Европейски омбудсман

Решение по случай 1537/2008/(TJ)GG - Проблеми, свързани с обработването на заявление за субсидия с цел побратимяване на градове

Решение
Случай 1537/2008/(TJ)GG - **Открит на** 03/07/2008 - **Решение от** 04/11/2009

Вносителят на жалбата е асоциацията за побратимяване на градове на селище в Англия.

През ноември 2007 г. вносителят на жалбата е подал заявление за субсидия до EACEA. Заявлението касае среща във връзка с побратимяване на градове, която е трябвало да се проведе в контекста на проект по програмата „Европа за гражданите" на Европейската комисия за периода 2007-2013 г. На 10 април 2008 г. EACEA е отхвърлила това заявление на основание, че вносителят на жалбата не е представил подходящ документ за доказване на неговото учредяване.

В своята жалба до Омбудсмана вносителят на жалбата заяви, че отхвърлянето на документите, които е подал, е погрешно и произволно. Вносителят на жалбата също така заяви, че EACEA (i) не е спазила своя собствен краен срок за уведомяване на заявителите до 1 април 2008 г.; (ii) не го е уведомила за отхвърлянето на заявлението; (iii) предоставила е уеб адрес, който в действителност никога не работи; и (iv) е предоставила номер на гореща телефонна линия, на която е била пускана записана музика вместо да се дава полезна информация.

Омбудсманът стигна до предварителното заключение, че EACEA е действала неправилно, когато е счела, че вносителят на жалбата не е представил достатъчни доказателства за своето учредяване. Той също така счете, че възраженията на вносителя на жалбата относно процедурата са основателни.

Поради това Омбудсманът направи предложение за уреждане на спора по взаимно съгласие, в което предложи EACEA (i) да оцени повторно заявлението за субсидия на вносителя на жалбата; (ii) да се извини за получилото се забавяне и липсата на достатъчна информация относно това забавяне; и (iii) да преразгледа начина, по който работи нейната гореща телефонна линия.

В своя отговор EACEA уведоми Омбудсмана, че е поднесла своите извинения на вносителя на жалбата и е предприела стъпки за отстраняване на проблемите във връзка с въпросната гореща телефонна линия.

Що се отнася до въпроса по същество EACEA отбеляза, че е взела решение да оцени предложението за проект на вносителя на жалбата в съответствие с приложимите критерии за предоставяне. Тази оценка е довела до заключението, че предложението не отговаря на условията за предоставяне на субсидия.

Вносителят на жалбата уведоми Омбудсмана, че не е удовлетворен от този резултат. В следствие на това Омбудсманът извърши проверка на съответното досие на EACEA. Тази проверка доведе до неговото заключение, че не може да се открие явна грешка по отношение на оценката.

Поради това Омбудсманът приключи случая въз основа на факта, че в контекста на стъпките, предприети от EACEA в нейния отговор на предложението му за уреждане на спора по взаимно съгласие, не е необходимо допълнително разследване. При все това, Омбудсманът изрази становището, че би било полезно, ако EACEA обмисли предоставяне на по-подробна информация относно резултатите от оценката на вносителя на жалбата и на бъдещи заявители, които оспорват оценката на своите заявления.

THE BACKGROUND TO THE COMPLAINT

1. Dunston, a village in Lincolnshire (United Kingdom), is twinned with a village in France, Trangé. The complainant, 'Dunston Twinning Association', is a body created in order to deal with matters concerning Dunston's twinning projects.

2. In November 2007, the complainant submitted a grant application to the Education, Audiovisual and Culture Executive Agency ("EACEA"). This application concerned a meeting to be held within the context of a project under the 'Europe for Citizens' Programme 2007-2013 of the European Commission, which fell within Measure 1.1 ("Town twinning Citizens' meetings") of Action 1 ("Active citizens for Europe") of the said programme. The relevant meeting was due to start on 12 April 2008.

3. The relevant version of the 'Europe for Citizens' Programme Guide provided as follows:

" *To be eligible, the applicant must be the municipality in which the meeting takes place, or its twinning association/twinning committee with a legal status (legal personality), and be established in a participating country* ".

4. The Programme Guide further foresaw the following:

"Applicants must enclose with their application form: ... the legal entity form, duly completed and signed. For twinning committees/associations the legal entity form must be accompanied by an official document attesting to the establishment of the twinning committee/association

(articles of association, registration document indicating date and place of the registration), together with any related up-dates or changes. ..."

5. According to the 'legal entity form' to be submitted along with applications, the following had to be attached to it:

" a copy of the resolution, law, decree or decision establishing the entity in question;*

** or, failing that, any other official document attesting to the establishment of the entity by the national authorities"* .

6. The complainant supplied copies of the twinning charters drawn up by Dunston and its French partner village. Each was signed by the head of the local councils (the "maire" of the "conseil municipal" in France and the chairman of the parish council in England).

7. On 10 April 2008, the EACEA informed the complainant that its application did not meet the criteria set out in the Programme Guide. The letter noted the following:

"An official document attesting to the establishment of the entity is missing (see section 'What are the eligibility criteria? - Eligible applications' of the programme guide for town twinning citizens' meetings (measure 1.1)."

8. On 19 April 2008, the complainant asked the EACEA to reconsider its decision in light of the wording of the Programme Guide. The complainant expressed the view that it clearly fulfilled the second of the criteria set out there (" *registration document indicating date and place of the registration* "). It added that in previous, successful applications for funding from the Commission, the documents it sent to the EACEA had been accepted as proof of "the establishment of the entity" and of its legal status. The complainant stressed that the documents it had submitted were the only ones it had and that they had been accepted by all other organisations it dealt with, e.g., its bank.

