

Decision of the European Ombudsman closing his inquiry into complaint 814/2008/(IG)IP against the European Commission

Decision

Case 814/2008/(IG)IP - Opened on 22/04/2008 - Decision on 11/11/2009

THE BACKGROUND TO THE COMPLAINT

1. The complaint was submitted by a representative of the Italian agency *Studio di Consulenza per l'Unione Europea* (SCUE). It 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 of the call for proposals [3] to select the partners for the EEN network, which was published on 15 December 2006.

2. SCUE was a member of the *Bureau des rapprochement des Entreprises* ('the BRE network') [4] from 1998 onwards. In 2003, the Commission decided to close the BRE Network and the database which supported it.

3. The complainant, as well as other former members of the BRE network, had the possibility to request access to the EIC network database, namely, the Business Cooperation Database (BCD). The complainant made use of the BCD until 1 January 2008, when it was shut down and replaced by the EEN network database.

4. According to the complainant, she repeatedly requested information from the Commission concerning the procedure and conditions to be admitted to the future network [5]. However, the Commission informed her only in January 2008 that the selection of the partners for the EEN network had already taken place through the call for proposals published on 15 December 2006.

5. On 15 March 2008, the complainant turned to the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY



6. On 22 April 2008, the Ombudsman's opened an inquiry into the following allegation and claim:

Allegation :

The Commission failed to inform the complainant " *in good time* " of the call for proposals to participate in the new network.

The complainant stated that, despite numerous requests about the procedure and conditions of access to the future network, the Commission informed her only in January 2008 that the selection had already taken place through a call for proposals [6] .

Claim :

The Commission should allow the complainant to become a member of the EEN network for the year 2008. Alternatively, the Commission should publish a new call for proposals for those members of the BCD who were not duly informed how to join the EEN network.

THE INQUIRY

7. On 22 April 2008, the Ombudsman opened an inquiry and asked the Commission for an opinion on the complainant's allegation 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 database 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 20 November 2008.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation that the Commission failed to inform the complainant "in good time" of the call for proposals to select the partners of the EEN network

Arguments presented to the Ombudsman

8. The complainant alleged that the Commission failed to inform her " *in good time* " of the call for proposals to participate in the new network.

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



10. After the BRE network was closed in 2003, its former members had the possibility to request access [7] to the database of the EIC network [8] . The situation of the members of the EIC network and that of the former members of the BRE network, including the complainant, was, however, not comparable. The members of the EIC network, which 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 informed about its phasing-out during two EIC Steering Committee meetings in June and November 2006.

11. However, the former BRE network members, including the complainant, were also aware of the developments occurring within the EIC network, since they were granted ad hoc access to a section of the electronic message system of the EIC network, the 'BCD Conference'.

12. 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') [9] . Additionally, it was posted on the official website of the European Union [10] , 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 to 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 proposals before its publication because it may have breached both the Public Procurement rules and the principle of equal treatment of all potential stakeholders and future partners of the new network, the EEN network.

13. In her observations, the complainant gave a general overview of SCUE's activities. She emphasised the positive results obtained by the agency at the international level and pointed out that, following various meetings in Brussels [11] , she had hoped that the Commission would maintain its relationship with the former BRE members. The complainant did not make specific comments on the Commission's opinion and stated that she wished to express her personal feelings about the situation.

The Ombudsman's assessment

14. On 15 December 2006, the Commission published an open call for proposals to select the partners for the new EEN network. This network was meant to replace the existing EIC network and its database, the BCD. The Ombudsman considers that the BCD was closed in the context of the closure of the EIC network for which it had been created. The complainant did not contest the legality of the Commission's decision to close the EIC network.

15. The Ombudsman understands that, when the complainant alleged that the Commission failed to inform her " *in good time* ", she meant that the Commission failed to inform her *directly*



of the publication of the call for proposals *before* the call for proposals was actually published.

16. 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 [12] . In accordance with this principle, tenderers must be in an equal position when they formulate their tenders [13] . 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 the publication of that call.

17. 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. The minutes of the above-mentioned meeting of 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.

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

B. The complainant's claim that the Commission should allow her agency to join the EEN or, alternatively, publish a new call for proposals

Arguments presented to the Ombudsman

19. Relying on her above allegation, the complainant claimed that the Commission should allow her agency, a former user of the BCD database, to join the EEN network, or, alternatively, publish a new call for proposals for those members of the BCD which were not duly informed of how to join the EEN network.

20. In its opinion, the Commission did not accept the complainant's claim.

21. The complainant did not make comments on the Commission's opinion and she did not pursue her claim any further in her observations.

22. Given the Ombudsman's findings of no maladministration regarding the complainant's



allegation, her claim cannot stand.

C. 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, her 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] 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 [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 [Link]).

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

[4] This refers to a trans-national 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.

[5] The complainant did not submit further information concerning the correspondence she referred to in this regard.

[6] The Ombudsman included this point in his letter opening the present inquiry. In its opinion, the Commission pointed out that the complainant failed to support it by any evidence such as



copies of letters or e-mails written to the institution. She did not even refer to any specific conversation or correspondence with Commission officials. The Commission was, therefore, not in a position to comment on this aspect of the complaint. The Ombudsman notes that the complainant did not, in fact, submit any evidence of the above-mentioned correspondence in her complaint. Moreover, she did not comment on this part of the Commission's opinion. In light of the foregoing, the Ombudsman considers that it is not justified to pursue his inquiry further into this aspect of the case.

[7] From the content of the complaint, it is possible to assume that the complainant submitted such a request, which the Commission subsequently granted. She had, in fact, the possibility to use the BCD until the end of December 2007 (see paragraph 3 above).

[8] 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.

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

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

[11] In this regard, the complainant generally referred to some meetings that she apparently had with Mr M. and with Mr S. at the Commission. However, she did not provide any further information about those meetings, such as the capacity in which Mr M. and Mr S. participated in these meetings, when and where they took place, and whether there are any minutes or other documents relating to them.

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

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