

## Decision of the European Ombudsman on complaint 991/98/IP against the European Commission

Decision

**Case 991/98/IP - Opened on 29/10/1998 - Decision on 06/07/1999**

Strasbourg, 6 July 1999 Dear Mr L., On 24 September 1998 you made a complaint to the European Ombudsman concerning the Commission's rejection of your application for a postgraduate TMR Marie Curie Research Training Grant. On 29 October 1998, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 20 January 1999 and I forwarded it to you on 3 February 1999 with an invitation to make observations, if you so wished. On 18 February 1999, I received your observations on the Commission's opinion. I am writing now to let you know the result of the inquiries that have been made.

### THE COMPLAINT

The complainant, a specialist in planetary geology, presented three projects for a postgraduate TMR Marie Curie Research Training Grant to the European Commission in the period between June 1996 and June 1997. Having evaluated the projects the Commission's services informed the complainant that his projects had not been retained. The last negative decision was communicated to the complainant on 13 October 1997. Following the third refusal, the complainant wrote on several occasions to the Commission with a view to obtaining further information on the decision. He considered that his projects had been wrongly evaluated given the very high quality of his proposals. From 23 October to 20 November 1997 an intense exchange of correspondence took place between the complainant, the responsible for the evaluation process of the Earth Science Panel of Directorate General XII and the Head of Division. regarding the protection of the public interest. As Mr L. considered the information submitted by the Commission to be unsatisfactory, he made a complaint to the European Ombudsman on 24 September 1998, in which he basically put forward that: (i) the selection procedure handled by the Commission was not transparent enough, and that the evaluators were not experts in the matter; (ii) the evaluation of proposals should be carried out by both the evaluators and the applicants; (iii) better consideration should have been given to applicants from less favoured regions.

### THE INQUIRY

**The Commission's opinion** The European Commission's comments on the complaint are in summary the following: As a preliminary element, the Commission indicated that the complainant applied for a postgraduate TMR Marie Curie Research Training Grant (hereafter



TMR programme) on 12 June 1996, on 20 December 1996 and on 18 June 1997. After each evaluation round, he was duly informed of both the results of the evaluation of his proposal and the success rate in his category in the Panel for which he had applied. As regard the alleged lack of transparency in the selection procedures and the competence of the evaluators, the Commission pointed out that the evaluation of TMR proposals had been carried out by the scientific community itself using a peer review system that is regularly monitored by external high-level scientific observers. As established in the Guide to the Evaluation about the constitution of the Panels: *"In appointing Members, the Commission shall aim to ensure a reasonable distribution of expertise between subdisciplines"* for each area covered by the Programme. *"The Commission shall seek names of potential members from national representatives through the Programme Committee and from scientific and professional bodies, notably those involved in the European Science and Technology Assembly"*. The Commission assured that its evaluation was performed in full independence by the evaluators and based exclusively on the criteria and the rules included in the Guide which has been sent to the complainant by E-mail. Moreover, the Commission considered that an effort has been made in order to help the complainant to understand the procedures involved and to provide him with extensive feedback on his application through an exchange of correspondence between the Commission officials and the complainant. The institution also stated that it introduced some changes in the design of the Fifth Framework Programme. These changes had been suggested by the complainant during the exchange of correspondence with the Commission's services, in order to improve the TMR programme. As concerns the complainant's claim that the evaluation of proposals should be carried out by both the evaluators and the candidates, the Commission noted that such a suggestion was not practical due to the large number of applicants. With respect to the complainant's allegation that better consideration should be given to applicants from less favoured regions, the institution firstly pointed out that the selection must be made on the basis of scientific merit only. Furthermore, the Commission underlined that there are two special measures for less favoured regions in the TMR programme: the categories of the Return grants for up to 10% of the available funds, and of the Established research grants for up to 5% of the available funds. As is established in the "Guide to the Evaluation", at the end of the short list (corresponding to 5% of the budget) there is a special measure in which, in case of comparable scientific quality of proposals, priority should be given to those ones with industry involvement with a host institute in a less favoured region or with a candidate coming from a less favoured region. These proposals will be preferred to others. **The complainant's observations** The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his reply, the complainant, who basically maintained his original complaint, made some additional observations on certain aspects of the Commission's opinion. As regard the transparency of the selection procedure, the complainant considered that the Commission's allegation that its services had always been available not to be completely true. Although the complainant acknowledged that the person responsible for the evaluation process of the Earth Science Panel had duly replied to his messages of 24 and 30 October 1997, and of 6, 13 and 18 November 1997, he also referred to the fax of 20 November 1997 signed by the Head of Division of Directorate G of DG XII, in which he stated that the responsible officer had been instructed to concentrate on "urgent planning tasks" he had given to him and, therefore, he would not be in a position to continue the exchange with the complainant. Due to the fact that this aspect was not part of the original complaint, and that the



institution therefore had no opportunity to comment upon it, the Ombudsman does not deem it appropriate to consider this new allegation. Regarding the selection procedures of the project, the complainant alleged that the Commission should be obliged to disclose the names of the evaluators and the number of applications received in order to assure the effective transparency of the selection.