9. On 29 April 2008, the complainant sent a reminder to the EACEA. It pointed out that it had twice telephoned the EACEA's "Town Twinning Hotline". According to the complainant, on each occasion it had received recorded music but no message of explanation. The complainant stressed that this was a waste of time and money and not the kind of service it would expect.

10. In its e-mail reply of 30 April 2008, the EACEA pointed out that the Programme Guide required applicants to submit a legal entity form and that, in the case of twinning committees/associations, this legal entity form had to be accompanied "by an official document attesting to the establishment of the twinning committee/association (e.g., articles of association, registration document indicating date and place of the registration)." The EACEA stressed that it was, therefore, not possible to grant privileged treatment in the present case. It added, however, that it appreciated the comments that had been made by the complainant and that these comments would be taken into account in the future.

11. In its reply, which was also sent on 30 April 2008, the complainant pointed out that it still did not know what was wrong with the documents it had submitted. It added that these documents had been accepted by the EU in previous applications during its 20 years of twinning. The complainant also submitted that, if the rules had been changed, it would have been fair to advise it much earlier. It further pointed out that the EACEA had not met its own deadline of 1 April 2008 for the allocation of monies and that it, that is, the complainant, had had to telephone the EACEA in early April in order to find out what had become of its application.

12. The EACEA replied on 14 May 2008, explaining that "where a twinning committee/association is not officially registered with a proof of registration (e.g., as a charity in the UK) the committee/association is still required to submit its founding constitution, statutes or similar document". According to the EACEA, this was not the same as the twinning charter the complainant had referred to, which was only proof of the twinning agreement. The EACEA added that the Programme Guide for the programme 2007-2013 established the framework for the town-twinning measures concerned and that any criteria that might have applied in the past were no longer relevant. It also submitted that the delay in publishing the list of selected projects was, as had been indicated on the EACEA's website, most regrettable but was due to circumstances outside the EACEA's control. As regards the hotline, the EACEA pointed out that the current configuration meant that recorded music was played when the line was occupied. The EACEA added, however, that it was considering changing this.

13. In its reply of 16 May 2008, the complainant reiterated its view that the documents it had submitted were sufficient. It further asked why it and other twinning associations had not been informed of the delay in the publication of the relevant list by e-mail. It pointed out that no information on the delay had been published on the website, which it had consulted several times. As regards the hotline, the complainant submitted that the EACEA's answer was absolutely appalling and constituted again poor customer service.

14. In its reply of 21 May 2008, the EACEA pointed out that, as far as the documents that should accompany the legal entity form were concerned, "the constitution of your twinning association is an acceptable document in the case where your organisation has no official registration number and consequent registration document". The EACEA also provided details concerning the website where it had published information on the procedure. It added that the problem concerning the hotline had been looked into and that it was envisaged to have a recorded message to be played before the background music began.

15. On 25 May 2008, the complainant replied to this e-mail. In its reply, it submitted that the EACEA now appeared to say that its constitution would have been an acceptable document to accompany the legal entity form. According to the complainant, this was extraordinary and quite at variance with what was asked for on the application form. The complainant added that its constitution indicated neither a date nor a place of registration; nor was it signed by any official person, as the registration document it had submitted to the EACEA was. According to the complainant, it would be totally inconsistent and arbitrary to reject a document that met the criteria originally set out and to ask for a document that did not indicate the complainant's legal identity and could be drawn up by anyone.

16. On 11 June 2008, the EACEA confirmed its position. It stated that the complainant's constitution was "a form of articles of association".

THE SUBJECT MATTER OF THE INQUIRY

17. In its complaint to the Ombudsman, the complainant basically alleged that the EACEA had failed properly to handle its application and that the rejection of the documents it had submitted was perverse and arbitrary. In the complainant's view, these documents were clearly "registration document[s] indicating date and place of the registration", as required by the application form. The complainant pointed out that, given that it was neither a company nor a registered charity, it did not have articles of association.

18. The complainant also alleged that the EACEA had (i) failed to meet its own deadline of 1 April 2008; (ii) failed to inform it of this failure, either by e-mail or through the Internet; (iii) provided a web address which in fact never worked; and (iv) provided a telephone hotline which played recorded music rather than give useful information.

19. The complainant claimed that the application should be accepted without further ado and the money awarded to it.

20. In its observations on the EACEA's reply to the Ombudsman's proposal for a friendly solution, the complainant expressed the view that it should be offered monetary compensation. It therefore claimed that the EACEA should pay it the sum of EUR 2 000, corresponding to the minimum grant that could be awarded at the time when the complainant submitted its application. The Ombudsman notes that this claim was only raised at an advanced stage of the present procedure, that it was not preceded by appropriate approaches to the EACEA and that the complainant has not put forward any specific arguments to show that monetary compensation should be granted in this case. Accordingly, he considers that it would not be justified to take this claim up for inquiry in the present case. As a matter of fact, the complainant appears to consider that the amount claimed should be paid in order to compensate it for the maladministration that occurred. However, and as will be seen below, the Ombudsman considers that the EACEA has done its best to correct the mistakes that it had made.

THE INQUIRY

21. The complaint was submitted on 28 May 2008. On 3 July 2008, the Ombudsman opened an inquiry and asked the EACEA for an opinion on the complaint.

22. The EACEA sent its opinion on 28 October 2008. The opinion was forwarded to the complainant, which submitted its observations on 21 November 2008.

23. On 2 April 2009, the Ombudsman submitted a proposal for a friendly solution to the EACEA.

24. The EACEA replied to this proposal on 30 June 2009. The reply was forwarded to the complainant, which submitted its observations on 14 July 2009.

