

## Decision of the European Ombudsman closing his inquiry into complaint 277/2008/(IG)IP against the European Commission

Decision

**Case 277/2008/(IG)IP - Opened on 28/03/2008 - Decision on 11/11/2009**

### THE BACKGROUND TO THE COMPLAINT

1. The complainant represents a consultancy firm. His complaint relates to the Commission's decision to close the Euro Info Centre network ('the EIC network') [1] and replace it with the Enterprise Europe network ('the EEN network') [2]. More specifically, the complaint concerns the Commission's alleged failure to inform the complainant in due time of the above decision, and its refusal to allow his firm to join the EEN network.
2. The complainant's firm was a member of the *Bureau des rapprochement des Entreprises* ('the BRE network') [3]. In 2003, the Commission decided to close the BRE network and the database which supported it.
3. The complainant, as well as the other former members of the BRE network, had the possibility to request access to the EIC network database, namely, the Business Cooperation Database (BCD). By letter of 30 September 2004, the Commission invited the complainant to sign a declaration concerning the use of the database. On 13 October 2004, the complainant signed the declaration. Thereafter, he was allowed access to the BCD.
4. On 15 December 2006, the Commission published an open call for proposals [4] to select the partners for the new EEN network.
5. According to the complainant, he received a message from the Commission at the end of November 2007. The institution informed him that the BCD would be closed as from January 2008 and would be replaced by the EEN network database. Access to the EEN network database would be granted only to those of its partners who were selected under the above-mentioned call for proposals.
6. On 29 January 2008, the complainant turned to the Ombudsman.



## THE SUBJECT MATTER OF THE INQUIRY

7. On 28 March 2008, the Ombudsman opened an inquiry into the following allegations and claims:

Allegations :

- The Commission failed to contact the former BRE members [5] individually at the time it took the decision to close the EIC network and the database which supported it.
- The Commission failed to inform the complainant in due time of the call for proposals to participate in the new network, namely, the EEN network.

Claim :

The Commission should allow the complainant to join the EEN network.

## THE INQUIRY

8. On 28 March 2008, the Ombudsman opened an inquiry and asked the Commission for an opinion on the complainant's allegations and claim. In his letter opening the inquiry, the Ombudsman asked the institution to provide information on (i) whether and how the former BRE members using the BCD were informed of the closure of the EIC network; and (ii) whether the Commission advertised the call for proposals to the members of the EIC network, including those who were former BRE members. The Commission's opinion was forwarded to the complainant, from whom the Ombudsman received observations on 22 October 2008.

## THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

### A. Preliminary remarks

9. In light of the inquiry carried out, the Ombudsman considers that the two above mentioned allegations can be summarised as follows: the Commission failed to contact the complainant individually and to inform him in due time of the call for proposals to participate in the new network.

### B. The complainant's allegation

*Arguments presented to the Ombudsman*

10. The complainant alleged that the Commission failed to contact him individually and to inform him in due time of the call for proposals to participate in the new network, namely, the EEN



network.

11. In its opinion, the Commission first set out the following background information.

12. After the BRE network was closed in 2003, its former members had the possibility to request access to the database of the EIC network [6]. The complainant submitted such a request, which the Commission subsequently granted. The Commission, however, underlined that it had no contractual relationship with the former members of the BRE network. The situation of the members of the EIC network and that of the former members of the BRE network, including the complainant, was therefore not comparable. The members of the EIC network, who unlike the members of the BRE network had a contractual relationship with the Commission, knew that the network was only financed for a limited time period. They were, in fact, informed about its phasing-out during two EIC Steering Committee meetings in June and November 2006.

13. With specific regard to the complainant's allegation, the Commission explained that the call for proposals in question was published in the Official Journal on 16 December 2006, in accordance with point 2 of Article 167 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ('the Financial Regulation') [7]. Additionally, it was posted on the official website of the European Union [8], from which the relevant documents could be downloaded. Furthermore, on 12 January 2007, an information day on the call for proposals was held in Brussels. The event could also have been followed live on the Internet. Finally, an online 'Question and Answer' facility was operational prior to the closure date for the call, which provided answers any questions raised regarding the services relating to the call. The answers to the questions were posted on the website where the call was published and were, therefore, available to any potential applicants. The Commission could not disclose any more specific information about this call for proposal before its publication because it may have breached both the public procurement rules and the principle of equal treatment among all potential stakeholders and future partners of the new network, the EEN network.

14. In his observations, the complainant maintained his allegation. He further stated that, to his understanding, the Commission had a privileged relationship with the members of the EIC network, since they had been informed about its phasing-out during two EIC Steering Committee meetings in June and November 2006. He also underlined that the members of the former BRE network were not aware of the information concerning the phasing out of the EIC network, since they did not have access to the minutes of these meetings and were only informed of the closure of the EIC network in December 2007.

