

## **Decision of the European Ombudsman on complaint 1708/2014/JVH against the European Commission concerning a decision to reject the complainant's application to work on an EU-funded project**

Decision

**Case 1708/2014/JVH - Opened on 10/11/2014 - Decision on 19/05/2016 - Institution concerned** European Commission ( No maladministration found ) |

In July 2014, the Commission rejected the complainant's application to work as an expert on a project in Indonesia because she had already committed to work on an EU-funded project in Liberia taking place at the same time. The complainant re-applied when the project in Liberia was delayed due to the Ebola crisis, pointing out that she was in fact available to work on the project in Indonesia.

The Ombudsman found that the Commission is entitled to request experts to be available to work exclusively on projects for specified periods. She noted that the complainant had declared that she would be available to work, on an exclusive basis, on two overlapping projects. The complainant did not explain this contradiction when she made her initial application. On the basis of the information provided, the Ombudsman considers that the Commission was correct in rejecting the complainant's first application. With regard to the second application, the complainant did, in fact, state that the on-going Ebola crisis in Liberia meant that she was in fact free to work on the project in Indonesia. The Commission then re-examined her situation. In the Ombudsman's view, it made a fair and reasonable judgement when it concluded that the complainant was unable to guarantee her availability. Thus, the Ombudsman concludes, the Commission also did not err when it rejected her second application to work on the Indonesian project. However, it does leave questions as to how the Commission deals with the rights of experts caught up in crises such as the Ebola-outbreak.

The Ombudsman closed the inquiry with a finding of no maladministration. She suggested to the Commission that, where a project has to be suspended, it should be prepared to release any affected expert from an exclusivity commitment.

### **The background to the complaint**

1. The European Commission regularly hires experts to work on EU-funded projects world-wide. These projects are normally managed through the various EU Delegations around the world.



2. It is common for experts to be asked to sign a "Statement of Exclusivity", which serves to guarantee that they will be available to work on a project for a specified period.

3. In July 2014, the Commission rejected the complainant's application to work on a project in Indonesia when it found out, after examining her "Statement of Exclusivity", and her CV, that the complainant had already made a commitment to work on another EU-funded project in Liberia (which was taking place at the same time). The complainant then stated in a second "Statement of Exclusivity", that the project in Liberia had been delayed due to the Ebola crisis. As a result, she argued, she was in fact available to work on the project in Indonesia.

4. The Commission maintained its position. The complainant then turned to the Ombudsman.

#### **The subject matter of the inquiry**

5. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

Allegation :

The Commission should not have rejected the complainant's application to work for the Indonesia delegation.

Claim :

The Commission should provide an explanation as to why that application was rejected.

#### **The inquiry**

6. The Ombudsman requested the Commission to provide her with an opinion. The Commission provided the Ombudsman with its opinion. This was forwarded to the complainant, who made observations thereon.

## **Arguments presented to the Ombudsman**

7. The Commission stated that the complainant had, when she applied to work on the project in Indonesia, already made a commitment to work on an EU-funded project in Liberia (which was taking place at the same time).

8. The Commission noted that the Statements of Exclusivity, which the complainant was asked to sign for each project, read:

*"I confirm that I am not engaged in another EU-funded project in a position for which my services are required during the above periods ..."*



9. It then noted that the "*period of exclusive availability*" for the project in Liberia overlapped with the "*period of exclusive availability*" for the project in Indonesia.

10. As regards the complainant's argument that the project in Liberia had been delayed due to the Ebola crisis, and that she was therefore available to work on other projects during the period, the Commission pointed out that the complainant could not guarantee that she would be available for the period during which the project in Indonesia would take place.

11. The Commission also noted, as regards the project in Indonesia, that it had explicitly informed the company with which the complainant had a working relationship that, for operational reasons, the Commission "*could not allow for any possible delay resulting from the unavailability of personnel*".

12. The Commission thus contended that it had dealt with the matter fairly and properly.

13. The complainant stated that the project in Liberia was delayed due to the outbreak of the Ebola crisis and for other operational reasons. Therefore, she was available to work on other projects while the project in Liberia was on hold.

14. The complainant also contested the Commission's view that the period of exclusivity (for the project in Indonesia) covered the entire contract period (of 75 days). She argued that it should have covered only the period when she was required to work on the project in Indonesia (which was 37 days). These 37 working days could have been delivered, she argues, before **mid-September 2014**. She noted that the project in Liberia was still on hold at that time.