25. Having examined these submissions, the Ombudsman concluded that it was necessary to inspect the EACEA's file. This inspection took place on 15 September 2009. A copy of the report on this inspection was sent to the EACEA. A further copy was sent to the complainant for its observations, which it sent on 12 October 2009.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation of failure properly to handle grant application and related claim

Arguments presented to the Ombudsman

26. The complainant alleged that the EACEA failed properly to handle its application and that the rejection of the documents it had submitted was perverse and arbitrary. In the complainant's view, these documents were clearly "registration document[s] indicating date and place of the registration", as required by the rules governing the application. The complainant pointed out that, given that it was neither a company nor a registered charity, it did not have articles of association. It claimed that the application should be accepted without further ado and the money awarded to it.

27. In its opinion, the EACEA pointed out that, when carrying out its tasks, it is obliged to apply Council Regulation (EC, Euratom) No 1605/2002 [1] (the "Financial Regulation") and Commission Regulation (EC, Euratom) No 2342/2002 [2] (the "Implementing Rules"). According to Article 64 of the Implementing Rules, no budgetary transaction can be accounted for, if it does not carry the reference of a legal entity previously entered in a common file by the institution. An entry in a common file is only possible, if the entity in question has provided proper documentation on its legal status.

28. According to the EACEA, it was on this basis that the eligibility criteria for town-twinning projects were defined in the Programme Guide. The EACEA submitted that it applied these criteria to all applicants for grants in a consistent and equitable way. It added that it appreciated that proceeding in such a manner could pose difficulties for small voluntary organisations such as the complainant. The EACEA stated that it had therefore made available direct e-mail and telephone contact for questions concerning the application procedure. It pointed out that this facility was advertised very clearly on its website and that it had been available to the complainant at the time it submitted its application.

29. The EACEA submitted that the complainant failed to provide proper documentation of its legal entity. It handed in only a document proving the existence of a twinning agreement

between Dunston and its partner village in France. According to the EACEA, providing such a document was required by the Programme Guide, independently of the documentation attesting to the establishment of the twinning committee/association.

30. The EACEA took the view that it had applied the eligibility criteria fairly and that any other decision would have discriminated against other applicants in the same circumstances.

31. The EACEA further argued that, prior to December 2007, the complainant's last grant application had been submitted in 2002. Since that time, there had been two consecutive EU programmes with different legal bases and application procedures for the award of town-twinning grants. Consequently the complainant's prior experience could not be seen as relevant to its 2007 grant application. A town-twinning grant had last been awarded to Dunston in 1996. Considering this significant lapse of time, there was a legitimate interest and a duty for the EACEA to check whether all eligibility criteria were met by the complainant.

32. In its observations, the complainant maintained its position that it had submitted sufficient information to the EACEA.

33. The complainant pointed to the fact that it was a small association that was not supported by a municipality but relied on volunteers giving their own time and money to make twinning work. It added that it, therefore, did not expect to be subject to a bureaucratic system which seemed designed to catch it out. It appeared that the EACEA was more used to dealing with large towns or cities and that it should adapt its procedures to cope with applications from small villages as well as large towns. The complainant queried why it was not immediately informed of the problems which arose and given some time to submit additional or alternative documents or information.

34. The complainant recalled that the EACEA staff were public *servants* and pointed out that it would be nice to see more evidence of this. It added that its members were appalled by the events which were the subject of the present complaint and believed that the EACEA staff should be reprimanded for the Agency's pointless and indefensible waste of taxpayers' money.

35. The complainant further recalled that a main purpose of town-twinning arrangements was to foster a sense of the relevance of the EU to its peoples and the idea that all citizens are citizens of Europe. In the view of the complainant and of its members, the way in which the EACEA had treated the complainant's application tended to do the opposite, i.e., bring the EU into disrepute in view of the way the 'Brussels bureaucracy' acted. The Ombudsman should advise the EACEA to adopt more client-friendly policies aimed to help rather than hinder applicants and to show the EU bureaucracy in a more favourable light.

36. The complainant noted that it was disturbed that the EACEA was prepared to accept a document - the complainant's constitution - that gave neither the date nor the place of registration and was not signed by any official person, as the complainant's registration document/charter was. In the complainant's view, this was not a sound way to ensure the legal identity of an applicant and created the risk of fraudulent applications. The complainant stressed

that its constitution, in common with those of similar organisations, was drawn up by the members to indicate how the association was to be conducted. It was a document that anyone could write on a word processor. In no way could it be considered "an official document attesting to the establishment of the twinning committee/association". In reply to this argument, the EACEA had, in its e-mail of 11 June 2008, stated that "we would ask that articles of association or constitutions which are not formally registered by a competent national authority are certified (signed) by the legal representative of the applicant organisation". However, given that it had not been contacted in relation to the documents it did submit, the complainant considered it most unlikely that the EACEA would have contacted it for a signature; instead, the document and the application would most likely have been rejected as not meeting the criteria.

The Ombudsman's preliminary assessment leading to a friendly solution proposal

37. The present allegation raised the issue as to whether or not the documents submitted to the EACEA fulfilled the requirements foreseen by it. Before dealing with this core problem, a number of introductory remarks should be made.

38. *First* , the Ombudsman fully agreed with the EACEA's statement that it needs to respect both the Financial Regulation and the Implementing Rules, when carrying out its activities. It was also correct that it follows from Article 64 of the Implementing Rules that no budgetary transaction can be accounted for, if it does not carry the reference of a legal entity previously entered in a common file by the institution. The EACEA's statement that an entry in a common file is only possible, if the entity in question has provided proper documentation on its legal status would appear to be logical. It should be noted, however, that the said provision does not stipulate any specific documents that would need to be submitted for such an entry to be possible. This means that the question whether the documents submitted by the complainant were sufficient needs to be assessed on the basis of the rules established by the EACEA. Besides, it was not without interest to note that Article 64 of the Implementing Rules provides that payments by bank credit transfer may only be made "if the bank account details of the payee have first been entered in a common file" and that this entry "shall be based on a document, in paper or electronic form, certified by the payee's bank". The said provision thus seemed to be concerned with ascertaining the correctness of the bank account details of a payee rather than the latter's identity as such. The Ombudsman notes that, without being contradicted by the EACEA, the complainant explained that the documents it had submitted to the latter had been accepted by its bank.

