

## **Decision of the European Ombudsman on complaint 905/2001/GG against the European Commission**

Decision

**Case 905/2001/GG - Opened on 27/06/2001 - Decision on 29/11/2001**

Strasbourg, 29 November 2001

Dear Mr I.,

On 18 June 2001, you submitted, acting on behalf of the Austrian village Deutsch Griffen, a complaint against the European Commission concerning the latter's handling of an application for a grant towards a town-twinning project.

On 27 June 2001, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 3 October 2001. I forwarded the Commission's opinion to you on 4 October 2001 with an invitation to make observations, if you so wished. On 7 November 2001, you sent me your observations on the Commission's opinion.

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

### **THE COMPLAINT**

The complainant, an Austrian MEP, intervened on behalf of the Austrian village Deutsch Griffen. In March 2001, the said village applied (using the relevant standard form) for an EU grant towards a project organised in the context of its twinning agreement with a German town. This project was due to take place between 15 and 17 June 2001. Half of the costs of the event were to be borne by the Austrian village. The standard form contains a declaration to this effect (part 6 of the form) signed by the mayor of the Austrian village.

In part 3 of the form filled in by the applicant the costs of the event (box on the left-hand side) had been calculated as  $\text{€ } 7\,206$  whilst under the column 'financing plan' (box on the right-hand side) the Austrian village had only mentioned the amount of  $\text{€ } 3\,603$  (i.e., 50 %) it was requesting as a grant. The Austrian village had proceeded likewise in part 4 of the form where it had set out the costs of transport ( $\text{€ } 5\,090$ ) and the amount of the grant requested ( $\text{€ } 2\,545$ , i.e. 50 %).



On 3 May 2001, the Commission wrote to the Austrian village to inform it that its application had been rejected. The Commission enclosed a 'list of reasons for rejection' on which the following reason had been ticked: 'The budget is not balanced'.

The Austrian village then turned to the complainant for help who sent two e-mails to the case-handler at the Commission (28 May and 1 June 2001). In the first of these e-mail messages, he pointed out that the Austrian village appeared to have made a formal mistake by omitting to include the contribution of the applicant in part 3 of the form. He therefore asked the Commission to permit the Austrian village to resubmit this part of the application. The complainant subsequently also sent a fax to Mrs Reding, the Member of the Commission in charge of the matter (5 June 2001). In the absence of a reply to any of these letters, the complainant turned to the Ombudsman for help.

In his complaint, the complainant made the following allegations:

- (1) The Commission had failed to reply to his letters
- (2) The Commission had unfairly rejected the application on purely formal grounds

## THE INQUIRY

The complaint was sent to the Commission for its opinion.

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

In its opinion, the Commission made the following comments:

The Commission had received approximately 1 300 applications for grants. For the handling of all these applications the service responsible for town-twinning grants had to make full use of all its human resources and of all the time available. During this period of time, some delays in the treatment of incoming post were considered to be normal. Mr Van der Pas, the Director-General of Directorate-General Education and Culture, had addressed a detailed two-page reply to the complainant on 11 July 2001.

The application of the Austrian village had not been selected since it had not been in conformity with the rules set out in the relevant call for proposals (1). The budget included in the application had not been clearly balanced, showing expenditure and income for the proposed activity, and it had not been "accompanied by details of expenditure and income, stating unit costs", as required by point 7.1.b) of the above-mentioned text. Without a clear and detailed presentation of the budget, the selection committee was unable to judge whether all the costs included in an application were eligible for Community funding.

A copy of the letter of Mr Van der Pas to the complainant of 11 July 2001 was enclosed with the opinion.

In his letter, Mr Van der Pas pointed out that when he acceded to his post in early 2000, he



discovered that there was considerable dissatisfaction among applicants regarding the handling of their applications. There were unacceptable delays regarding notifications of the acceptance or the rejection of applications and also in so far as the payment of grants was concerned. An internal audit had shown the need for a fundamental overhaul of the existing system and for the introduction of a procedure that was both efficient and in conformity with the Commission's rules on granting funds. After thorough consultation of national and regional town-twinning organisations a new system had thus been introduced in November 2000 and a call for proposals had been published in the Official Journal. In this document and on the website set up by his Directorate-General, precise explanations had been given as to what form had to be used, how it had to be filled in and what additional documents had to be included. Sufficient information had thus been given.

