

Decision of the European Ombudsman on complaint 3095/2005/TN against the European Commission

Decision

Case 3095/2005/TN - Opened on 05/10/2005 - Decision on 13/12/2007

Strasbourg, 13 December 2007

Dear Dr B.,

On 13 July 2005, you submitted a complaint to the European Ombudsman concerning the European Commission's handling of a project proposal submitted under the title EAGLES Food Forum in response to call FP6-2003-Food-2-A under the programme "*Integrate and strengthen the European Research Area*" (complaint 2450/2005/TN).

The complaint was closed on 1 September 2005, since I could not identify its object because it was not clear what your claims were. You were advised to clarify your claims if you wished to pursue your complaint further.

By letter of 20 September 2005, you clarified your claims. Your letter was therefore registered as a new complaint under reference 3095/2005/TN. On 5 October 2005, I decided to open an inquiry into this new complaint and forwarded it to the President of the Commission. By letter of 17 October 2005, you clarified certain points pertaining to your complaint. Your letter was forwarded to the Commission on 4 November 2005.

The Commission sent its opinion on 22 December 2005. I forwarded it to you with an invitation to make observations, which you sent on 22 February 2006.

On 11 September 2006, I wrote to the Commission, asking for further information in relation to your complaint. The Commission sent its reply on 11 December 2006. I forwarded it to you with an invitation to make observations, which you sent on 23 February 2007.

I am writing now to let you know the results of the inquiries that have been made. I apologise for the time it has taken to deal with your complaint.

THE COMPLAINT

In his complaint, the complainant explained that the correspondence between himself and the



Commission attached to his complaint letter provided a summary of the situation. From the above documents, the following could be deduced:

A project proposal, under the title EAGLES (1) Food Forum, was submitted to the Commission, in response to call FP6-2003-Food-2-A, relating to the programme " *Integrate and strengthen the European Research Area* ". The Commission favourably evaluated the proposal and, by letter of 4 June 2004, informed the complainant, as the co-ordinator of the proposed project, that it wished to proceed to contract negotiations, which was also done. By letter of 4 December 2004, the complainant requested that he be replaced as the co-ordinator of the project, the reason being his disagreements with the then President of the European Federation of Biotechnology ("the EFB"). The complainant explained that he did not want the project to suffer from their disagreements. The Commission replied that, in order to be able to complete the contract negotiations, a transfer of the project had to be agreed upon by all partners involved in the EAGLES project, that is, among others, the legal entities constituting the EFB, which itself was not a legal entity. Following some further correspondence on the matter, the complainant informed the Commission, by letter of 16 March 2005, that he was prepared to remain as the co-ordinator since the President of the EFB had resigned.

By letter of 25 April 2005, the Commission put forward concerns as to whether the human resources needed in order to carry out the project were still available. For this reason, it had requested the written agreement of the core partners. Since no such agreement had been submitted, the Commission considered that it was unable to accept the project proposal.

By letter of 17 May 2005, the complainant withdrew the proposal and asked for the Commission's confirmation of the withdrawal. According to the complainant, new developments had made it more appropriate to submit a new proposal. The Commission replied on 2 June 2005, explaining that, since the proposal had been made on behalf of the EFB, which, in the meantime, had acquired legal personality, the only organisation that could withdraw the proposal was the EFB. In his reply dated 23 June 2005, the complainant argued that the proposal had *not* been made on behalf of the EFB, but that it had been submitted by him with the Cambridge Biomedical Consultants ("CBC") as the legal entity. By letter of 6 July 2005, the Commission cited a number of passages in the proposal which, in its view, indicated that the proposal had been submitted on behalf of the EFB. The Commission further explained that it had resumed contract negotiations with the relevant EFB representatives.

In a letter to the Commission of 13 July 2005, the complainant maintained that the proposal had not been made on behalf of the EFB. According to the complainant, CBC had been the legal entity submitting the proposal because the EFB was not a legal entity at the time. If the situation had changed in that regard, it would have been normal and good administrative practice to inform the parties thereof and to seek the agreement of all affected parties when deciding on their new roles. The complainant further argued that the transfer of the project under way was not to the EFB as a legal entity, but to another entity, the Catalan Research Foundation, which was unknown to most of the participants in the EAGLES project. The fact that the complainant had neither been informed of the transfer, nor been offered any opportunity to discuss it, was contrary to good administrative practice. Furthermore, not all participants had agreed to the



changes in the EAGLES proposal and a number of them had withdrawn or made their involvement conditional. Finally, the status of the EFB as a legal entity still had to be approved by its General Assembly, which was to meet on 21 August 2005. It therefore appeared that the procedures that had been followed were flawed. Only a few members of an as yet inexistent legal entity, i.e., the EFB, claimed to be acting in its name, without providing any evidence of having obtained a mandate from its members or from all the participants of the project.

By letter of 23 August 2005 to the Ombudsman, the complainant stated that, since his letter of 13 July 2005 had been brief, leaving the documents attached to it to speak for themselves, he considered it helpful to set out the main issues as he saw them:

His main concern was that the Commission, after a positive evaluation of the project proposal, had begun contract negotiations with another organisation, namely, the Catalan Foundation for Research, without informing or involving him. In addition, the Commission was wrong to argue that the project proposal had been made on behalf of the EFB. The Commission had provided no proof in this regard. The Commission had failed to give him the opportunity to discuss the proposal before any action affecting his rights was taken, despite his being the proposer and co-ordinator of the project.

The complainant alleged that the Commission had:

- Wrongly concluded that the project proposal had been submitted on behalf of the EFB;
- Failed to give him the opportunity to discuss the proposal before any action affecting his rights was taken, despite his being the proposer and co-ordinator of the project;
- Wrongly initiated contract negotiations with another organisation without informing him.

The complainant claimed that:

- The Commission should confirm that the proposal was submitted by him as the co-ordinator, with the EFB acting as one of the supporting organisations; that the proposal was not submitted on behalf of the EFB; and that he therefore remains in contract negotiations with the Commission.
- The Commission should invite him to revise and update the project in consultation with its services and with potential participants. Such a revised and updated project should take a specific form, should be run under the aegis of the EFB Task Group on Public Perceptions of Biotechnology and should be co-ordinated by Professor Karel Luyben, Dean of the Faculty of Applied Sciences at the Delft University of Technology.
- If the above would not be possible, contract negotiations with the Catalan Research Foundations should be terminated, allowing the funds to be used for another more up-to-date project.
- Should the project be withdrawn or contract negotiations be continued with the Catalan Research Foundation or any other organisation, he and his staff should be compensated for the costs they incurred in preparing and submitting the proposal.

