answered. In January 2004, another company had been contacted. By letter dated 26 January 2004, however, this company had informed the Commission that it did not wish to submit an offer.

The Commission submitted that its services had acted diligently and with the sole aim of procuring the supplementary insurance coverage as soon as possible, in conformity with its commitments towards the Ombudsman, whilst strictly respecting the rules on public procurement. According to the Commission, the difficulties to find a contractor were due to the divergences between the contractual needs that had to be satisfied and the specific nature of the market for insurances in Austria.

Given that the relevant procedure had failed, it would now have to be closed. A new open procedure based on modified conditions would be launched as soon as possible. The Commission could only confirm its commitments in the matter whilst stressing that the various problems it had encountered could not be attributed to itself.

1.4 In her observations, the complainant took the view that it would make little sense to continue to argue over the relevant procedure that had since been closed, given that the Commission had decided to launch a new open procedure. According to her, what was important now was to ensure that the supplementary insurance coverage was set up as soon as possible, given that more than ten years had lapsed and that several local agents had left the Commission in the meantime. The complainant added that she would be grateful if the Ombudsman could ask the Commission to submit a progress report to him every six months and if this report could then be forwarded to her.

2 Conclusion

In the light of the complainant's observations, the Ombudsman concludes that there are no grounds further to pursue his inquiry in the present case. The Ombudsman therefore closes the case. However, the Ombudsman will make a further remark.

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

FURTHER REMARKS

The Ombudsman notes that the Commission has stressed that it intends to honour its commitment towards the Ombudsman to procure the supplementary insurance coverage for its local agents in Vienna as soon as possible. He also notes that the Commission has decided to launch a new open procedure based on modified conditions in order to achieve this aim. The Ombudsman would therefore be grateful if the Commission could submit a report on the progress that has been achieved on this matter to him until 30 April 2005. On the basis of this report, the Ombudsman will then decide whether it is necessary to resume his inquiry, possibly in the form of an own-initiative investigation.

Yours sincerely,



P. Nikiforos DIAMANDOUROS