39. *Second* , the Ombudsman noted that the Programme Guide stipulated that, in order to be eligible, applicants had to be either the municipality concerned or a town-twinning association or committee "with a legal status (legal personality)". This could be understood as meaning that only legal persons, i.e., bodies recognized by law to possess a distinct legal identity, could be eligible. The Ombudsman noted, however, that the EACEA did not appear to interpret its Programme Guide in such a narrow manner but only required adequate proof that the entity concerned had been established.

40. *Third* , the complainant argued in its observations that it should have been immediately

informed of the problem and given some time to submit additional or alternative documents or information. However, the procedure set up by the EACEA in this area appeared to be based on the premise that only documents submitted before the relevant deadline for applications could be relevant. In its letter of 10 April 2008, the EACEA informed the complainant "that the Agency cannot accept information sent after the closing date". Seen from this perspective, the EACEA would not have been in a position to proceed as suggested by the complainant. Even though the approach adopted by the EACEA was a rather strict and rigid one, the Ombudsman considered that it could not be criticized as such. After all, the EACEA is faced with a considerable number of applications each year, and applicants should reasonably be expected to provide it with all relevant documents and information after carefully having studied the requirements laid down by the EACEA for this purpose. The Ombudsman considered it logical, however, to assume that the strictness of the approach adopted by the EACEA was only justified, if applicants are indeed clearly informed what documents and information they need to submit.

41. *Fourth* , in its opinion the EACEA pointed out that it hadprovided direct e-mail and telephone contact for questions concerning the application procedure. The EACEA thus seemed to suggest that the complainant had failed to contact it in order to find out whether the documents it subsequently submitted would be sufficient. The Ombudsman was unable to accept this line of reasoning. The very purpose of a Programme Guide and of an application form is to indicate clearly what documents and information need to be made available by an applicant. If these documents were not sufficiently clear on this essential point, the EACEA could not exonerate itself by arguing that it was possible for the complainant to clarify any existing doubts by making direct contact with it.

42. *Fifth* , even though the complainant referred to the handling of previous applications, the EACEA was clearly correct in stating that the present case needed to be assessed on the basis of the rules applicable to the 'Europe for Citizens' Programme 2007-2013. The fact that the complainant might have been considered eligible on previous occasions was thus not directly relevant to the present case.

43. It thus had to be examined whether the documents which the complainant submitted to the EACEA constituted *"official document[s] attesting to the establishment of the entity"* , as the EACEA had put it in its letter of 10 April 2008.

44. The EACEA argued that the twinning agreement submitted by the complainant was not sufficient, since providing such a document was required by the Programme Guide, independently of the documentation attesting to the establishment of the twinning committee/association. It thus appeared that the EACEA wished to argue that the complainant would have had to submit two different documents, one concerning the twinning agreement and one concerning itself. The Ombudsman noted that the EACEA did not specify on which rule its assumption was based. It appeared likely that applicants will normally submit two separate documents, notably where a twinning agreement is entered into before a twinning association or committee is formed. However, it was clearly conceivable that one and the same document could show that a twinning agreement had been concluded and that a twinning association or

committee had been established.

45. The 'Programme Guide' and the application form required *"an official document attesting to the establishment of the twinning committee/association (articles of association, registration document indicating date and place of the registration)"* , *"a copy of the resolution, law, decree or decision establishing the entity in question"* or *"any other official document attesting to the establishment of the entity by the national authorities"* .

46. Given that the complainant was not a company, it was unable to submit articles of association or a registration document properly speaking. The Ombudsman was not convinced by the EACEA's argument, put forward in its letter of 11 June 2008, that the complainant's constitution was "a form of articles of association". In view of the fact that the complainant was formed by individual citizens, it furthermore appeared excluded that it could produce a *"law, decree or decision"* that would have established it. The same would appear to apply to the possibility of submitting a *"resolution"* to that effect. Although it could be argued that the agreement of a number of citizens to form a twinning committee or association constitutes a 'resolution' to that effect, it was clear that the complainant was unable to submit such a document. The complainant had consistently argued that all it could submit in addition to the twinning charters was its constitution. A copy of this document was attached to the complainant's observations. This document was drawn up by the members of the complainant in order to determine the name of the association, its aims and membership and the way it was to operate. As the complainant correctly observed, this document indicates neither the date nor the place of the complainant's establishment. Nor was it signed by any official person. The Ombudsman therefore failed to see how this document could be considered to constitute an *"official document attesting to the establishment of the entity"* .

47. In one of its letters to the complainant, the EACEA suggested that it would have accepted constitutions that "are certified (signed) by the legal representative of the applicant organisation". The Ombudsman found this difficult to understand. The wording of the Programme Guide and the application form, difficult though they might be to interpret, at least seemed to be clear in requiring that the document to be submitted had to be an "official" one. It further appeared that, in the absence of a standard document attesting to the establishment of a given entity (such as articles of association), the document to be submitted had to be an *"official document attesting to the establishment of the entity by the national authorities"* . It would thus seem that the document needed to have been issued by a public authority. It would seem clear that the fact that an association's legal representative signs a copy of the association's constitution does not transform this document into an "official" document within the above-mentioned meaning. Moreover, if one were to assume that such a document would be sufficient proof of an entity's establishment, it would be difficult to understand what useful purpose the relevant requirement could serve. As a matter of fact, all that would then be required would be a simple statement by a private citizen to the effect that an association has been established.