THE INQUIRY

The Commission's opinion



The Commission's comments, made in its opinion, can be summarised as follows.

Background

The EAGLES Food Forum proposal was submitted by the complainant in his capacity as Acting General Secretary of the European Federation of Biotechnology (the EFB). The EFB was not a registered legal entity at the time of submission. In such cases, the Commission's practice is to consult the legal entities forming the organisation, since the submission represents their interests. It is clear that a grant agreement between the Community and the interested parties could only be entered into with a legal entity. The proposal was to be carried out at the EFB's Delft Regional Branch Office, under the complainant's non-profit limited company, registered in the United Kingdom as "Cambridge Biochemical Consultants Ltd" ("CBC"). The EAGLES proposal was submitted as a Specific Support Action ("SSA"), which may be executed by at least one legal entity established in a Member State or in an Associated country. EAGLES is an international initiative set up through members of the EFB. EAGLES has been established as a formal Task Group of the EFB, the "EFB EAGLES Task Group". The specific EAGLES Food Forum is part of the global EAGLES initiative, which was submitted to the Commission as a proposal under the Sixth Framework Programme. The EAGLES Food Forum is composed of an international consortium of 34 individual participants. The Chairman of the EAGLES Food Forum is Professor M., in his capacity as Chairman of the already existing EAGLES Task Group of the EFB. The complainant, as Acting General Secretary of the EFB at the EFB Delft Regional Branch Office, provided the administrative support for the EAGLES initiative and, as such, submitted the EAGLES Food Forum proposal.

The EAGLES proposal was evaluated in March 2004 by independent experts from outside the Commission, in accordance with the procedures published and applied under the Sixth Framework Programme. On 29 April 2004, the Commission informed the complainant, in his capacity as co-ordinator of the proposal, of the evaluation results. On 4 June 2004, the Commission opened contract negotiations with the complainant for the proposal in question. After a period of negotiations through correspondence and meetings with the complainant as the co-ordinator, a first draft Technical Annex to the contract and Contract Preparation Forms were received by the Commission on 1 July 2004, followed by a revised version on 6 September 2004. On 4 December 2004, the complainant asked the Commission to transfer the co-ordination activities of the proposal from him to Professor Karen Luyben, a former president of the EFB. On 23 December 2004, the Commission acknowledged receipt of the complainant's request, informing him that it had been forwarded to the legal department of the Commission's Directorate-General ("DG") for Research.

During the period 14 December 2004 to 19 January 2005, the President of the EFB informed the Commission that, as of 1 September 2004, the complainant was no longer General Secretary of the EFB, a member of the Executive Board of the EFB, Secretary of the EFB Task Group EAGLES, or Manager of the EFB Regional Branch Office Delft. This change in the complainant's above situation was the result of the fact that the Regional Branch Office status of his company, CBC, had been revoked by the EFB. The Commission was further informed that the EFB Central Office was going to be moved to Barcelona as of 1 March 2005, and that the EFB had taken steps to acquire legal personality as of February 2005. The EFB further informed the Commission that it had not been consulted on the proposed transfer of the



co-ordination of the project to Professor Karen Luyben, who had so far not been part of the proposal and was not a member of the EFB Executive Board. The EFB could not, therefore, under any circumstances, accept the transfer, but would be pleased to arrange the transfer of co-ordination activities to another legal entity in the EFB framework, for example to the new EFB Central Office in Barcelona. Confirmation of the above information was received from Professor M. in his capacity of Chairman of the EFB EAGLES Task Force and the EAGLES Food Forum.

In its reply of 17 January 2005 to the complainant, the Commission stressed that it was of the opinion that the proposal had been submitted by the complainant on behalf of the EFB, given that, at the time, the EFB was not a legal entity and that the rules governing the Sixth Framework Programme require that only legal entities can participate in Community funded projects and to submit proposals. Therefore, only the legal entities constituting the membership of the EFB could be considered to be the legitimate proposers in this case and it was they who should request the transfer of the co-ordination activities. As soon as the transfer was effected, the Commission could resume the contract negotiations.

In reply of 26 January 2005, the complainant explained that he would do his best to obtain the information regarding a commonly agreed co-ordinator so that contract negotiations could be resumed as soon as possible. The Commission acknowledged receipt of his letter on 3 February 2005, and indicated that it looked forward to receiving, as soon as possible, the information on the commonly agreed co-ordinator.

By letter of 31 January 2005, the EFB Executive Management Committee asked the Commission not to consider any request or submission made by the complainant or any other person or group concerning EAGLES, without the formal written approval of the EFB. At the same time, in a letter also dated 31 January 2005, the President of the EFB confirmed the decisions taken by the EFB Executive Management Committee and Executive Board with respect to the involvement of the complainant in the different EFB groups.

On 9 February 2005, the complainant wrote to the Commission, explaining the problems that he had with the EFB and confirming his readiness to provide the necessary information on a commonly agreed co-ordinator. In its reply of 22 February 2005, the Commission reiterated its wish to receive written confirmation by all partners, including the EFB members central to the project, on a commonly agreed co-ordinator. Failure to receive this information by 18 March 2005 would be interpreted by the Commission as a wish not to finalise the contact negotiations, in which case the Commission would initiate procedures to reject the proposal. A copy of the same letter was sent to the Chairman of the EAGLES Food Forum.

By letter of 16 March 2005, the complainant stated that he was prepared to withdraw his earlier request to transfer the co-ordination tasks and to remain as the co-ordinator in order to complete the contract negotiations as quickly as possible. Together with his letter, the complainant attached a revised version of the EAGLES Food Forum Work Description, where structural modifications appeared, including the replacement of the statement "*activities are carried out on behalf of the European Federation of Biotechnology*" by the statement that activities are carried out "*in co-operation with the European Federation of Biotechnology*".