Mr Van der Pas added that he would have liked to resolve problems such as those experienced by the Austrian village by way of greater flexibility, for example by granting additional time to submit information that was missing. However, this would unfortunately and unavoidably have caused problems with the majority of applicants or with the Commission's financial control system. Since all the applications had to be considered together to ensure equal treatment, applicants who had filled in their forms correctly would have had to wait longer for a decision on their application and for the grant. The shortness of the time between the date for submitting applications and the commencement of projects simply did not allow delays in handling applications. If delays were to be accepted in order to show more flexibility, this would inevitably lead to retroactive payments that were not in conformity with the rules on granting funds. The Commission was thus in a dilemma. Either it showed flexibility and thus disappointed the majority of applicants through renewed delays (i.e., a lapse back into the old system) or it stuck to the clear rules and thereby exposed itself to the criticism of individual applicants whose applications had been turned down.

Mr Van der Pas asked for the complainant's comprehension that in such circumstances the Commission had decided in favour of the majority of applicants. He added, however, that he was aware of the fact that the new system still needed to be improved and that this question would be considered together with its partner organisations and the European Parliament in September.

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

In his observations, the complainant made the following comments:

The Commission's arguments did not justify the unfair and unjust way in which it had proceeded. It was clear from the application that the Austrian village was providing the necessary own resources for the event. The formal mistake that had occurred should therefore not have resulted in the rejection of the application.

Numerous discussions with persons concerned showed that applicants had problems filling in forms. It was impossible to draft forms in such a way that questions or queries on the part of the persons filling them in would be altogether excluded. The Commission itself knew that it was nearly impossible to work out perfect forms.



Applications from which the intentions of the applicant clearly emerged had to be treated in a positive way. It was highly unfair not to give applicants a chance to correct a mistake. The aim pursued by the Commission was obvious: It used forms that were in parts complicated and that would lead to mistakes. Applications were then rejected on the basis of minute formal errors although the intentions of the applicant could clearly be gauged from them.

The Ombudsman should therefore ensure that the Austrian village obtains its grant as soon as possible.

## **THE DECISION**

### **1 Failure to reply to letters**

1.1 The complainant, an Austrian MEP, intervened on behalf of an Austrian village that had applied, in March 2001, for an EU grant towards a project organised in the context of the twinning agreement between this village and a German town. On 3 May 2001, the Commission informed the applicant that its application had been rejected. The complainant then sent two e-mails to the case-handler at the Commission (28 May and 1 June 2001) and a fax to the member of the Commission in charge of the matter (5 June 2001). In his complaint submitted in June 2001, he claimed that he had not received an answer to any of his letters.

1.2 The Commission pointed out that 1 300 applications had been received and that the service in charge had to make full use of all its human resources and of all the time available to handle these applications. According to the Commission, some delays in the treatment of incoming post were therefore considered to be normal during this period of time. Furthermore, Mr Van der Pas, the Director-General of Directorate-General Education and Culture, had addressed a detailed two-page reply to the complainant on 11 July 2001.

1.3 It is good administrative practice that the administration should reply to letters from members of the public within a reasonable period (2) . The Commission itself, in its own Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public, has acknowledged that letters (and e-mail messages that are, by their nature, the equivalent of a letter) should be answered within 15 working days (3) . According to the same Code, a holding reply should be sent where a reply cannot be sent within this period. The Ombudsman considers that in any event an acknowledgement of receipt should be sent within a period of two weeks unless a substantive reply is sent within this period (4) . In these circumstances, the Ombudsman cannot accept the Commission's claim that in view of the workload of the relevant service delays in answering letters are to be considered as "normal". It should in any event be possible to send an acknowledgement of receipt or a holding letter in such cases.

1.4 The Ombudsman notes, however, that a detailed reply was sent to the complainant on 11 July 2001, that is to say little more than a month after the complainant had first contacted the Commission. In these circumstances the Ombudsman considers that it is not necessary for him further to pursue his inquiry into this aspect of the complaint.