48. As mentioned above, the Ombudsman considered that the strictness of the approach adopted by the EACEA in this area was only justified, if applicants are clearly informed as to

what documents and information they need to submit. In the Ombudsman's view, this was not the case here. The Programme Guide indicated that an applicant needed to submit *"an official document attesting to the establishment of the twinning committee/association (articles of association, registration document indicating date and place of the registration)"* . This suggested that only one of the two types of documents mentioned in brackets was acceptable. In its letter of 30 April 2008, the EACEA indicated that what was needed was *"an official document attesting to the establishment of the twinning committee/association (e.g. articles of association, registration document indicating date and place of the registration)"* . This wording suggested that the two types of documents mentioned in brackets were only illustrative examples and that other documents could also be accepted. In its letter of 21 May 2008, the EACEA explained that the complainant's constitution was acceptable. However, in its letter of 11 June 2008 the EACEA indicated that this constitution would only be acceptable if it were *"certified (signed) by the legal representative of the applicant organisation"* . It was difficult to avoid feeling that the EACEA itself was not sure how on to handle cases like the complainant's. The complainant was probably right in assuming that the documents prepared by the EACEA are geared to large towns or cities rather than small villages. However, the purpose of town-twinning arrangements is the same in both cases. The EACEA thus needs to consider the difficulties of small villages when interpreting its own rules.

49. As regards the documents on which the complainant relied, the Ombudsman noted that they were the charters that were drawn up in 1988 in order to establish the twinning of Dunston and its French partner village. Given that the contents of the two documents were basically identical, it appeared sufficient to consider the English version. This document was signed by the Chairman of Dunston Parish Council, the mayor of the French partner village, the chairman of the complainant, its then members (or at least some of them), the chairperson of the twinning committee of the French partner village and the secretary of that committee.

50. The Ombudsman considered it obvious that this document was an "official" document, given that it was signed by what appear to have been the legal representatives of Dunston and its French partner village at the time. Furthermore, the document made express reference to the complainant. It begins with the words "The Twinning Associations of Dunston and Trangé, having agreed on the principle of a twinning between the two villages, formally resolve: ..." The signatures are preceded by the words "Signed for and on behalf of Dunston". The document indicated that it was drawn up in Dunston on 30 October 1988. Contrary to what the complainant asserted, this document does not indicate the date and place of the complainant's establishment, but the date when and the place where the twinning charter was adopted. However, regard should be had to the fact that what appears to have been required under the EACEA's rules was proof that the relevant twinning association or committee had been established. There was no clear indication that information was also required as to the date and the place when and where this had happened. Although the document submitted by the complainant did not explicitly state that the complainant had been established, the Ombudsman considered that it made it abundantly clear that the complainant did indeed exist and must therefore have been established. As a matter of fact, the complainant could obviously not have agreed on the twinning charter (as the latter stated it did) with its French counterpart, if it had not existed. Nor would it have been able to act "for and on behalf of Dunston". The EACEA did

not explain why this document should not be considered as sufficient proof of the fact that the complainant had been established. In fact, it appeared that the EACEA had so far not even considered the contents of this document.

51. The EACEA argued that its interpretation was correct and fair and that any other decision would have discriminated against other applicants in the same circumstances. The Ombudsman was not convinced by this argument. If the documents submitted by the complainant constituted sufficient evidence attesting to its establishment, accepting them could not have discriminated against other applicants. Discrimination could only have arisen if such documents had only been accepted as regards the complainant, but not for other applicants in the same circumstances. However, in that case the EACEA would simply have had to treat the other applicants likewise to avoid such discrimination.

52. In light of the above, the Ombudsman made the preliminary finding that the EACEA's refusal to consider the documents submitted by the complainant as sufficient evidence attesting to its establishment amounted to an instance of maladministration. He therefore made a corresponding proposal for a friendly solution below, in accordance with Article 3(5) of the Statute of the European Ombudsman.

53. It appeared useful to add that the issue discussed above concerned the assessment of the eligibility of the complainant's application for a town-twinning grant. The complainant itself accepted that the funds at the EACEA's disposal were limited. The Ombudsman, therefore, noted that if the EACEA, after having reconsidered the issue, were to arrive at the conclusion that the complainant's application was eligible, this would not necessarily mean that the application would have to be granted.

B. Alleged procedural deficiencies

Arguments presented to the Ombudsman

54. The complainant also alleged that the EACEA (i) failed to meet its own deadline of 1 April 2008; (ii) failed to inform it of this failure, either by e-mail or through the Internet; (iii) provided a web address which in fact never worked; and (iv) provided a telephone hotline which played recorded music rather than give useful information.

55. In its opinion, the EACEA explained that the eligibility of all applications concerning the relevant phase had been verified in January 2008. Following the evaluation of eligible projects by independent experts (which was carried out in the first half of February 2008), the EACEA's evaluation committee met on 14 February 2008. The committee confirmed the results of the verification of the eligibility criteria. Following the establishment of the list of projects proposed for EU funding, this list was submitted to the European Commission on 28 February 2008, to the Programme Committee for its opinion (to be delivered by 7 March 2008) and subsequently to the European Parliament to exercise its right of scrutiny. After the expiry of the period for Parliament to use this right, the final selection decision was taken on 18 April 2008 and

published on the EACEA's website immediately afterwards.

56. The EACEA submitted that it had not been possible to meet the foreseen deadline of 1 April 2008 because of the procedural requirements set out above. It stressed that the consultation of the Programme Committee and of Parliament can take from 6 to 8 weeks and was outside its control. The EACEA took the view that the delay did not cause any harm to the complainant.