Further changes to the EAGLES Food Forum structure were proposed by the complainant in this letter. These changes included the condition that the project should be run under the aegis of the EFB Task Group on Public Perceptions of Biotechnology instead of under the original EFB EAGLES Task Group, and that Professor H. should become co-Chair of EAGLES. The complainant further claimed to have obtained from the EFB members all the necessary support for him to remain co-ordinator of the EAGLES Food Forum project, explicitly mentioning four members of the EAGLES Food Forum. However, the complainant had not been able to obtain the agreement of the main EFB members, who were central to the project (including the Chairman of the EAGLES Task Group and the EFB President). In addition to the four mentioned expressions of support, the complainant only provided agreements obtained from the consortium members at the time when the proposal was originally submitted and contract negotiations were initiated, that is, in early-mid 2004.

On 18 March 2005, the Chairman of the EFB EAGLES Task Group, who was also the Chairman of the EAGLES Food Forum and co-Chairman of EAGLES, wrote to the Commission, providing information on the re-organisation of the EFB, its establishment as a separate legal entity, and of EAGLES in particular. On behalf of the EFB Management Committee, the EFB Acting President and the EAGLES Chair Group, he proposed that (i) he would act as the co-ordinator of the EAGLES Food Forum and (ii) the Catalan Research Foundation, as the new Central Office of the EFB, would become the co-ordinator and sign the contract with the Commission. He confirmed that the proposed re-organisation had recently been agreed upon by the majority of the members of the EAGLES Food Steering Committee.

On 25 April 2005, the Commission replied to the complainant's letter, stating that he had not been able to demonstrate the institutional commitment of the parties to carry out the work because the letters of support from the core partners, including the EFB members central to the project, dated from when the proposal was submitted in 2004 and not from the period when the problems had emerged in 2005. The Commission was therefore no longer able to regard the complainant as the co-ordinator of the project.

On 3 May 2005, the Commission formally resumed negotiations with the EFB regarding the EAGLES Food Forum proposal. On 17 May 2005, the complainant wrote to the Commission that he wished to withdraw the EAGLES Food Forum proposal and that he considered submitting an updated and revised proposal in the next call for proposals to be launched under the Sixth Framework Programme. On 2 June 2005, the Commission replied to the complainant, reiterating that the EAGLES Food Forum had been submitted by CBC on behalf of the EFB and that, during the preceding months, it had become clear that the EFB had withdrawn its support for CBC to act on its behalf. In the meantime, the EFB had acquired legal personality so that it could enter into contractual arrangements in its own name. In view thereof, the only organisation that could withdraw the proposal was the EFB. On 23 June 2005, the complainant replied to the Commission, insisting that neither he nor CBC had submitted the proposal on behalf of the EFB and that he considered bringing the case before the European Ombudsman. On 6 July 2005, the Commission replied to the complainant, reiterating its position that the EAGLES Food Forum proposal had been prepared and submitted by CBC on behalf of the EFB. The Commission confirmed that it had therefore resumed negotiations with the relevant



EFB representatives, given that, in the meantime, the EFB had become a legal entity in its own right. On 13 July 2005, the complainant wrote to the Commission stating that he would turn to the Ombudsman. Meanwhile, the Commission had finalised the negotiations for the EAGLES Food Forum project with the EFB as the co-ordinator.

The complaint The allegation that the Commission wrongly concluded that the project proposal had been submitted on behalf of the EFB

From the EAGLES Food Forum proposal, it appears very clear that it was submitted by the complainant, as the Chairman of CBC, on behalf of the EFB. The EFB members, and particularly the EFB EAGLES Task Group, are clearly indicated as origin and leaders of the project. The complainant submitted the proposal as Acting General Secretary of the EFB, based at the EFB Delft Regional Branch Office. The co-ordinator's activities were to be carried out at the EFB Delft Regional Branch Office, under a non-profit limited company registered in the United Kingdom, namely CBC. CBC was to provide the legal entity required for entering into contract with the Commission since, at the time of submitting the proposal, the EFB was not a registered legal entity.

The Commission considers that extracts from the EAGLES Food Forum proposal confirm its conclusions:

- Page 2: " *List of participants: Coordinator: [the complainant], Acting General Secretary, European Federation of Biotechnology (EFB) " with an EFB e-mail address;*
 - Page 13: " *Co-ordinator: [the complainant], European Federation of Biotechnology Task Group Secretary, Netherlands (...) Role, complementarity and resources: [the complainant], as Acting General Secretary of the European Federation of Biotechnology (EFB) and Secretary of its Task Groups, will (...) ";*
 - Page 16: " *Prof. [D.], as President of EFB, will: provide experience and advice in all phases of the project on its strategic planning and general oversight (...) ";*
 - Page 17: " *Prof. [M.] (Chairman, EAGLES Food Forum & EFB EAGLES Task Group, Co-Vice Chairman EAGLES) (...) as Chairman of EAGLES Food Steering Committee (...), Prof. [M.] will: - provide leadership, expertise, experience and advice in all phases of the project, on its strategic planning and general oversight (...) ";*
 - Page 32: " *EAGLES was formed on the initiative of the EFB and is established as an EFB Task Group (...) ";*
 - Page 35: " *the project will be supervised and managed by the EAGLES Food Steering Committee, and co-ordinated and administered on a day-to-day basis by its EAGLES Food Communication Office. (...) The EAGLES Communication Office will be provided at the European Federation of Biotechnology Delft Regional Branch Office by [the complainant], Acting General Secretary of the European Federation of Biotechnology and Secretary of its five Task Groups (...) ";*
 - Page 37: " *Since the European Federation of Biotechnology is not a registered legal entity these activities are carried out by its Delft Regional Branch Office under a non-profit private limited company registered in the UK as 'Cambridge Biomedical Consultants Limited' (CBC) to provide the legal entity required for entering into contracts with the European Commission (...) "*
- The allegation that the Commission failed to give the complainant the opportunity to discuss the proposal before any action affecting his rights was taken, despite his being the proposer and co-ordinator of the project*