15. She then argued that the Commission's policy seriously limits the freedom of experts to work. She noted that, in light of the Ebola-related delays affecting the project in Liberia, she would not have been able to work for another EU-funded project until after August 2015 (when the Ebola crisis eventually abated). She stated that had she simply withdrawn from the delayed Liberian project, she would have risked exclusion from future projects.

16. The complainant also stated that she had previously worked on multiple EU-funded assignments at the same time.

## **The Ombudsman's assessment**

17. The Ombudsman notes that the Commission was factually correct when it found that there was an overlap between the two Statements of Exclusivity.

18. The Ombudsman notes that the complainant did not, when signing and submitting her first Statement of Exclusivity for the project in Indonesia, inform the EU Delegation to Indonesia that she had already signed another (overlapping) Statement of Exclusivity with the EU Delegation to Liberia. When the Delegation discovered that there was an overlap, it rejected her application



to work on the project. On the basis of the information at its disposal at that time, the Ombudsman considers that the EU Delegation in Indonesia was correct to reject the initial application of the complainant.

**19.** The EU Delegation to Indonesia then reopened the request for services, which gave the complainant the opportunity to clarify her situation. She again applied for the job. She stated that she had already signed a Statement of Exclusivity with regard to an EU-funded project for the EU Delegation to Liberia. She also stated that out of 50 working days that she was required to work on that project, only 25 working days remained. Furthermore, the next part of the project, which was initially scheduled to resume between May and June of 2014, was delayed due to the outbreak of the Ebola crisis. Therefore, her next period of involvement in the project in Liberia had not been scheduled yet. As a result, she argued, she should be allowed to take up other work.

**20.** Good administration requires that situations be assessed in light of the actual circumstances prevailing and not on the basis of an inflexible, pre-ordained approach. In the present case, good administration required the Commission to look beyond the simple fact that the complainant had signed two overlapping Statements of Exclusivity. Once it was informed by the complainant that there were unusual and serious circumstances (namely, the outbreak of the Ebola crisis) it was necessary for the Commission to look at those circumstances and to take a view as to whether they justified accepting the complainant's application.

**21.** The Commission did just that in this case. It examined the information provided by the complainant. The Ombudsman notes that the EU Delegation in Indonesia considered that, in light of the urgency of the project in Indonesia (which was about to start immediately), it needed absolute guarantees that experts would be available to work on its project immediately. It repeatedly stressed the urgency of the particular project. It also repeatedly stressed the need to carry out the required mid-term assessment quickly. It stated that it could not bear any risk of personnel being unavailable. It then came to the conclusion that the complainant could not provide an absolute guarantee that no interference with the Indonesian project would occur. In this context, it was unclear, in July of 2014, how the Ebola crisis was going to develop. It was thus quite possible, at that time, for the project in Liberia to recommence. The fact that, unfortunately, the Ebola crisis took many months to resolve was not something the Commission could have known in July 2014. That fact does not alter the Ombudsman's view that the Commission made a reasonable judgement call in July 2014 when it rejected the complainant's offer to work on the project in Indonesia.

**22.** The complainant contended that the 37 working days to be delivered on the project in Indonesia could have been delivered before mid-September 2014, at which stage the Liberian project was still suspended. While the project in Liberia may have been on hold at that time, it was also the case that it could have been restarted at any time in the relevant period (July/August/September 2014). Thus, the complainant could not have guaranteed that she would be available to work in that period.

**23.** The Ombudsman thus concludes that the Commission has indeed made a fair and



reasonable judgement call in this case.

24. The Ombudsman nevertheless has great sympathy for the situation in which the complainant found herself. Through no fault of her own, the project in Liberia was delayed due to the Ebola crisis for, as it eventually transpired, a considerable period of time. This does not imply that the Commission was wrong, in July 2014, to reject her application to work on the project in Indonesia. However, it does raise valid questions about how the Commission treats experts it has engaged who become caught up in the fall-out from crises such as the Ebola outbreak. The Ombudsman would expect that, once the Commission becomes aware that a project will be put on hold for a significant period, it should formally free personnel from their exclusivity commitments or compensate them for remaining bound by those commitments.

## Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion: **There has been no maladministration by the European Commission.** The complainant and European Commission will be informed of this decision. **Further Remark The European Commission should, when it becomes aware that a project must be suspended for a period of time, formally free experts from any relevant exclusivity commitments or, in the alternative, compensate those experts for the lost opportunity to take up other employment.**

Strasbourg, 24/05/2016

Emily O'Reilly

European Ombudsman