

## Decision of the European Ombudsman on complaint 1183/2000/BB against the European Commission

Decision

**Case 1183/2000/BB - Opened on 19/10/2000 - Decision on 19/10/2001**

Strasbourg, 19 October 2001

Dear Mr W.,

On 14 September 2000 you made a complaint to the European Ombudsman concerning the process of reviewing grant proposals for programme « *Quality of Life and Management of Living Resources* » and the decision to declare your grant application ineligible due to its alleged late arrival.

On 19 October 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 12 December 2000. I forwarded it to you with an invitation to make observations, which you sent on 26 February 2001. In your observations you mentioned that despite several requests the scientific evaluation of your application was not communicated to you. On 30 May 2001, I forwarded your observations to the Commission with a request for complementary information. On 29 June 2001, the Commission sent the complementary information which was forwarded to you with an invitation to make complementary observations. On 20 August 2001, you sent your complementary observations indicating that you have nothing to add and look forward to a decision.

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

### THE COMPLAINT

The complainant submitted to the European Commission a research and technological development (RTD) proposal QLRT-1999-31172 under call for proposals 1999/C 64/14 (1). On 15 November 1999, the complainant sent his grant proposal from Sweden using the International Mail carrier TNT. The shipment arrived to Brussels on 16 November 1999. On 11 April 2000, the Commission services confirmed that the proposal was declared ineligible due to its late arrival 90-95 days after the submission of the proposal.

According to the call for proposals, a postmark dated 15 November 1999 would have been accepted, provided that the grant proposal was in Brussels within 10 days from that date.



Electronic submission of the forms was possible, with a 48 hours grace period. For personal or manual delivery the deadline was 15 November 1999 at 5 p.m.

According to the complainant, the interpretation of the Commission is that only national postal services are allowed, and that any other kind of delivery was to be interpreted as a manual/courier delivery and arrival date should have been 15 November at 5 p.m. The complainant is of the view that only one type of deadline should be applied for grant proposals sent via different type of shipments.

Moreover, the complainant alleges that the review procedure of the proposal differed from the Guide for Proposers. In the Guide for Proposers, part 1, page 21, it is stated that an application is checked for eligibility in step 2, and if eligible, then processed in step 3. In steps 4, 5, prioritizations are made and in step 6A financial and administrative checks are made. If an application has been once regarded as eligible to go through the evaluation process (step 3), it should not be declared ineligible at a later time, but only reviewed for soundness of financial and administrative prospects of the project. If the Commission would have followed the Guide for Proposers, the grant proposal would have been declared ineligible immediately upon arrival and the complainant would have had a chance to present a new application for the next call 15 March 2000. Now, a new application can only be made in October 2001.

Finally, the complainant alleges that the Commission has not informed him of its interpretation of the notion "postmarked date". According to the complainant, despite written and e-mailed requests to the Commission he has not obtained the scientific review of his proposal QLRT-1999-31172. Furthermore, the complainant alleges that despite written and e-mailed requests to the Commission he has not obtained the scientific review of proposal QLRT-1999-31172.

In his complaint the complainant makes the following claims:

- 1) the Commission applies different deadlines for different modes of shipment;
- 2) the review process applied by the Commission differed from the Guide for Proposers;
- 3) lack of information and refusal of information by the Commission.

The complainant made suggestions to the Commission with the aim of improving the review procedure of grant proposals. According to the complainant, there should be neutrality as to the means of shipment of a proposal and a decision that there should only be one type of a deadline without a " *grace period* ". The review procedure should comply with the guidelines. The complainant called for complete transparency of the procedure of grant proposals.

## THE INQUIRY

### The Commission's opinion

The Commission made, in summary, the following points:



1) The second paragraph of point 6 in call 1999/C 64/14 clearly states that : « *In submitting a proposal, either on paper or electronically, proposers accept the procedures and conditions as described in this call and in the documents to which it refers.* ». In submitting his proposal, the complainant therefore accepted all the rules which constitute the framework of the call. If proposers find one of the conditions unacceptable, they are always at liberty not to respond to the Commission's call.