57. The EACEA submitted that, in view of the number of files being dealt with at the time, it had not been able to contact applicants individually. However, applicants who contacted the EACEA by telephone and e-mail were informed of the delay. In addition to that, a notice drawing attention to the problem had been published on the EACEA's home page and on the website dedicated to 'Europe for Citizens'. According to the EACEA, the complainant never sought to contact it concerning the delay.

58. The EACEA pointed out that the web address to which the complainant had referred (eacea.cec.eu.int/staic/en/citizenship/index.htm) corresponded to the first web address mentioned in the Programme Guide that had been published in early 2007. This web address had subsequently changed. The new address was indicated in the updated version of the Programme Guide published in December 2007. An automatic 'redirect' function was made available in order for visitors to be made aware of the change. Should users still have encountered problems accessing the relevant page, a very basic search on web search engines ("eacea citizenship") would have led them to the right source of information.

59. The EACEA pointed out that its hotline was available 3 mornings a week between 9.30 and 12.30. The hotline receives approximately 1500 calls a year and provides direct contact with the staff of the EACEA who are able to respond specifically to town-twinning inquiries in a wide range of official EU languages. During the time when the complainant called, the hotline music was automatically played when the line was occupied. Once the line was clear, the caller would have been connected to a member of staff. Indeed, the hotline could on occasions be extremely busy. The EACEA rejected the allegation that it was not possible to obtain any useful information from the hotline. As an alternative to the hotline, the telephone number of the secretariat of the Citizenship Unit of the EACEA responsible for town-twinning measures appeared on the Agency's website. Consequently telephone contact was always possible to external callers during working hours.

60. In its observations, the complainant submitted that its application had effectively already been rejected on 13 February 2008 and that the EACEA thus did not have to wait until 18 April 2008 to inform it of this decision.

61. As to the EACEA's statement that the delay had caused the complainant no harm, the latter submitted that this was a very complacent statement. To learn whether or not funding will be provided only days before a twinning visit was definitely not helpful. The complainant further pointed out that, if it had waited until the EACEA decided to inform it officially, it would not have found out until the visit was over. The delay might not have caused 'harm' but it had certainly caused considerable inconvenience and stress.

62. As regards the notice published in March 2008, to which the EACEA had referred, the complainant argued that twinning associations should not be expected constantly to have to check the EACEA's website to look for information of this sort. The complainant took the view that the EACEA could very easily have e-mailed all associations in order to inform them or to direct them to the correct location on the web.

63. The complainant submitted that, contrary to the EACEA's statement, it did try to contact the EACEA. According to the complainant, an e-mail sent in late March 2008 remained unanswered. On 1 April 2008, the complainant telephoned the EACEA's hotline and was informed that there was a delay and that its application had been rejected.

64. The complainant stated that it expected that information concerning delays would be posted on the web page where it had submitted its application and where there was a space for 'General News'. It added that it had checked this website on several occasions in early 2008. The complainant pointed out that the website indicated by the EACEA in its e-mail of 10 December 2007 had been discontinued shortly afterwards. An automatic redirect function had been put in place, but only for a very limited period of time. In the complainant's view, it should have been maintained until after the EACEA had completed its evaluation process, i.e., at least until the end of April 2008. The complainant further submitted that the EACEA's website was not easy to negotiate and that it never imagined that an institution like the EACEA would change its website address without implementing an automatic redirect during the evaluation process. It explained that it was for this reason that it did not try to search for another web page, simply assuming that there was something wrong with the EACEA's website and procedures. The complainant took the view that it should not have been expected to carry out such detective work and that it would have been easy for the EACEA to inform applicants of the change of the website by e-mail.

65. As regards the hotline, the complainant queried how callers could know that they would be connected to a member of staff once the line became free, how long they should be expected to wait and how they could even know that they had reached the EACEA. It added that most callers were making relatively expensive international calls. The complainant pointed out that it had telephoned twice and waited several minutes, each time wasting money. In the complainant's view, no client/customer-friendly organisation would behave in such a manner.

The Ombudsman's preliminary assessment leading to a friendly solution proposal

66. As regards the *first* issue raised by the complainant in its second allegation, the Ombudsman noted that the EACEA did not dispute that a delay occurred. Whereas applicants had initially been informed that the results of the procedure would be published by 1 April 2008, the final decision was only taken on 18 April 2008 and published subsequently. The EACEA argued that the delay was due to the need to consult the Programme Committee and the European Parliament and was thus outside its control. The Ombudsman did not find this to be convincing. It was true that the EACEA had no direct control over the way in which the third parties it needed to consult dealt with the matter. However, this did not affect the fact that it was

the EACEA that was in charge of handling applications under the 'Europe for Citizens' Programme. In the Ombudsman's view, it followed from this that it was the EACEA's responsibility to arrange the procedure in a manner that avoided unnecessary delays and that it was the EACEA that had to be held responsible for any delays that did occur. According to the EACEA, the consultation of the Programme Committee and the European Parliament could take from 6 to 8 weeks. In these circumstances, the EACEA should have seen to it that the deadline of 1 April 2008 could be met even if the said consultation took 8 weeks. The EACEA had not clearly indicated when the consultation of the Programme Committee and the European Parliament was launched. It was clear, however, that it was initiated after the EACEA's evaluation committee had drawn up a list of projects proposed for funding. This committee met on 14 February 2008. However, at the time there were barely more than 6 weeks left until 1 April 2008.

67. The Ombudsman further noted that the consultation of the Programme Committee and the European Parliament concerned the list of projects proposed for funding. It thus seemed that no consultation was foreseen as regards those applications which the EACEA considered to be ineligible. However, the EACEA pointed out that the examination of the eligibility of applications took place as early as January 2008 and that the evaluation committee, which met on 14 February 2008, confirmed the results of the verification of the eligibility criteria. In these circumstances, the Ombudsman was not convinced that the EACEA was unable to inform the complainant of the result of the assessment of its application before 18 April 2008. In this context, it appeared useful to note that the letter in which the EACEA informed the complainant of the rejection of its application was dated 10 April 2008. At that date, the final decision on the list of projects proposed for funding had not yet be adopted.

