

Decision of the European Ombudsman on complaint 209/2000/ME against the European Commission

Decision

Case 209/2000/ME - Opened on 20/03/2000 - Decision on 15/05/2001

Strasbourg, 15 May 2001

Dear Mr K.,

On 10 February 2000, you made a complaint to the European Ombudsman on behalf of the project ASIA MINOR: Cradle of Cults, Cultures and Civilisations concerning your presentation of the project following the call for proposals for the EUROMED AUDIOVISUAL programme of the European Commission.

On 20 March 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 27 June 2000 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

In February 2000, the complainant wrote to the European Ombudsman concerning the project "ASIA MINOR: Cradle of Cults, Cultures and Civilisations" that he had presented to the European Commission to obtain financial support following its call for proposals of the EUROMED AUDIOVISUAL, a Euro-Mediterranean Programme for Audio-visual Co-operation.

The complainant stated that in June 1999, he received a fax message from the Commission informing him that the proposal was eligible but had not been selected. On 18 June 1999, the complainant addressed a fax to the responsible Head of Unit at the Commission asking him to kindly provide the project with some additional information, i.e. apparent oversights, mistakes and shortcomings in the presentation of the proposal which had led to the rejection of the proposal. It was pointed out that the purpose was to learn how to avoid doing the same mistakes in future proposals. On 6 July 1999, the complainant sent a reminder letter also asking which department of the Commission would be responsible for providing the information. On 20 September 1999, the complainant addressed a third letter to the Commission, this time setting out in more detail the information he wanted to obtain. The complainant asked for the complete



reasoning of the jury in rejecting the proposal; a list of the proposals which were selected; a list of proposals which were eligible but not selected; the names of the members of the jury and finally any other relevant information.

The complainant alleged that none of the letters were replied to or even acknowledged.

The complainant asked the Ombudsman for assistance in obtaining the information as put forward in particular in his letter of 20 September 1999.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission initially explained the background to the complaint and the call for proposals. The Commission thereby enclosed the call for proposals in respect of the EUROMED AUDIOVISUAL programme, published on 7 August 1998 by the former DG 1B and DG X. The responsibility for the evaluation procedure was taken over by the Joint Relex Service for the Management of Community Aid to Non-member Countries (SCR) in October in collaboration with DG 1B. Out of the seventy-eight submitted proposals, fifty were eligible and six were selected. The Commission enclosed a list of the eligible proposals as well as one of the selected proposals.

As regards the complainant's letters of 18 June and 6 July 1999, the Commission stated that a reply had indeed been sent on 2 September 1999 and enclosed a copy of its reply. In the reply, the Commission informed the complainant that it could not provide information on apparent oversights, mistakes and shortcomings in the presentation of his proposal. The Commission found that, taking into account the annual holiday period and the fact that this was the first call for proposals handled by the newly created SCR, as well as the need to co-ordinate the answer between the services concerned, an answer in the first days of September on a request received in the second half of June cannot be considered so late as to constitute maladministration, also taking into account that all decisions were taken and the complainant only asked for guidance with respect to future projects.

The Commission pointed out that the call for proposals can serve as a guide for applicants, as point six indicates the selection criteria on the basis of which the companies are selected. In accordance with Commission grant management rules and general principles of law, the principle of equal treatment has to be respected in the sense that the Commission is not giving specific advice on a proposal to an applicant which other applicants would not share. Nevertheless, the applicants have access to a regularly updated table of questions and answers, which the SCR publishes for each call for proposals, outlining the Commission's answers to questions of general interest asked by other applicants.

As regards the complainant's request to receive the complete reasoning of the jury in rejecting the proposal, the Commission stressed that the selection was not made between competing offers for the same task, where, indeed, it is useful to know where the bid went wrong, but concerned a greater variety of proposals with quite different subjects, where the option for one



does not necessarily indicate particular shortcomings of the others, but simply that in the opinion of the Commission it better fits the objectives of the programme. This is a general assessment by the Commission and not a mathematical comparison of criteria, especially where only six out of a total of fifty proposals could be retained for financial reasons. As a result, the Commission was of the view that the complete reasoning was correctly given by informing the complainant that other proposals were of better quality. The Commission also added that the complainant's proposal had been, in comparison, expensive.

The Commission concluded that in its view it had dealt with the call for proposals with due diligence whilst respecting the rules applicable in the field of grant management.

The complainant's observations

The Commission's opinion was forwarded to the complainant for comments. No such comments appear to have been received from the complainant.

THE DECISION

1 Reply to letters

1.1 The complainant sent letters to the Commission on 18 June, 6 July and 20 September 1999 asking for information in relation to a call for proposals to which the complainant had participated. The complainant alleged that none of the letters were replied to or even acknowledged.