As regards sending and receiving proposals, the Commission stated that to make it easier to submit proposals, it gave proposers three different ways of sending them: by post, preferably registered, as confirmed by the postmark; by courier or hand-delivered or by electronic submission.

With regard to the first two options, which concern this complaint, proposals sent by post must be posted before or on the deadline laid down by the call (in this particular case: 15 November 1999) and must arrive during the ten working days following the deadline. Proposals which are sent by courier or are hand delivered must be received by the European Commission before or on the deadline laid down by the call (in this particular case: 15 November 1999 at 5 p.m., Brussels time).

This distinction - whether or not a period of ten working days is allowed - is made for the following reason: if a letter is posted, it cannot be recovered from the postal service. However, if a letter is entrusted to a courier service, it can always be recovered and its contents altered while it is being sent.

As the complainant has pointed out, his proposal was handed over to the courier service TNT in Lund in Sweden on 15 November 1999 and was delivered to the Commission on 16 November 1999, the day after the deadline for the receipt of proposals. Moreover, in the electronic message annexed to the Commission's opinion, the complainant admits that he made a mistake.

By submitting his proposal, the complainant has accepted *de facto* the procedures and conditions described in the call. His proposal, which was received by the Commission after the deadline, did not meet the eligibility requirement concerning « *the date of receipt of proposals* ». The Commission therefore rightly declared it to be ineligible.

2) As regards the compliance with the published evaluation rules, the Commission stated that the first two paragraphs of the Chapter Administrative check on eligibility in the Evaluation Manual for proposals for indirect RTD actions adopted by Commission Decision C(1999)710 of 17 March 1999 states that:

« *Commission staff will verify that proposals meet the eligibility criteria referred to in the call for proposals. These criteria will be rigorously applied and any proposal found to be ineligible will be excluded from evaluation.*



*An eligibility check list will be filled out for each proposal on the basis of the information contained in the proposal form. If it becomes clear during or after the evaluation phase that one or more of the eligibility criteria have not been fulfilled by a proposal, it will be declared ineligible and withdrawn from any further examination. »*

In practice, the Commission staff carries out an initial administrative check on eligibility when proposals arrive, and then evaluate the proposals before starting negotiations with the coordinators of proposals retained for possible funding. However, further eligibility checks on the proposals are generally carried out during the evaluation of the proposals as well as afterwards. This possibility is clearly referred to in the above mentioned Evaluation Manual.

Thus, after having been evaluated, it clearly appeared that the complainant's proposal did not meet the eligibility criteria regarding the reception date of proposals. In conformity with the rule described above, the Commission services have rightly discarded the complainant's proposal.

As regards the notification of ineligibility of the proposal, the Commission explained that following the receipt of more than 1700 proposals on 15 November 1999, the proposals were checked for eligibility and then evaluated between December 1999 and February 2000. Subsequently, the Commission services drafted Commission Decision C(2000) 1394, which was adopted on 29 May 2000. On 30 May 2000, the Commission services notified the complainant of the Commission's decision. Checking, evaluating and filing more than 1700 proposals takes up a great deal of resources. The Commission nevertheless does all it can to shorten the time it takes to send out the results.

However, it should be noted that the Commission did not, in the context of call 1999/C 64/14, in any way give an undertaking that it would process the proposals it received within a given period of time.

Furthermore, it is incorrect to claim that the complainant's proposal could have been re-submitted in March 2000 in the context of call 1999/C 361/06 if he had known earlier that his proposal was ineligible. In fact, area 9.3 (Brain development) in which he submitted a proposal was not open in March 2000. The area in question will be open in 2001 with a submission date of 18 October.

3) As to the request for interpretation, the Commission stated that its department was not able to find any request from the complainant for interpretation. The Commission explained that if they find they have made a mistake in declaring a proposal ineligible, they prepare a new decision amending the earlier one and everything is done to make good the damage sustained by the proposer.