On three occasions (on 17 January, 3 February and 22 February 2005), the Commission asked the complainant to show that he had the necessary support from the EFB in order to make the changes he wanted regarding the co-ordination of the project. On 26 January and 9 February 2005, the complainant agreed to provide the requested information but, in the end, was unable to show that he had the necessary support. On 25 April 2005, the Commission informed the complainant that he had not been able to demonstrate the institutional commitment of the EFB to carry out the work and that the Commission therefore was not able to accept the complainant's proposal to act as the co-ordinator of the project. On 17 May 2005, the complainant informed the Commission that he wished to withdraw the EAGLES Food Forum proposal and that he would consider submitting an updated and revised proposal in the next calls to be launched under the Sixth Framework Programme. On 2 June 2005, the Commission replied to the complainant, reiterating its position that the EAGLES Food Forum proposal had been submitted by CBC on behalf of the EFB and that, during the previous months, it had become clear that the EFB had withdrawn its support for CBC to act on its behalf. In the meantime, the EFB had acquired legal personality so that it could enter into contractual agreements in its own name. In view thereof, the only organisation that could withdraw the proposal was the EFB. On 23 June 2005, the complainant replied to the Commission insisting that neither he nor CBC had submitted the proposal on behalf of the EFB. On 6 July 2005, the Commission replied to the complainant reiterating its position that the EAGLES Food Forum proposal had been prepared and submitted by CBC on behalf of the EFB. The Commission confirmed that it had resumed negotiations with the relevant EFB representatives given that, in the meantime, the EFB had become a legal entity in its own right. The Commission therefore is of the opinion that it has given the complainant ample opportunity to discuss the proposal and to submit the requested documents and that his rights have not been affected.

The allegation that the Commission wrongly initiated contract negotiations with another organisation without informing the proposer

In December 2004, when the issue of co-ordination arose, the Commission made it clear that its understanding, based on objective evidence, was that the proposal was submitted by CBC, represented by the complainant, on behalf of the EFB. This was clear from the information provided in the proposal and was indirectly recognised by the complainant since he accepted to provide evidence that he had the necessary support from the EFB. The Commission noted that the complainant's position changed several times during the period between December 2004 and June 2005. In December 2004, he asked for the tasks to be performed by the co-ordinator to be transferred to another organisation. In March 2005, he proposed to withdraw his transfer request, proposing that CBC remain as the co-ordinator, and finally, in May 2005, he stated that he wished to withdraw the proposal.

On 22 April 2005, the Commission informed the complainant that CBC could not be the co-ordinator of the project because it was clear that he no longer had the necessary support to act on behalf of the EFB. The Commission resumed formal contract negotiations with the EFB on 3 May 2005. In reply to the complainant's request to withdraw the EAGLES Food Forum proposal, the Commission informed him that only the EFB could withdraw the proposal. He was further informed, on 6 July 2005, that the Commission had resumed negotiations with the EFB. The Commission started the formal negotiations with the EFB after having informed the complainant that he could no longer be the co-ordinator. The Commission is of the opinion that



it rightly pursued negotiations with the organisation from which the proposal originated. Prior to doing so, the Commission gave the complainant ample opportunity to provide the requested evidence that he continued to enjoy the support of the EFB for the changes in co-ordination tasks that he was proposing.

The first claim

The Commission does not confirm the complainant's claim. Based on the evidence in its possession, the EAGLES Food Forum proposal was submitted by the complainant on behalf of the EFB.

The second claim

The Commission concluded the negotiations with the EFB, which had become a legal entity in its own right. The negotiated EAGLES Food Forum project remains under the leadership of the EFB EAGLES Task Group, as in the original proposal.

The complainant was not able to obtain the necessary support from the EFB regarding the different proposals that he made pertaining to changes in the co-ordination tasks.

The third claim

Contract negotiations were concluded with the EFB, which has become a legal entity in its own right, and not with the Catalan Research Foundation. The contract would also be concluded with the EFB.

The complainant's fourth claim

The Commission does not reimburse the costs of preparing and submitting proposals, either in cases where the proposal is retained for funding, or in cases where the proposal is not funded.

The complainant's observations

The comments made by the complainant in his observations can be summarised as follows.

The complaint *The allegation that the Commission wrongly concluded that the project proposal had been submitted on behalf of the EFB.*

In a letter of 23 June 2005, he wrote the following to the Commission:

" Unfortunately you seem to have been seriously misinformed when you say that 'the above project was submitted by Cambridge Biomedical Consultants (CBC) on behalf of the European Federation of Biotechnology (EFB)'. Nowhere in the proposal was this stated, or even intimated, nor has there ever been any agreement or contract to this effect in relation to this or any of the other similar proposals which I have made to the Commission. Like these it was submitted with all of the participants as individual and supporting organisations. Some seven individuals were members of the EFB among a total of thirty-six participants in this project. The EFB is clearly listed separately from the individuals as one of the 'Supporting Organisations' on the second page of the proposal and within (p.32/3), and this cannot in any way be construed as 'on behalf of'. "

In his letter of 18 March 2005 to the Commission, Professor M. claims that "*[a]s stated in the Food project proposal on page 14, and in the Health project proposal on page 12, the projects were originally to be carried out on behalf of the European Federation of Biotechnology (...)*". However, the phrase "*on behalf of*" does not occur in either proposal and the pages referred to contain no such reference, dealing only with the descriptions and roles of the participants. Furthermore, the location of the proposed EAGLES Communication Office has no relevance to



the question of whether or not the proposal was submitted on behalf of the EFB.

The Commission came to a similar misconception in its opinion as regards the revised version of the project Work Description, which concerned the carrying out of the project. The submission of the proposal "on behalf of" should be distinguished from the unrelated carrying out of the proposal.

None of the quotations from the proposal, listed by the Commission as bullet points, relates to the question as to whether the proposal was submitted on behalf of the EFB. Hence the Commission has failed to establish that the proposal was submitted on behalf of the EFB. The only existing evidence shows that the EFB was merely a supporting organisation.

The allegation that the Commission failed to give the complainant the opportunity to discuss the proposal before any action affecting his rights was taken, despite his being the proposer and co-ordinator of the project

The correspondence with the Commission, from January to July 2005, reflects his responsibility as the project's co-ordinator to protect the project in the wake of Professor D.'s criticism, and to propose feasible, pragmatic and beneficial ways in which the project could be handled and contract negotiations continued without delay. According to the publication "*Participating in European Research*", second edition, January 2004, the project co-ordinator is the contractor which provides the interface between the consortium and the Commission and assumes certain co-ordination tasks of the consortium by maintaining contact and communication with the Commission.