1.2 The Commission stated that by letter of 2 September 1999, the Commission had replied to the complainant's letters of 18 June and 6 July 1999. It enclosed a copy of that letter. The Commission argued that, taking into account the annual holiday period and the fact that this was the first call for proposals handled by the newly created SCR, as well as the need to co-ordinate the answer between the services concerned, an answer in the first days of September on a request received in the second half of June cannot be considered so late as to constitute maladministration, also taking into account that all decisions were taken and the complainant only asked for guidance with respect to future projects.

1.3 The Ombudsman notes that, although the complainant claims that he never received the reply, the Commission had replied by letter of 2 September 1999 to the complainant's first letters from June and July 1999. It is not clear why the Commission's reply never reached the complainant. From the letter of 20 September 1999, it was however clear that the complainant had not received the Commission's reply.

1.4 It is good administrative behaviour to respond to letters from citizens within a reasonable period of time. Thus, the Ombudsman finds that the Commission should not have ignored the letter of 20 September 1999. The Ombudsman will address a critical remark to the Commission.

2 The requested information

2.1 The complainant asked the Commission to inform him of apparent oversights, mistakes and shortcomings in the presentation of his proposal to the call for proposals arranged by the Commission. Later, the complainant asked for the complete reasoning of the jury in rejecting the proposal; a list of the proposals which were selected; a list of proposals which were eligible but



not selected; the names of the members of the jury and finally any other relevant information. As he did not receive the requested information from the Commission, he asked the Ombudsman to help him obtain the information.

2.2 The Commission explained that the call for proposals served as a guide for applicants and that applicants have access to a table of general questions and answers. Regarding the request to receive the complete reasoning of the jury in rejecting the proposal, the Commission stated that the selection concerned a variety of proposals were the Commission selects a proposal that in its opinion fits the objectives of the programme better than other proposals. It had thus informed the complainant that other proposals were of better quality. The complainant's proposal had also been, in comparison, expensive. Finally, the Commission provided a list of the selected proposals and a list of eligible but not selected proposals.

2.3 The Ombudsman's understanding of the complaint, is that the complainant was requesting information from the Commission, as set out in his letter of 20 September 1999, and not that the complainant asked for access to certain documents under the Commission's rules on public access to documents.

2.4 As regards the complainant's request to receive the complete reasoning of the jury in rejecting the proposal, the Ombudsman notes that the general duty to state reasons enshrined in Article 253 of the EC Treaty should apply (1) . According to the case law of the Community Courts (2) , the statement of reasons required by Article 253 of the EC Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and to enable the Community Courts to exercise their supervisory jurisdiction.

2.5 In the letter from the Commission of 4 June 1999, the complainant was informed that his proposal was eligible but not classified among the most advantageous projects. In its opinion, the Commission stated that other proposals better fitted the objectives of the programme and that the complainant's offer was expensive. The Ombudsman thereby firstly notes that the complainant was informed of the eligibility criteria as well as the objectives of the programme in the call for proposals. The Ombudsman also notes that the Court of First Instance has considered the reasoning that an application satisfied all the formal requirements of the procedure but was considered to be less economically advantageous than other tenders, as a sufficiently detailed reasoning for the rejection of a tender proposal (3) . Against this background, the Ombudsman considers that the Commission did provide the reasons for the rejection.

2.6 As regards the complainant's request to receive a list of the proposals which were selected and a list of proposals which were eligible but not selected, the Ombudsman notes that the Commission provided such lists in its opinion to the Ombudsman which was forwarded to the complainant.

2.7 As regards the complainant's request to receive the names of the members of the jury, the



Commission did not comment on this. The Ombudsman notes that point 9 of the call for proposals states that a jury will be responsible for the selection of the offer. It is good administrative behaviour to deal with requests for information. The Commission should therefore have dealt with the complainant's request and responded to it, at least in the opinion to the Ombudsman. A failure to do so constitutes an instance of maladministration. The Ombudsman will therefore address a critical remark to the Commission.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remarks:

It is good administrative behaviour to respond to letters from citizens within a reasonable period of time. Thus, the Ombudsman finds that the Commission should not have ignored the letter of 20 September 1999.

It is good administrative behaviour to deal with requests for information. The Commission should therefore have dealt with the complainant's request and responded to it, at least in the opinion to the Ombudsman. A failure to do so constitutes an instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

Jacob Söderman

(1) See Decision of the European Ombudsman on complaint 1087/97/OV against the European Commission of 28 September 1998. Reported in: The European Ombudsman Annual Report for 1998, Heading 3.5.3, OJ L [1999] 300/1. Also published on the Website of the European Ombudsman: <http://www.ombudsman.europa.eu> [Link].

(2) See for example cases 258/84, *Nippon Seiko KK v. Council*, ECR [1987] 1923, paragraph 28 and T-166/94, *Koyo Seiko Co. Ltd v. Council*, ECR [1995] II-2129, paragraph 103.

(3) Case T-19/95, *Adia Interim SA v. Commission*, ECR [1996] II-321, paragraph 35.