

Decision in case OI/14/2017/MDC on how the European Commission defined the term ‘civil society organisation’ in a call for proposals

Decision

Case OI/14/2017/MDC - **Opened on** 30/11/2017 - **Decision on** 11/12/2018 - **Institution concerned** European Commission (No maladministration found) |

The case concerned the European Commission’s refusal to recognise a public university as a ‘civil society organisation’ (CSO) in the context of a call for proposals. The Commission considered that the university in question was a state actor. It rejected the proposal because CSOs had to be non-state actors. The complainant argued that the commonly understood definition of the term CSO includes universities and that the Commission’s rejection of its application was unfair.

The Ombudsman opened an inquiry into the issue and found that, although the Commission’s rejection letter was unclear, the Commission had determined the university’s eligibility in line with the applicable rules. The Ombudsman found no maladministration by the Commission.

The Ombudsman was, however, pleased to note that the Commission acknowledged that in future calls, it should ensure greater clarity with regard to the definition used for ‘civil society organisations’.

Background to the complaint

1. The complainant is an association that responded (as the lead applicant) to a call for proposals issued by the European Commission. The Commission rejected the proposal, stating that in accordance with the *Guidelines for grant applicants* (the ‘Guidelines for Applicants’), the lead applicant and co-applicants must be civil society organisations (‘CSOs’). It noted in its rejection letter that “[o]ne of the co-applicants ... is a Public university and therefore does not qualify as CSO, being a non-state organisation”.

2. The complainant contested the Commission’s decision and asked it to reconsider. The complainant stated that the university in question is a CSO because it is a “ *non-state, not-for-profit public institution aimed at pursuing research and human rights protection* ”. It noted that, although the Guidelines for Applicants do not define CSOs, they refer to an



instrument (the 'Guidelines for EU support to civil society in enlargement countries, 2014-2020', hereinafter the 'EU Guidelines') [1] , which in turn refers to a Commission Communication [2] that includes 'research institutions' as an example of CSOs [3] .

3. The Commission rejected the complaint. It considered that there is no universal definition of the term CSO, particularly in the context of calls for proposals. It added that the definition used by the Commission for the call for proposals at issue was the definition set out in the EU Guidelines, which consider CSOs to be “ *non-State, non-profit making actors operating on an independent and accountable basis* ”. The Commission pointed out that the university in question was registered as a public law body, as confirmed by the Legal Entity Form that had been submitted together with the application. Thus, the university could not qualify as a CSO.

4. Since it was dissatisfied with the Commission's position, the complainant lodged a complaint with the Ombudsman.

The inquiry

5. The Ombudsman opened an own-initiative inquiry based on the complaint [4] . Before opening the inquiry, the Ombudsman asked the complainant to explain how, despite being registered as a public law body, the university was nonetheless a non-state actor, and thus, as it argued, a CSO.

6. After receiving the complainant's reply on 14 November 2017, the Ombudsman decided to inquire into the following aspects of the complaint: since the Guidelines for Applicants do not provide a definition of the term 'civil society organisation' and the Commission's rejection letter was unclear, the complainant did not have a proper opportunity to contest the Commission's position. The Ombudsman put a number of questions to the Commission to seek clarity on its definition of the term CSO. She also asked the Commission to state whether, in light of the arguments presented by the complainant in its correspondence of 14 November 2017, it still considered the co-applicant university in this case ineligible.

7. In the course of the inquiry, the Ombudsman received the reply of the Commission, and subsequently invited the complainant to comment on the Commission's reply. The complainant did not submit any comments.

Arguments presented to the Ombudsman

8. The complainant expressed the view that the Commission was wrong to reject its application, as the Commission's rejection letter “ *did not contest that the University ... is a non-state actor. They, actually, confirmed this fact in their letter.*”

9. The complainant went on to cite parts of the law on higher education in Albania, where the university is based, as well as parts of the university's statute and regulation [5] . Against this



background, the complainant argued that the university operates on an independent and accountable basis, and enjoys academic autonomy and freedom, which is expressed through its self-governance. Moreover, the complainant noted that it met other criteria relating to non-state actors listed on the website of DG DEVCO [6] .