According to the Commission, the EFB had, "*in the meantime*", acquired legal personality. However, the EFB acquired legal personality only on 28 October 2005. Furthermore, the question of its acquiring legal personality is irrelevant to the project in question, since the project was proposed neither by the EFB nor on its behalf.

The Commission failed to inform him, as proposer and co-ordinator of the project, about the letters and e-mail correspondence sent to it by Professor D. on 16 December 2004, by Professor M. on 28 December 2004, and by Professor D., Professor M. and others on 19 January 2005. The Commission failed to give him the opportunity to discuss the content of that correspondence, which clearly affected his rights as a proposer and co-ordinator of the project. The Commission also failed to inform him or allow him to discuss, at any time, the fact that it resumed contract negotiations with the EFB. He only learned about this fact through an e-mail from the European Science Foundation on 9 May 2005, in which it explained that the Commission was eager to start the EAGLES project, that a revised proposal was in the process of being submitted and that the contract holder would be the Catalan Foundation for Research.

Furthermore, the resumption of contract negotiations with the EFB on 3 May 2005, even though the latter did not become a legal entity until 28 October 2005, contravened the Rules for Participation in the Sixth Framework Programme (2), since only legal entities may participate in project proposals, formal negotiations and contracts under the Programme. Furthermore, since he was the proposer and co-ordinator, the communications between the Commission and the project's participants should have gone through him.



In its opinion, the Commission also failed to refer to a number of matters about which he had informed it, such as, for example, the argument that Professor M. only obtained the agreement for his proposal regarding the project from 11 of the 36 participants in the project, despite the Commission's requirement that all participants had to agree. For instance, the complainant was not asked to agree, as a participant, to Professor M.'s proposal.

Nor was it true, as stated by the Commission, that the EFB had withdrawn its support for CBC to act on its behalf. Several leading members of the EFB supported him as proposer and co-ordinator. Their support has continued throughout, as has that of the majority of the EFB members who have also stated that they have not been provided with full and accurate information about the matter.

The allegation that the Commission wrongly initiated contract negotiations with another organisation without informing the proposer

The Commission has provided no evidence in support of its argument that it informed him as the proposer that it had initiated contract negotiations with another organisation. It was only through the Commission's opinion that he was informed that contract negotiations had been resumed with the EFB on 3 May 2005.

The first claim

The Commission has not provided any evidence to support its stance that the proposal was submitted on behalf of the EFB. Nor did it inform him that he was no longer in contract negotiations with it in relation to the project.

The second claim

As explained to the Commission by letters of 17 May and 23 June 2005, he and his colleagues had come seriously to question the proposed EAGLES project, considering that it should be fundamentally reconsidered, since the aim of the project has been superseded by events. A more appropriate proposal has recently been submitted to the Commission's FP6-2005-FOOD-4-C Call, entitled " *Special Support Actions for Sub-Saharan Africa (SSA2FOOD)* ". The complainant expected and trusted that the Commission would evaluate and handle it according to good administrative practice and completely independently of the present matter.

The third claim

The contract should not be concluded, thereby allowing the funds to be used on an up-to-date, forward-looking and targeted project, providing for the now well-recognised needs of developing countries.

The fourth claim

Should the Commission conclude a contract for the EAGLES Food Project with the EFB, then the costs for the administrative support provided for the EAGLES programme, the preparation of the project proposal and subsequent contract negotiations and loss of income from the project, including legal fees and time spent by him and his staff, would be due from the EFB as a consequence of the actions taken by its former President, Professor D., and certain of its members. As a result of its various failings and adverse actions giving rise to costs, the Commission may be deemed jointly liable under Article 41 of the Charter of Fundamental Rights of the European Union.

Conclusions

The Commission's opinion provided no indication that it made any attempt to investigate the



serious attacks made on him by Professor D., which initiated the matter complained about. The Commission appears to have accepted, without question, the statements made by Professor D. and certain other people. Their correspondence with the Commission, which the latter used to support its actions, consists of opinions, orders and actions entirely without evidence. The burden of proof therefore rests with the Commission to produce evidence to substantiate the opinions, orders and actions made by Professor D. in relation to the project, and to show that this evidence is sufficient to justify its finalising the negotiations for the EAGLES Food Forum project with the EFB as the co-ordinator.

The complainant stressed that the matter concerns an important principle for him, his aim being to ensure that the European tax payers' money is used in providing genuinely significant and tangible benefit for the poor and needy in the developing countries. He further expressed his regret for the unfortunate situation that had emerged and his respect for the Commission, with which he has had good relations during so many years. He concluded by stating his hope that a friendly solution could be found.

Further inquiries

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

On the basis of the arguments put forward by the complainant in his observations, it appeared necessary to ask the Commission the following questions.

The allegation that the Commission wrongly concluded that the project proposal had been submitted on behalf of the EFB

Could the Commission please explain how it came to the conclusion that the proposal was submitted " on behalf of " the EFB, given that the complainant argues:

(1) that nowhere in the proposal was the phrase " on behalf of " mentioned,

(2) that only seven individuals out of thirty-six participants in the project were members of the EFB and

(3) that the EFB was merely listed as one out of three " supporting organisations " ?

The allegation that the Commission failed to give the complainant the opportunity to discuss the proposal before any action affecting his rights was taken, despite his being the proposer and co-ordinator of the project, and the allegation that the Commission wrongly initiated contract negotiations with another organisation without informing the proposer

(4) Before it decided to agree to a new co-ordinator, did the Commission inform the complainant about, and allow him the opportunity to comment on, the letters and e-mail correspondence sent to it by Professor D on 16 December 2004, by Professor M on 28 December 2004, and by Professor D, Professor M and others on 19 January 2005, suggesting that the complainant should be replaced as co-ordinator for the proposal?

(5) When did the Commission inform the complainant that it had resumed contract negotiations with the EFB?



(6) When did the Commission inform the complainant that he was no longer in contract negotiations with it?

(7) Could the Commission please explain its stance that it could take up contract negotiations with the EFB on 3 May 2005 because the EFB had obtained legal personality, given that the complainant argues that the EFB only obtained legal personality on 28 October 2005?

(8) Could the Commission please explain its approval of Professor M's proposal on how to pursue the project proposal, given that the complainant argues that Professor M had only obtained the agreement of eleven out of thirty-six participants in the project?

The complainant also appeared to have made a new argument in support of his second allegation, that is, that the Commission failed to give him the opportunity to discuss the proposal before any action affecting his rights was taken, despite his being the proposer and co-ordinator of the project.