#### *The Ombudsman's assessment*

15. On 15 December 2006, the Commission published an open call for proposals to select the partners for the EEN network. This network was meant to replace the existing EIC network and its database, the BCD, to which the complainant (who was a member of the former BRE network, closed by the Commission in 2003) had had access since October 2004. The complainant alleged that the Commission failed to inform him in due time of the publication of



this call for proposals.

16. The Ombudsman understands that, when the complainant alleged that the Commission failed to contact him individually and inform him in " *due time* " of the call for proposals to participate in the new network, he essentially wished to express a grievance about an alleged failure, by the Commission, to inform him *directly* of the publication of the call for proposals *before* the call for proposals was actually published. It appears that he made this allegation on the understanding that the members of the EIC network had in fact been given such information before the call was published. The complainant referred to the two meetings, held in June and November 2006, during which the members of the EIC network were informed of the phasing out of the network.

17. The Ombudsman notes that the tender procedures of the Community institutions must follow two fundamental principles: (i) the principle of sound financial management, as provided for in Article 274 of the EC Treaty, and in Article 3 and 27 of the Financial Regulation; and (ii) the principle of equal treatment and non-discrimination. The Ombudsman further notes that the principle of equal treatment of tenderers is a general principle of Community law [9] . In accordance with this principle, tenderers must be in an equal position when they formulate their tenders [10] . As the Commission has indicated, it is fundamentally incompatible with these rules and principles to give targeted potential bidders specific and privileged information on a public call for tenders prior to publication of that call.

18. The complainant essentially argued that the Commission appeared to have informed the members of the EIC network of such specific and privileged information. He, therefore, felt that he should have been informed as well.

19. The Ombudsman emphasises that, even if the Commission had expressly given privileged prior information to the members of the EIC network, this could not in itself have entitled the complainant to receive such information. Moreover, the Ombudsman cannot accept the above-mentioned interpretation of the facts that the complainant appears to have adopted. The minutes of the above-mentioned meeting in June 2006 stated that: "[in] *order to respect the rules governing public tenders, the Commission is unable to disclose detailed information [about the call] to the EIC network at this stage* ". A similar statement was made in the minutes of the meeting held in November 2007: "[s] *ince the call has not been published, the Commission is unable to disclose specific information to the EIC network. This would breach public procurement rules* ". In light of the above, it emerges that, even though the members of the EIC network were informed of the phasing out of this network, they did not receive any relevant specific information about the call for proposals here concerned.

20. In light of his above findings, the Ombudsman considers that there has been no maladministration corresponding to the complainant's allegation.

## C. The complainant's claim that the Commission should allow him to join the EEN network



21. Relying on his above allegations, the complainant claimed that the Commission should allow him to join the EEN network.

22. Given the Ombudsman's finding of no maladministration regarding the complainant's allegation, his claim cannot stand.

## D. Conclusion

On the basis of his inquiries into this complaint, the Ombudsman closes it with the following conclusion:

There has been no maladministration corresponding to the complainant's allegation. Accordingly, his claim cannot stand.

The complainant and the Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 11 November 2009

[1] The EIC was a network of business consultants who assisted small and medium sized enterprises (SMEs) with specific services in their search for cross-border cooperation. According to the Commission's website, the EICs "[a] re the result of a partnership between the European Commission and the local, regional or national organisations that host them. These can be Chambers of Commerce, regional governments, banks. They provide significant financial and logistical support, as well as access to their databases and information sources. These organisations are selected for their excellent integration in the local business environment, and the quality of their work. They are linked to the Commission by a contractual agreement." ( [http://www.enterprise-europe-network.ec.europa.eu/index\\_en.htm](http://www.enterprise-europe-network.ec.europa.eu/index_en.htm) [Link]).

[2] According to the Commission's website, the EEN "[c] ombines and builds on the former Innovation Relay Centres and Euro Info Centres. The new integrated network offers a 'one-stop shop' to meet all the information needs of SMEs and companies in Europe ( [http://www.enterprise-europe-network.ec.europa.eu/info/about\\_network\\_en.htm](http://www.enterprise-europe-network.ec.europa.eu/info/about_network_en.htm) [Link]).

[3] This refers to a transnational cooperation project launched by the European Commission to assist SMEs in their cross-border activities. The project ran until 2003, when the Commission decided to close the BRE network and its related database.

[4] OJ 2006 C 306/07, pp. 17-23.



[5] In his opening letter, the Ombudsman interpreted the complainant's allegation to mean that the Commission " *failed to contact the members of the EIC network* " (emphasis added). In fact, the reference should - as the Commission appears to have realised when drafting its opinion - have been to the members of the BRE .

[6] The network was based on a Framework Partnership Agreement (FPA) defining the framework of cooperation between the institution and each individual member. Additionally, a Specific Grant Agreement (SGA) set out the financial and contractual conditions for this cooperation.

[7] OJ 248 L 48, p. 1.

[8] <http://europa.eu> [Link]

[9] See Case C-57/01 *Makedoniko Metro* [2003] ECR I-1091, paragraph 69.

[10] See Case C-448/01 *EVN and Wienstrom* [2003] ECR I-14558, paragraph 47.