## THE DECISION

**1 Transparency in the selection procedure** 1.1 The complainant alleged a lack of transparency in the Commission's evaluation procedure regarding applications received for a postgraduate TMR Marie Curie Research Training Grant in the framework of the Fourth European Programme of the Union. In particular, he stressed that his projects had been wrongly assessed by the evaluators, who were not experts in Planetary Geography, the subject matter of his proposals. 1.2 It has to be recalled that, following the jurisprudence of the Community Courts, in assessing the relevant factors to be taken into account for deciding to award a contract following an invitation to tender, the responsible Community Institution enjoys a large degree of discretion (1) . That discretion cannot justify, however, any misuse of power or serious and manifest errors in the selection procedure (2) . 1.3 Furthermore, principle of good administration behaviour require the administration to give reasons of its decision and to reply promptly to the submission of citizens. 1.4 As regards the transparency of the selection procedure of the present case, the Commission assured that its evaluation in the present case had been performed by expert and independent evaluators which based their opinion exclusively on the criteria and the rules established in the Guide to the Evaluation. The Guide also indicated that the *"The names of the Chairman and Members of Panels will be published by the Commission, notably in the Annual reports of the TMR programme"*. 1.5 Moreover, the complainant was informed that the experts who evaluated his last project were different from the ones that had examined his previous proposals. They had not been informed of the score obtained by the previous applications to assure the impartiality of the decision. 1.6 The Ombudsman notes that, in the letter of 23 October 1997 in which the Commission services informed the complainant of the negative decision, both the score given by the evaluators to the project and the averages for successful proposal in the same category were indicated. The complainant was also informed that in the same category, 47 applications had been presented and that only five of them had been retained, showing that only exceptionally good proposals obtained funds. 1.7 It appears that in this case the complainant has not offered any evidence to prove that the European Commission acted wrongly during this selection procedure. It seems from the information submitted that the evaluators based their assessment on a number of prima facie objective criteria, and that the Commission's services had duly replied to the complainant's messages addressed to the Institution in order to help him to understand the procedures involved. 1.8 Accordingly, the Ombudsman considers that there is no evidence which might suggest that the Commission did not act within the limits of its legal authority in adopting its decision not to award a grant to the complainant's project. The Ombudsman therefore finds that there is no instance of maladministration in relation to this aspect of the case. **2 Participation of applicants in the selection procedure** 2.1 The complainant considered that the evaluation of the projects received by the Commission should be carried out by a panel made up of both experts and candidates. 2.2 The Commission explained that this was not practical due to the large number of applications. The Ombudsman notes that from the



correspondence enclosed with the complaint, it appears that in the message of 5 November 1997, the Commission services indicated to the complainant that direct contact between applicants and evaluators would result in considerably more work for the evaluators and they considered this not to be possible. 2.3 From the information given to the Ombudsman, it appears that the Commission acted in accordance with the rules of the selection's procedure set out in the contents of the Guide to Evaluation". The Ombudsman therefore finds that there is no instance of maladministration in relation to this aspect of the case. **3 Applicants from less favoured regions** 3.1 The complainant argued that in his opinion, better consideration should be given to applicants from less favoured regions. 3.2. As the Commission clearly stated, it has to be taken into account that the selection must be made on the basis of scientific merit only. Thus the place of origin of applicants is not relevant for the selection of the projects. 3.3 Nevertheless, the Ombudsman draws attention to the fact that the Commission has stated in its comments that in the TMR programme there are special measures for less favoured regions. Moreover, at the end of the short list a special measure (corresponding to 5% of the budget) allows, in case of comparable scientific quality of proposals, to give priority to those ones with industry involvement with a host institute in a less favoured region or with candidates coming from a less favoured region. 3.4 In view of the above circumstances, the Ombudsman considers that there is no evidence of maladministration by the European Commission. **4 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN

(1) Case 19/95, *Adia Interim SA v. Commission* [1996] ECR II-321, par.49

(2) Case 56/77, *Agence Européenne d'Interims v. Commission* [1978] ECR 2215, par. 20