With regard to what is meant by the expression "as confirmed by the postmark", the Commission departments explained that this is an expression which is hallowed by usage in all the Member States, in particular in connection with public tenders. Given that the expression contains that word post a date hand-written by a courier service can never be considered equivalent to a postmark.



Call for proposals 1999/C 64/14 was published in OJ on 6 March 1999. On publication, the deadline for the submission of proposals for area 9.3 was specified as being 11 October 1999. By means of a corrigendum published in OJ C 229, p. 13, on 12 August 1999, the date of submission was extended to 15 November 1999. The complainant had 8 months in total to submit the proposal concerned. He was therefore taking a great risk by submitting it on the last day.

The Commission, taking into account the complainant's suggestions, has decided to abolish from future calls for proposals what the complainant calls a « *grace period* », i.e. the period of ten working days allowed after the deadline of receipt for the delivery of letters sent by post. As it is, this will not in any way affect the situation as regards a proposal which is received after the deadline given in the call: the proposal will be declared to be ineligible.

Furthermore, the Commission services have agreed to communicate to the proposers the results of the eligibility check and the summary evaluation report established by the independent experts as soon as the eligibility checks and the evaluations have been completed. In this context, the Commission agrees to the transmission of the complainant of the summary evaluation report concerning the complainant's proposal.

The Commission noted that if the complainant's proposal had not been declared ineligible it would have been ranked 24<sup>th</sup> (out of 33 proposals) in a list of which, for budgetary reasons, only the first 15 proposals have been financed.

The forthcoming date for submission of proposals for indirect RTD actions in area 9.3 « *Brain development* » of the programme « *Quality of Life and Management of Living Resources* » is 18 October 2001: the complainant is invited to submit a new proposal as soon as possible in 2001.

#### **The complainant's observations**

The complainant maintained his complaint. The complainant disagreed with the Commission statement that by submitting a proposal, the participant accepts the procedures. The complainant stressed that there was no equality between the three options of submitting the applications. According to the complainant, he could not have retrieved the application once it had been handed over to TNT courier service and he claimed that his application was sent with a method equivalent of that of mail service. The company called itself « *TNT International mail service* ». The complainant claimed that the Commission did not provide a list of individual companies that it considers as courier services or postal services.

According to the complainant, his application was first declared admissible and only after the scientific evaluation ineligible. The complainant claims that if he would have been notified sooner about the ineligibility he could have submitted a proposal for the call 1999/C 361/06 with a deadline of 15 March under Diseases of aging.

The complaint contains an electronic printout of the tracking record of the shipment, and it shows that the parcel was picked-up on the 15<sup>th</sup>, well within the deadline. The complainant has evidence for a shipment date of 15<sup>th</sup> both as hand-written and an electronic verification.



The complainant claimed that his application was wrongfully declared ineligible and that he has submitted the application correctly using TNT International Mail Service and that this company provides services identical to that of a national postal service. There should be no difference between a postal mark or a pick-up date (hand-written or electronically verified). If the parcel had been put in a regular mailbox, it would have been declared eligible. The complainant claims that there was no neutrality for the modes of shipment and that this is maladministration.

According to the complainant, the Commission stated that the application would have been ranked #24 out of 33. Thus, it admits that the application has been through the scientific process, and was rated. Despite several requests the scientific evaluation was not communicated to the complainant.

The complainant noted that the Commission has changed the instructions for future application according to the complainant's suggestions. The complainant is thankful that at least some good has come out of the complaint process.

#### **Further inquiries**

The European Ombudsman requested complementary information from the Commission regarding the complainant's request to obtain a copy of the scientific evaluation of their application under call for proposals 1999/C 64/14.