### **2 Unfair rejection of application**



2.1 The complainant claims that the Commission acted unfairly by rejecting the application on purely formal grounds.

2.2 The Commission points out that the application did not comply with the formal requirements set out in the relevant call for proposals (5) . According to the Commission, the budget included in the application had not been clearly balanced, showing expenditure and income for the proposed activity, and it had not been "accompanied by details of expenditure and income, stating unit costs", as required by point 7.1.b) of the above-mentioned text. In a letter sent to the complainant by the Director-General of the Directorate-General, Mr Van der Pas, in charge of the matter, a copy of which was submitted by the Commission, more general explanations are given. Mr Van der Pas there explained that a new system regarding grants for town-twinning events had been introduced in 2000 in order to remedy the defects of the previous system. He pointed out that in the call for proposals that had subsequently been published on the website set up by his Directorate-General, precise explanations had been given as to what form had to be used, how it had to be filled in and what additional documents had to be included. Mr Van der Pas added that he he would have liked to resolve problems such as those experienced by the Austrian village by way of greater flexibility, for example by granting additional time to submit information that was missing. According to Mr Van der Pas, this would however have meant that the majority of applicants who had filled in their forms correctly would have had to wait longer and that conflicts with the rules on grants (which prohibited retroactive funding) would have loomed. Mr Van der Pas asked for the complainant's comprehension that in such circumstances the Commission had decided in favour of the majority of applicants. He added, however, that he was aware of the fact that the new system still needed to be improved and that this question would be considered shortly.

2.3 The Ombudsman considers that his experience with previous complaints regarding applications to the Commission for grants for town-twinning projects (6) would appear to confirm the Commission's conclusion that a reform of its procedures was necessary. In the Ombudsman's view, and for the reasons set out in the letter from Mr Van der Pas to the complainant, the Commission's decision to opt for a strict interpretation of the new rules so as to handle applications as quickly as possible does not appear to be unreasonable. If applicants who had failed to submit complete applications were given more time to remedy these defects, delays working to the disadvantage of applicants who had complied with all the relevant requirements would indeed be likely to arise.

2.4 The Ombudsman considers, however, that such a strict approach is only appropriate if sufficient information is given to applicants and if errors that are nevertheless caused by the inadequate drafting of the relevant forms do not automatically lead to the rejection of an application.

2.5 In the present case, the complainant admits that whilst in part 3 of the form the full costs of the event were mentioned under "eligible costs", only those 50 % thereof which the applicant requested the Commission to provide as a grant were mentioned under "financing plan". The Ombudsman considers, however, that it had not been made sufficiently clear that it was essential to mention the remaining 50 % here. As the complainant points out, the standard form



contained a declaration (part 6 of the form) signed by the mayor of the Austrian village according to which 50 % of the costs of the event were to be borne by the Austrian village. In the absence of precise instructions to the contrary, the applicant could thus be led to believe that it was not necessary to mention the 50 % of the costs to be borne by itself also in part 3 of the form (7) .

2.6 The Ombudsman notes, however, that the Commission further claims that the application was not "accompanied by details of expenditure and income, stating unit costs", as required by point 7.1.b) of the Call for proposals. The application form submitted to the Ombudsman does indeed not contain such an accompanying document. The complainant has not made any comments in this respect. The Ombudsman further notes that the application form submitted to him includes a note in bold type, after part 3, according to which details of expenditure and income, stating unit costs, had to be added to the application form. In view of these circumstances, the Commission's view that the application had to be rejected since it was not in conformity with the rules applicable appears to be reasonable.

2.7 In these circumstances, there appears to be no maladministration on the part of the Commission in so far as the complainant's second allegation is concerned.

### **3 Conclusion**

On the basis of the European Ombudsman's inquiries into this complaint, it appears that there is no maladministration on the part of the Commission. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) OJ 2000 C 320, page 9.

(2) Cf. Article 17 of the Code of Good Administrative Behaviour prepared by the European Ombudsman that was approved by the European Parliament on 6 September 2001. The Code is available on the Ombudsman's website ( <http://www.ombudsman.europa.eu> [Link]).

(3) In point 4 of the 'Guidelines for good administrative behaviour' laid down therein. The Commission's Code is annexed to the Commission's Rules of Procedure (OJ 2000 L 308, page 26).

(4) Cf. Article 14 (1) of the Ombudsman's Code of Good Administrative Behaviour.

(5) OJ 2000 C 320, page 9.



(6) See for example the Ombudsman's decision of 12 October 2000 on complaint 516/2000/GG (available in English on the Ombudsman's website).

(7) Point 7.1.b) of the Commission's call for proposals only asks applicants to submit "a balanced budget estimate in euro, showing expenditure and income for the proposed activity". The German text of this provision is even less clear since the expression "ausgewogen" used therein is ambiguous.