It therefore appeared appropriate to ask the Commission the following:

(9) Could the Commission please comment on the complainant's argument that the Commission accepted, without question, the statements made by Professor D and certain other people, on the basis of which it decided to finalise the negotiations for the project with the EFB as the co-ordinator?

The Commission's reply

The Commission's reply to the Ombudsman's further inquiries can be summarised as follows.

Question 1

It is true that in Part A (Proposal Forms) of the original EAGLES Food Forum proposal, the words " *on behalf of* " do not appear. However, there are a number of other elements mentioned in Part B (Description of Work) of the proposal that clearly show that the proposal was submitted on behalf of the EFB. As declared by the complainant on page 5 of Part B, the proposal was made by the members of the Food Forum of EAGLES. EAGLES was, and still is, a Task Group within the EFB. Furthermore, early draft versions of Part B mentioned that the work would be carried out " *on behalf of* " the EFB. This was changed in the version of 2 July 2004 to " *in collaboration with* " the EFB.

Question 2

The Commission considered the legal entities that were the members of the EFB as the legitimate proposers. EAGLES is an international initiative set up through members of the EFB (initially conceived and developed by Professor D., at the time he was president of the EFB, and five other people, one of whom is the current president of the EFB). EAGLES is established as a formal Task Group of the EFB. The EAGLES Food Forum is an activity of the global EAGLES initiative. This, combined with the evidence given under the first question, clearly shows that the proposal was made on behalf of the EFB, and particularly its EAGLES Task Group.

Question 3

In view of what has been explained as regards questions 1 and 2, the Commission is of the opinion that the EFB was not merely a supporting organisation but was at the origin and core of the submission of the proposal.



Question 4

On 4 December 2004, the Commission was informed for the first time, by the complainant himself, of the problems in the project. The complainant requested that the co-ordination of the project be transferred because of " *serious attacks on his person by the President of the EFB* ".

Question 5

By letter of 6 July 2005, the Commission reiterated its earlier stated position that the EAGLES Food Forum proposal had been prepared and submitted by CBC on behalf of the EFB. The Commission confirmed that it had therefore resumed contract negotiations with the relevant EFB representatives, given that, in the meantime, the EFB had become a legal entity in its own right.

Question 6

This was communicated to the complainant in several letters, dated 25 April, 2 June and 6 July 2005.

Question 7

The royal decree by which legal personality was given to the EFB as an international " *association sans but lucratif* " was signed by the responsible Minister on 25 April 2005. It was published in the " *Moniteur Belge* " on 28 October 2005. It is the date on which the royal decree was signed, that is, 25 April 2005, which counts as the date as of which the EFB acquired legal personality. Independently, it should be noted that the Commission can negotiate with entities which do not have legal personality. What is important is that the entity has legal personality at the moment that the contract with the Commission is signed.

Question 8

Professor M. acted as the representative of the EFB, once it had acquired legal personality.

Question 9

The Commission did not consider these statements in reaching the decision to stop the negotiations with the complainant and start negotiations with the EFB. The complainant informed the Commission himself, on 4 December 2004, that because of problems with the EFB, he wanted to be replaced as the co-ordinator of the project. When it appeared that he did not have the necessary support from the EFB, the Commission informed him that he could no longer be considered to be the co-ordinator of the project. The Commission opened formal negotiations with the EFB once it was clear that the EFB had acquired its own legal status (by royal decree signed on 25 April 2005).

The Commission acted correctly under extremely difficult conditions in a conflict in which it was not a party and in which it tried not to take part. The Commission tried to strike a delicate balance between, on the one hand, the requirements to ensure a correct execution of the project and, on the other hand, the interests of the different persons and organisations involved. The Commission is of the view that, given the circumstances, the approach adopted was the best possible one.

The complainant's observations *Question 1*

The quotations from the proposal that the Commission refers to in attempting to explain how it came to the conclusion that the proposal was submitted on behalf of the EFB do not constitute evidence or proof that the proposal was submitted " *on behalf of EFB* ". EAGLES was formed at the initiative of a group of 14 people from a number of different organisations. The EAGLES Food Forum proposal comprised 36 participants, of whom 7, including the complainant, were



members of the EFB, and three, including the EFB, were supporting organisations.. As with all the other proposals submitted to the Commission by the complainant, the proposal was submitted on behalf of all the participants as individuals and supporting organisations, not on behalf of the EFB, which was one of the supporting organisations.

Question 2

As with the references made by the Commission in relation to *question 1* , the references made in relation to this question are all circumstantial and not pertinent.

Question 3

The Commission does not respond to this question beyond referring to its answers to questions 1 and 2.

Question 4

In its answer to the Ombudsman's questions, the Commission merely refers to earlier correspondence with the complainant concerning his request for a change of co-ordinator. The complainant only saw the letters and e-mails in question when they were attached to the Commission's opinion.

Question 5

It was not until 6 July 2005 that the Commission informed the complainant that it had resumed contract negotiations with the EFB. Importantly, the Commission only did so in response to a letter from the complainant, not on its own initiative, and only six months or more after having received the letters referred to in *question 4* .

Question 6

The Commission never informed the complainant that he was no longer in contract negotiations with it. It only informed him that it had entered into contract negotiations with the EFB.

Question 7

It may well be that the Commission is correct in saying that the EFB acquired legal personality on 25 April 2005 with the signing of the royal decree by the responsible Minister and not on 28 October 2005 with its formal publication in the "*Moniteur Belge*". Similarly, the complainant was not aware that the Commission can negotiate contracts with entities which do not have legal personality. However, the complainant would like these points of law to be confirmed.

Question 8

The Commission gives no explanation but merely states that "*Professor M acted as legal representative of EFB, having obtained legal personality*". The Commission entered into and completed contract negotiations with Professor M., acting as legal representative of the EFB, in the absence of any agreement of the other 25 participants. Such behaviour is inconsistent with the Commission's requiring the complainant "*to demonstrate the institutional commitment of the parties to carry out the work*", referred to under *question 6* above and used as the reason for the Commission's resuming contract negotiations with the EFB. The Commission's behaviour is discriminatory towards the complainant.