68. The EACEA submitted that the delay did not cause any harm to the complainant. The Ombudsman considered this statement to be unfortunate. Even though the complainant accepted that no material loss was caused, it was clear that, as the complainant correctly observed, finding out whether an application for a grant is accepted or not only days before the event for which the grant has been requested takes place is not helpful.

69. As regards the *second* issue raised by the complainant in its second allegation, the Ombudsman gathered from the information provided by the EACEA that a total of 523 applications for citizens' meeting were received and that some applications were submitted on-line whereas others were submitted by post. In these circumstances, and in the absence of more specific information, the Ombudsman doubted whether the EACEA was in a position or could have been expected to inform all applicants of the delay by an e-mail sent to each and every one of them. In the Ombudsman's view, drawing applicants' attention to the problem by posting a notice to that effect on a relevant website was, therefore, in principle, a legitimate solution. This presupposed, however, that applicants had previously been informed about this website and about the fact that relevant information would be made available there.

70. The Ombudsman understood that the website address used by the EACEA changed after the complainant had submitted its application. The complainant accepted that the EACEA installed a redirect function on the old website, which directed applicants to the new website. In

its observations it argued, however, that this function was only available for some time and that it had ceased to be available by the time when, apparently in March 2008, it searched the website originally indicated. In order to ascertain whether the complainant's submission is well-founded, further inquiries would have needed to be carried out. The Ombudsman considered, however, that this was not necessary, since the EACEA's approach would have been open to criticism, even if the redirect function had been available on the old website until April 2008. As a matter of fact, the EACEA confirmed that the change in address took place in December 2007. On 10 December 2007, the EACEA confirmed receipt of the complainant's application. The Ombudsman, therefore, failed to understand why this acknowledgement of receipt only referred to the old website even though the fact that this website had been replaced or was shortly to be replaced by a new one must have been known at the time.

71. In its opinion, the EACEA submitted that the complainant never sought to contact it in relation to the delay. The complainant rejected this statement, pointing out that it did contact the EACEA by telephone on 1 April. The Ombudsman considered that there was no need further to deal with this aspect of the case. Where a Community institution or body is not in a position to comply with a deadline it has publicly announced, it is for this institution or body to inform citizens about any delay that may occur, regardless of whether or not citizens contact it in order to obtain information on this issue.

72. The EACEA further argued that, if the complainant encountered problems accessing the relevant website, a very basic search on web search engines would have been sufficient to find the right source of information. The Ombudsman was unable to accept this argument. The complainant pointed out that it was able to consult the old website but was unaware of the fact that it had been replaced by a new one. There was therefore no need to carry out any search on the Internet. What was more, the Ombudsman agreed with the complainant's view that twinning associations should not be expected to carry out what the complainant referred to as 'detective work' of the sort suggested by the EACEA. As already indicated above, the EACEA could easily have avoided the problem if, in its e-mail of 10 December 2007 acknowledging receipt of the complainant's application, it had drawn the complainant's attention to the change of the website address.

73. In view of the above, the Ombudsman took the view that no further remarks needed to be made as regards the *third* issue raised by the complainant in its second allegation.

74. In so far as the *fourth* issue raised by the complainant in its second allegation was concerned, the Ombudsman noted that the complainant did not argue, as the EACEA appeared to assume, that it was not possible to obtain any useful information from the EACEA's hotline. As a matter of fact, in its observations the complainant itself referred to the information it received on 1 April 2008 by contacting this hotline. What the complainant criticized was the fact that when the hotline is engaged, callers are confronted with music rather than relevant information. The Ombudsman considered that the complainant's objection was justified. In the absence of any message, a caller who telephones the hotline when it is engaged could not even be certain that he had dialled the correct number. It was true that this was not the case of the complainant, since the latter had already successfully used the hotline. However, regard

needed to be had to other callers who might have been less lucky. After all, the EACEA itself stressed that its hotline could be extremely busy at times. In the Ombudsman's view, it would, therefore, have been good administrative practice to provide a recorded message informing callers that the line was busy at the time. It should be noted that, in its e-mail to the complainant of 14 May 2008, the EACEA pointed out that it was considering changing the configuration of the hotline in light of the comments made by the complainant. It was, therefore, regrettable that the EACEA's opinion did not address this issue.

75. The EACEA suggested that the complainant could, as an alternative to the hotline, have telephoned the secretariat of the Citizenship Unit of the EACEA responsible for town-twinning measures. According to the EACEA, the telephone number of this secretariat appeared on its website. The Ombudsman considered that where a specific hotline was offered, citizens and interested parties should be able to use it without having to search for other possibilities to contact the administration. As a matter of fact, if the said telephone number was indeed an alternative to the hotline, it could be expected that callers contacting the EACEA's hotline would be informed accordingly if the hotline is busy.

76. In light of the above, the Ombudsman made the preliminary finding that (i) the EACEA's failure to comply with the deadline of 1 April 2008, (ii) its failure sufficiently to inform the complainant about the delay that had occurred and (iii) the fact that the configuration of the EACEA's hotline was not sufficiently customer-friendly amounted to instances of maladministration. He, therefore, made a corresponding proposal for a friendly solution below, in accordance with Article 3(5) of the Statute of the European Ombudsman.

C. The proposal for a friendly solution

77. In view of the above findings, the Ombudsman addressed the following proposal for a friendly solution to the EACEA:

The EACEA could consider
- reassessing the complainant's application for a grant;
- apologizing for the delay that occurred and for the lack of sufficient information concerning this delay; and
- reviewing the set-up of its hotline.