#### **The Commission's complementary opinion**

The Commission sent a copy of the scientific evaluation report prepared by the expert evaluators which it had already annexed to its opinion. It stated that the proposal has been checked for eligibility in compliance with the first two paragraphs of the Chapter Administrative check on eligibility in the Evaluation Manual for proposals for indirect RTD actions adopted by Commission Decision C (1999) 710 of 17 March 1999.

#### **The complainant's complementary observations**

The complainant indicated in his observations that he had nothing to add.

## **THE DECISION**

### **1 Different deadlines for different modes of shipment in the call for proposals 1999/C 64/14**

1.1 The complainant claims that the Commission applied different deadlines for different modes of shipment in its call for proposals 1999/C 64/14. According to the call for proposals, a postmark dated 15 November 1999 would have been accepted, provided that the grant proposal was in Brussels within 10 days from that date. Electronic submission of the forms was possible, with a 48 hours grace period. For personal or manual delivery the deadline was 15 November 1999 at 5 p.m. According to the complainant, the interpretation of the Commission is that only national postal services are allowed, and that any other kind of delivery was to be interpreted as a manual/courier delivery and arrival date should have been 15 November at 5 p.m. The complainant is of the view that only one type of deadline should be applied for grant proposals sent via different type of shipments.

1.2 The Commission stated that proposals sent by post were to be posted before or on the deadline laid down by the call (in this particular case: 15 November 1999) and had to arrive



during the ten working days following the deadline. Proposals which were sent by courier or were hand delivered had to be received by the European Commission before or on the deadline laid down by the call (in this particular case: 15 November 1999 at 5 p.m., Brussels time). This distinction - whether or not a period of ten working days is allowed - was made for the following reason: if a letter is posted, it cannot be recovered from the postal service. However, if a letter is entrusted to a courier service, it can always be recovered and its contents altered while it is being sent.

1.3 The Commission pointed out that the complainant's proposal was handed over to the courier service TNT in Lund in Sweden on 15 November 1999 and was delivered to the Commission on 16 November 1999, the day after the deadline for the receipt of proposals.

1.4 The Ombudsman considers that the principles of good administration require the Commission to: (i) establish a reasonable and precise deadline for applications (ii) take adequate steps to inform applicants of the deadline and (iii) apply the deadline correctly in dealing with applications.

1.5 The Ombudsman finds that the Commission has given a reasonable explanation for its decision to set a different deadline for proposals delivered by courier service from that which applies to proposals sent by post. Furthermore, the Commission appears to have taken adequate steps to inform applicants of the different deadlines in the Call for Proposals >1999/C 64/14 and it appears to have applied the deadline correctly to the complainant's proposal. Therefore, there appears to be no maladministration in relation to this aspect of the case.

1.6 However, the European Ombudsman suggests that it could be useful for the European Commission to regularly review its rules on deadlines in the light of changing organisation of non-electronic mail services.

## **2 Review process differed from the Guide for Proposers**

2.1 The complainant claims that the review process of the proposal differed from the Guide for Proposers. In the Guide for Proposers, part 1, page 21, it is stated that an application is checked for eligibility in step 2, and if eligible, then processed in step 3. In steps 4, 5, prioritizations are made and in step 6A financial and administrative checks are made. If an application has been once regarded as eligible to go through the evaluation process (step 3), it should not be declared ineligible at a later time, but only reviewed for soundness of financial and administrative prospects of the project. If the Commission would have followed the Guide for Proposers, the grant proposal would have been declared ineligible immediately upon arrival and the complainant would have had a chance to present a new application for the next call 15 March 2000. Now, a new application can only be made in October 2001.