Question 9

The Commission's statement that it "*did not consider these statements in reaching the decision to stop the negotiations with [the complainant] and start negotiations with EFB*" is not true. If the correspondence in question had never taken place, the contract negotiations between the Commission and the complainant would have proceeded and led to a satisfactory conclusion.

The complainant also clarified that his claim that he and his staff should be compensated for



their costs incurred in preparing and submitting the proposal should not be understood to imply that these are equal to the normal costs of preparing and submitting proposals. The damages in question include the cost of the series of meetings and conference sessions commencing in January 2003 to gather support and participants for the two " *European Action on Global Life Sciences - EAGLES* " proposals organised by the complainant and his staff at the complainant's expense. It is these expenses and associated costs, together with damages resulting from the Commission's handling of the completion of the contract with another organisation, that the complainant wants the Commission to cover.

THE DECISION

1 Allegations that the Commission wrongly concluded that the project proposal had been submitted on behalf of the EFB and wrongly initiated contract negotiations with another organisation

1.1 The present part of the Ombudsman's decision will deal with the complainant's allegations that the Commission wrongly concluded that the EAGLES Food Forum project proposal had been submitted on behalf of the EFB and that it wrongly initiated contract negotiations with another organisation. The aspect of the latter allegation that relates to the alleged failure to *inform the complainant* of the contract negotiations will be dealt with in part 2 of the present decision.

1.2 The Ombudsman notes that the procedure in the context of which the EAGLES Food Forum project proposal was submitted was governed, in particular, by (i) the relevant Call for proposals ("the Call for proposals") (3) and (ii) the documents to which the Call for proposals referred, such as Regulation (EC) No 2321/2002 of the European Parliament and of the Council of 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006) (4) ("Regulation 2321/2002"). The relevant Guides published by the Commission, such as the Guide for proposers for Specific Support Actions (5) ("the Guide for proposers"), were also important, to the extent that they gave additional information and clarified certain issues regarding the procedure in question (6) .

1.3 The Ombudsman notes that the Call for proposals was made by reference to Article 9(1) of Regulation 2321/2002 (7) . For the analysis of the present case, the Ombudsman has taken into account, in particular, the provisions of (a) Articles 2, 8, 9, 10, 12, 13 and 15 of Regulation 2321/2002; (b) Point 4 of the Call for proposals and Point 11 of its Annex; (c) Point IV.2 of the Guide for proposers.

1.4 The Ombudsman notes, from page 2 of the EAGLES Food Forum proposal, that the proposal was to be implemented as a Specific Support Action ("SSA"). The "List of participants" appearing on the same page of this proposal first mentions the complainant as the co-ordinator and then, under the heading "EAGLES Food Forum", 13 "EU Life Scientists", 9 "DEC Life Scientists", 3 "Regulatory Specialists", 7 "Communication Specialists", 2 "Ethicists" and 3 "Supporting Organisations", one of which is the EFB. Furthermore, according to point B.1.2 of the project proposal, the latter was " *proposed by the members of the Food Forum of the*



European Action on Global Life Sciences (EAGLES), a high level network of scientists and humanists from Europe and the developing world ".

The Ombudsman remarks that the EAGLES Food Forum does not appear to be a legal entity. The Ombudsman also notes that nowhere in the proposal is it stated that it was submitted on behalf of the EFB.

1.5 Taking into account the above, the Ombudsman considers that it is clear that the EAGLES Food Forum project proposal could not be considered as the EFB's proposal or as a proposal submitted on behalf of the EFB. Recalling Article 2, paragraphs 7 and 8, of Regulation 2321/2002, the Ombudsman finds the EAGLES Food Forum project proposal to be a joint proposal of all the legal entities (natural and legal persons) appearing on page 2 of the proposal as "participants". The EFB was neither a natural nor a legal person and, hence, could not even be considered as a "participant" in the joint proposal.

1.6 It follows from the argumentation and documentation submitted by the complainant and by the Commission in the present case that, after the Commission had selected the EAGLES Food Forum project proposal for potential funding and after the relevant contract negotiations had been initiated, both the complainant and the EFB (or, at least, certain leading members of the EFB (8)) requested a change of co-ordinator. It appears that a conflict had arisen between the complainant and the President and other leading members of the EFB, who no longer offered the support of the EFB for the project, with the complainant acting as the co-ordinator. Subsequently, both the complainant and the EFB (or, at least, certain leading members of the EFB) expressed their willingness to assume the co-ordination of the project, and sought certain new arrangements for the management and carrying out of the project.

1.7 The Ombudsman has found that Regulation 2321/2002, the Call for proposals and the Guide for proposers do not explicitly state whether, and under which circumstances, a request for a change of co-ordinator could be accepted by the Commission. Nor do there appear to be any provisions governing, more generally, how situations like the one that arose within the group of participants in the EAGLES Food Forum proposal should be dealt with, that is, how the Commission should act after receiving information, before the conclusion of the grant agreement, that there is a disagreement among the participants. The Ombudsman further notes, in this regard, that there does not appear to have been a consortium agreement between the participants addressing these matters.

1.8 Moreover, the Ombudsman considers that the changes and new arrangements sought by the complainant and the EFB (or, at least, certain leading members of the EFB) mainly appear to pertain to management and organisational aspects of the project, which are essential elements of the proposal, subject to evaluation under Article 10(1)(b) of Regulation 2321/2002. Under these circumstances, and taking into account that the proposal was the joint proposal of all the legal entities (natural and legal persons) appearing on page 2 of the proposal as "participants", these changes could not, in the Ombudsman's view, be accepted by the Commission without the prior agreement of all participants. However, the Ombudsman notes, in light of the arguments and documents submitted by the parties during the course of the inquiry,



that neither the complainant, nor the EFB, managed to obtain the agreement of all participants to the proposed changed arrangements. The Ombudsman therefore considers that the proposal could no longer be seen as active and viable and that the Commission should have rejected it.

1.9 On the basis of the above, the Ombudsman finds that, by concluding that the EAGLES Food Forum project proposal was submitted on behalf of the EFB and by initiating contract negotiations, in relation to this proposal, with the EFB, the Commission committed an instance of maladministration. In light of his assessment on the complainant's claims (see point 3 of the present decision), the Ombudsman does not consider it justified to make a friendly solution proposal or a draft recommendation. The Ombudsman will, thus, make a critical remark in that regard below.