D. The parties' reaction to the proposal for a friendly solution and the Ombudsman's assessment

The arguments presented to the Ombudsman after his friendly solution proposal

78. In its reply, the EACEA pointed out that it had decided to have the complainant's project proposal evaluated in accordance with the relevant award criteria. This evaluation was carried out by two external experts with experience of the evaluation of town-twinning grant

applications. The EACEA explained that these two experts had awarded scores of 26/100 and 30/100 points to the project and that they considered that the latter had weaknesses with respect to the quality of the European content, its adequacy and adaptation in relation to the target group of the project and in relation to proposals to give visibility to the project and planned follow-up. The result of the evaluation was, therefore, that the application achieved an overall average score of 28/100 points. According to the EACEA, the proposal thus did not qualify for the award of a grant.

79. As regards the second part of the Ombudsman's proposal, the EACEA agreed with it and had apologized to the complainant. A copy of the relevant letter to the complainant was submitted by the EACEA. The agency added that a distinction between significant and minor missing documentation to be taken into account when assessing the eligibility criteria had now been introduced. Such a distinction afforded applicants an opportunity to complete their applications in specific circumstances. The EACEA also pointed out that changes had been carried out so as to accelerate the selection process.

80. As regards the town-twinning hotline, the EACEA explained that it and the European Commission had been engaged in a process of revising and de-centralising information support services. Specifically, Europe for Citizens Points had been established in countries eligible to take part in the relevant programmes. Given that the EACEA worked very closely with these Europe for Citizens Points, it had been decided to close the hotline with effect from the end of April 2009. This change had been explained and full details had been given on the EACEA's website. For questions strictly addressed to the EACEA, a functional e-mailbox continued to be maintained.

81. In its observations, the complainant noted that it was pleased to see that the EACEA had agreed to amend its procedures and that it had apologized, although this seemed to have been done somewhat grudgingly. The complainant stressed, however, that it was not content with the outcome of the friendly solution proposal as regards the application as such. In its view, the EACEA's reply was neither friendly nor satisfactory. The complainant noted that it was very surprised at the low score that had been given to its project and that it was at a complete loss to understand the meaning of the explanation given by the EACEA.

82. Having examined these submissions, the Ombudsman concluded that it was necessary to inspect the EACEA's file. This inspection took place on 15 September 2009. It emerged that the conclusions that had been mentioned by the EACEA were those reached by the two experts who had evaluated the complainant's project proposal. It further merged that these conclusions were based on detailed comments that these two experts had made.

83. In its observations on the report on this inspection, the complainant pointed out that no evidence had been provided on how the scores had been allocated, that it was still none the wiser as regards the weaknesses indentified by the two experts and that these experts had not worked independently of each other but had been able to discuss their evaluations with one another. The complainant added, however, that if the Ombudsman were to consider that the procedure was fair and correct, it would have to accept this.

84. In light of the complainant's observations, the Ombudsman concludes that no friendly solution was achieved in this case. It, therefore, has to be assessed whether the steps taken by the EACEA have dispelled the concerns that led the Ombudsman to make a friendly solution proposal or whether further action is needed.

85. The Ombudsman fully understands the complainant's disappointment as regards the way in which the EACEA reacted to the *first* aspect of his proposal for a friendly solution. However, the inspection of the file showed that the evaluation of the complainant's project proposal appears to have been carried out properly. It is true that the EACEA's statement, according to which this evaluation was carried out by two independent experts, is likely to induce the mistaken belief that each of these experts evaluated the project proposal on his or her own, whereas in fact the second expert evaluated the project proposal knowing the result of the evaluation by the first expert. The Ombudsman considers, however, that the decisive question is whether the result of the evaluation was correct or not. Given that the Community institutions and bodies enjoy a margin of discretion when evaluating such applications, the Ombudsman's assessment must limit itself to ascertaining whether the evaluation is tainted by a manifest error. Having examined the comments made by the evaluators and having compared them with the evaluations of other project proposals that were submitted at the same time, the Ombudsman cannot but conclude that no such error can be found.

86. As regards the *second* aspect of his proposal for a friendly solution, the Ombudsman notes that the EACEA has done what he invited it to do, i.e., apologize to the complainant. As regards the *third* aspect, the Ombudsman finds that the EACEA has decided to tackle the deficiencies identified as regards its town-twinning hotline by abolishing this hotline and entrusting the task of answering queries to contact points (Europe for Citizens Points). The complainant did not criticize this decision. In the absence of any indication to the contrary, the EACEA's approach would, therefore, appear to constitute a satisfactory reaction.

87. In view of the above, the Ombudsman concludes that, in light of the steps indicated by the EACEA in its reply to the Ombudsman's proposal for a friendly solution, no further inquiries into this case are needed.

E. Conclusions

On the basis of my inquiry into this complaint, I close it with the following conclusion:

In light of the steps indicated by the EACEA in its reply to my proposal for a friendly solution, no further inquiries into this case are needed.

The complainant and the EACEA will be informed of this decision. A copy will also be sent to the European Commission.

FURTHER REMARK

In its final observations, the complainant pointed out that it still did not understand what weaknesses had been identified by the experts who evaluated its project proposal. The Ombudsman considers that the detailed comments made by the two experts in their evaluation sheets would be most likely to provide the necessary clarifications. In the Ombudsman's view, it would, therefore, be useful if the EACEA could consider disclosing these comments to the complainant and to do likewise in possible further cases where the result of the evaluation of proposals for town-twinning projects is challenged.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 4 November 2009

[1] OJ 2002 L 248, p. 1.

[2] OJ 2002 L 357, p. 1.