2.2 As regards the compliance with the published evaluation rules, the Commission stated that the first two paragraphs of the Chapter Administrative check on eligibility in the Evaluation Manual for proposals for indirect RTD actions adopted by Commission Decision C(1999)710 of 17 March 1999 states that:

*« Commission staff will verify that proposals meet the eligibility criteria referred to in the call for*





*proposals. These criteria will be rigorously applied and any proposal found to be ineligible will be excluded from evaluation.*

*An eligibility check list will be filled out for each proposal on the basis of the information contained in the proposal form. If it becomes clear during or after the evaluation phase that one or more of the eligibility criteria have not been fulfilled by a proposal, it will be declared ineligible and withdrawn from any further examination .»*

2.3 The Commission stated that its staff carries out an initial administrative check on eligibility when proposals arrive, and then evaluate the proposals before starting negotiations with the coordinators of proposals retained for possible funding. However, further eligibility checks on the proposals are generally carried out during the evaluation of the proposals as well as afterwards. This possibility is clearly referred to in the above mentioned Evaluation Manual. According to the Commission after the complainant's proposal had been evaluated, it clearly appeared that it did not meet the eligibility criteria regarding the reception date of proposals. In conformity with the rule described above, the Commission services rightly discarded the complainant's proposal.

2.4 The Ombudsman observes that the information provided about the process of reviewing the eligibility of proposals is different in the Guide of Proposals, part 1, page 21 compared to the first two paragraphs of the Chapter Administrative check on eligibility in the Evaluation Manual for proposals for indirect RTD actions adopted by Commission Decision C(1999)710 of 17 March 1999.

2.5 Principles of good administration require the institution to communicate clear and understandable information to the public. In the present case, by providing information in the Guide for Proposers which did not correspond to Commission Decision C(1999)710 of 17 March 1999 the Commission failed to provide clear and understandable information on the process of eligibility and particularly on the phase in which eligibility of a proposal is checked. This failure to provide clear and understandable information constitutes an instance of maladministration.

### **3 Lack of information and refusal of information by the Commission**

3.1 The complainant alleges that the Commission has not informed him of its interpretation of the notion "*postmarked date*".

3.2 The Commission stated that its departments were not able to find any request from the complainant for interpretation. With regard to what is meant by the expression "*as confirmed by the postmark*", the Commission explained in its opinion the following. "*As confirmed by the postmark*" is an expression which is hallowed by usage in all the Member States, in particular in connection with public tenders. Given that the expression contains that word post a date hand-written by a courier service can never be considered equivalent to a postmark.

3.3 The Ombudsman finds that the Commission has in its opinion given a reasonable interpretation of "*as confirmed by the postmark*".

3.4 According to the complainant, despite written and e-mailed requests to the Commission he has not obtained the scientific review of proposal QLRT-1999-31172.





3.5 The Commission has both in its opinion and complementary opinion sent a copy of the scientific evaluation report prepared by the expert evaluators.

3.6 The Ombudsman is of the view that the complainant has not provided elements which would confirm the existence of any other scientific reviews of proposal QLRT-1999-31172 than the scientific evaluation report forwarded by the Commission in its opinion and complementary opinion.

3.7 Based on the above findings, there appears to be no instance of maladministration in relation to these aspects of the case.

#### **4 Conclusion**

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

The Ombudsman observes that the information provided about the process of reviewing the eligibility of proposals is different in the Guide of Proposals, part 1, page 21 compared to the first two paragraphs of the Chapter Administrative check on eligibility in the Evaluation Manual for proposals for indirect RTD actions adopted by Commission Decision C(1999)710 of 17 March 1999.

Principles of good administration require the institution to communicate clear and understandable information to the public. In the present case, by providing information in the Guide for Proposers which did not correspond to Commission Decision C(1999)710 of 17 March 1999 the Commission failed to provide clear and understandable information on the process of eligibility and particularly on the phase in which eligibility of a proposal is checked. This failure to provide clear and understandable information constitutes an instance of maladministration.

Given that this aspect of the case concerns 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.

## **FURTHER REMARK**

The European Ombudsman suggests that it could be useful for the European Commission to regularly review its rules on deadlines in the light of changing organisation of non-electronic mail services.

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

Yours sincerely,



Jacob SÖDERMAN

(1) Call published in OJ C 64 of 6 March 1999, p. 19, and amendment 1999/C 229/09 published in OJ C 229 of 12 August 1999, p. 13.