1.10 In addition, the Ombudsman considers that the changes to the proposal sought by the complainant and by the EFB (or, at least, by certain leading members of the EFB) could lead to a substantially revised proposal. The Ombudsman notes, in this regard, that the requests in question were made after the expiry of the deadline for submitting proposals established in the Call for proposals, a possibility not provided for in the relevant legal framework (9). In such circumstances, the principle of equal treatment of applicants for grants, mentioned in Article 109 of Council Regulation (EC) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (10) ("Regulation 1605/2002"), comes into play. Hence, in such a case, principles of good administration require the Commission to examine whether acceptance of the revised proposal would be compatible with the above-mentioned principle. This examination has to be carried out even before asking all participants in the project to agree to the changes. The Ombudsman will make a relevant further remark below.

2 Allegations that the Commission failed to give the complainant the opportunity to discuss the proposal before any action affecting his rights was taken and to inform him that contract negotiations had been initiated with another organisation

2.1 In light of the analysis and findings made in point 1 of the present decision, the Ombudsman finds no grounds further to inquire into, and consider, the Commission's alleged failure to give the complainant the opportunity to discuss the proposal before any action affecting his rights was taken and the failure to inform him that contract negotiations had been initiated with the EFB.

3 The complainant's claims

3.1 The complainant claimed that:

- The Commission should confirm that the proposal was submitted by him, as the co-ordinator, with the EFB acting as one of the supporting organisations; that the proposal was not submitted on behalf of the EFB.
- He should remain in contract negotiations with the Commission. The Commission should invite him to revise and update the project in consultation with its services and with potential participants. Such a revised and updated project should take a specific form, should be run under the aegis of the EFB Task Group on Public Perceptions of Biotechnology and should be co-ordinated by Professor Karel Luyben, Dean of the Faculty of Applied Sciences at the Delft University of Technology.
- If the above would not be possible, contract negotiations with the Catalan Research



Foundations should be terminated, allowing the funds to be used for another more up-to-date project.

- Should the project be withdrawn or contract negotiations be continued with the Catalan Research Foundation or any other organisation, he and his staff should be compensated for their costs in preparing and submitting the proposal.

3.2 On the basis of his analysis and findings in point 1 of the present decision, the Ombudsman reiterates that the proposal at issue was not the complainant's or EFB's proposal but rather the joint proposal of all the legal entities (natural and legal persons) appearing on page 2 of the proposal as "participants". The Ombudsman cannot, therefore, accept the first part of the complainant's first claim. The Ombudsman finds no grounds further to pursue the second part of the first claim since such a confirmation would not lead to the result sought by the complainant through his second claim.

The Ombudsman would also like to reiterate that the proposal can no longer be seen as active and viable. Accordingly, the complainant's second claim, and his relevant claim for damages formulated in his observations on the Commission's reply to the Ombudsman's further inquiries, cannot be accepted.

Moreover, since it seems that a contract for the project has already been signed, the Ombudsman finds no grounds to further pursue the complainant's third claim.

As regards the fourth claim, the Ombudsman recalls that, in general, the Community is not liable for expenses incurred during the preparation of a grant application. Furthermore, as concluded in point 1.5 of the present decision, the EAGLES Food Forum project proposal was made by all participants in it, not merely by the complainant. In this regard, the Ombudsman notes that the recovery of expenses, such as the ones concerned by the fourth claim, is normally a matter pertaining to the internal relationships and arrangements between the participants. The Ombudsman, therefore considers that the claim in question must fail.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The EAGLES Food Forum project proposal could not be considered as the EFB's proposal or as a proposal submitted on behalf of the EFB. Moreover, the changes to this proposal and new arrangements sought by the complainant and the EFB mainly appear to pertain to management and organisational aspects of the project, which are essential elements of the proposal, subject to evaluation under Article 10(1)(b) of Regulation 2321/2002. Under these circumstances, and taking into account that the proposal was the joint proposal of all the legal entities (natural and legal persons) appearing on page 2 of the proposal as "participants", these changes could not be accepted by the Commission without the prior agreement of all participants. It appears that neither the complainant nor the EFB managed to obtain the agreement of all participants to the proposed changed arrangements. Therefore the proposal could no longer be seen as active and viable and the Commission should have rejected it. By concluding that the EAGLES Food Forum project proposal was submitted on behalf of the EFB and by initiating contract



negotiations with that organisation, the Commission, thus, committed an instance of maladministration.

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

FURTHER REMARK

The Ombudsman considers that the changes to the proposal sought by the complainant and by the EFB (or, at least, by certain leading members of the EFB) could lead to a substantially revised proposal. In such circumstances, the principle of equal treatment of the applicants for grants, referred to in Article 109 of Regulation 1605/2002, comes into play. Hence, in such a case, principles of good administration require the Commission to examine whether acceptance of the revised proposal would be compatible with the principle of equal treatment. The Commission should carry out this examination even before it asks all the participants for their agreement to the changes.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

- (1) EAGLES stands for "European Action in Global Life Science".
- (2) Regulation (EC) No 2321/2002 of the European Parliament and of the Council of 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006), OJ 2002 L 355, p. 23. See, in particular, Article 1(8).
- (3) Commission Call for proposals for indirect RTD actions under the specific programme for research, technological development and demonstration: 'Integrating and strengthening the European Research Area', Thematic priority area: 'Food quality and safety', Call identifiers: FP6-2003-Food-2-A and FP6-2003-Food-2-B, OJ 2003 C 266, p. 14.
- (4) OJ 2002 L 355, p. 23.
- (5) Guide for Proposers, Priority 5, Food Quality and Safety, Integrating and Strengthening the European Research Area, Priority Food Quality and Safety Call 2, Call identifier FP6-2003-FOOD-2-A + B, Reference No. E_PGSS_200301_En.pdf.
- (6) Cf. Ombudsman's decision on complaint 3693/2005/ID, point 1.3.
- (7) See point 1, paragraph 3 of the Call for proposals.



(8) The Ombudsman has not been provided with specific information on who was entitled, according to the EFB's internal regulations, to represent that organisation before it acquired the status of a legal entity.

(9) The Ombudsman recalls, in this regard, that Article 15 of Regulation 2321/2002 concerns changes in consortium membership which take place after the grant agreement has been signed.

(10) OJ 2002 L 248, p. 1.