10. In its reply to the Ombudsman, the Commission maintained that the complainant did not qualify as a CSO.

11. It noted that the assessment of eligibility of applicants under a call for proposals is “ *carried out on a case by case basis* ”. For the proposal at issue, it had consulted the EU Delegation to Albania. The Evaluation Committee had analysed the statute and legal registration documents provided by the applicant. The Commission concluded that the university in question is a ‘state actor’, as it is both **registered as a public law body** and **funded from the State budget** . According to the Commission, the rejection of the applicant’s proposal was therefore in accordance with Section 2.1.4 of the Guidelines for Applicants, which states that “ *actions that fall within the general activities of competent state institutions or state administration services, including local government, are not eligible for financial support* ”.

12. With regard to the possibility to contest the Commission’s decision, the Commission noted that the complainant was informed in the rejection letter of the legal remedies it could pursue. The complainant’s points had been thoroughly examined in accordance with the rules and principles set out in the European Code of Good Administrative Behaviour.

13. However, the Commission acknowledged that it should ensure greater clarity with regard to the definition used for CSOs in future calls.

The Ombudsman's assessment

14. The Commission’s rejection letter was unclear, resulting in the complainant misinterpreting the Commission’s definition of the term CSO used in the context of this call for proposals. The complainant understood the phrase in the rejection letter “ *being a non-state organisation* ” to refer to the co-applicant and thought that the Commission was thereby confirming that the co-applicant university at issue was a non-state organisation. Had the Commission’s rejection letter been drafted more carefully, this misunderstanding might not have arisen.

15. The Ombudsman also finds merit in the complainant’s argument that a commonly understood definition of the term CSO includes universities.

16. However, on the basis of the Commission’s explanation, the Ombudsman is satisfied that the Commission was justified in its decision to reject the complainant’s application as ineligible in this case. Moreover, the Ombudsman finds that the Commission provided the complainant with an adequate opportunity to contest its decision.

17. Given the misunderstandings that arose in this case, the Ombudsman is pleased to note



that the Commission acknowledged that it should ensure greater clarity with regard to the definition used for CSOs in future calls.

18. Although there were shortcomings identified in this case, the Ombudsman finds that the Commission's conduct did not amount to maladministration.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

There was no maladministration by the Commission in this case.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 11/12/2018

[1] *Guidelines for EU support to civil society in enlargement countries, 2014-2020* , available at:

https://cdn3-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/S6fLEcQ6_cLwV2jZ5YOg7w1fDMswl1kouzeIRO4VeZ8/mtim
[Link]

[2] Commission Communication of 12 September 2012, entitled *The roots of democracy and sustainable development: Europe's engagement with Civil Society in External Actions* (COM(2012)0492), available at:

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2012%3A0492%3AFIN%3AEN%3APDF>

[3] The complainant also referred to the section related to CSOs on the website of DG DEVCO (the Commission's Directorate-General for International Cooperation and Development), which states that actors of civil society can include universities. According to the complainant, several prominent international organisations consider universities to be CSOs.



[4] The Treaty on the Functioning of the European Union and the Statute of the European Ombudsman set certain conditions as to the opening of an inquiry by the Ombudsman. One of these conditions is that the

complaint must be lodged by a " *citizen of the Union or any natural or legal person residing or having his registered office in a Member State of the Union* ". This condition was not met by the complainant, which is

based in Albania. However, the Ombudsman considered that there were grounds for pursuing the complainant's case by means of an own-initiative inquiry, in accordance with Article 228 TFEU.

[5] The complainant stated that as a public university, the university in question is a public legal person which can be self-financed, financed from the State Budget or from other sources.

[6] These included the 'gathering of its main structures outside government and public administration'; 'initiating grass-roots initiatives seeking to bring social changes'; and 'being active in different fields including human rights, environment and public health'.