

## **Decision of the European Ombudsman on complaint 687/2002/MF against the European Commission**

Decision

**Case 687/2002/MF/ADB - Opened on 16/05/2002 - Decision on 21/10/2002**

Strasbourg, 21 October 2002

Dear Mrs P.,

On 14 April 2002, you made a complaint to the European Ombudsman concerning your exclusion from the evaluation of the proposals under the call for proposals 1999/C72/14.

On 16 May 2002, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 5 July 2002. I forwarded it to you with an invitation to make observations, which you sent on 29 August 2002.

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

### **THE COMPLAINT**

According to the complainant, the relevant facts were as follows:

On 12 March 2002, the complainant submitted to the European Commission a proposal for a Marie-Curie Individual Fellowship under the call for proposals 1999/C 72/14 (hereafter "the call for proposals") for indirect Research and Technological Development actions. The deadline for the submissions of proposals was 13 March 2002.

The complainant used the "Chronopost" courier service to send her proposal that was sent from Paris on 12 March 2002. This courier service guaranteed the delivery within 24 hours for international consignments. However, the complainant's proposal was delivered to the Commission on 14 March 2002, after the deadline indicated in the call for proposals.

On 13 March 2002, following a connection to the Internet to check the tracking of her consignment, the complainant realised that her proposal was still in France. She immediately informed the Commission services (Marie Curie Fellowship Unit) by fax that her proposal would be delivered with a delay by the "Chronopost" courier service. At the complainant's request, the courier service sent a letter to her in which it stated that it was responsible for the delay in the



delivery and would reimburse her. The complainant sent this letter to the Commission, stating that she was not responsible for the delay in the delivery of her proposal and asking for it to be considered for evaluation.

In her telephone call to the Commission, the complainant proposed to send her proposal by fax to the Marie Curie Fellowship Unit. She was reminded that the call for proposals did not foresee this mode of submission and that proposals sent by fax were therefore unacceptable.

In a letter dated 15 April 2002, she informed the Director-general of D-G Research of her difficulties in putting together the proposal before the deadline indicated in the call for proposals and of the delay in the delivery that was not her responsibility. On 8 May 2002, the Commission services informed the complainant that her proposal was considered ineligible because it was delivered after the deadline for submission indicated in the call for proposals ( *"13 March 2002 at 5 p.m., Brussels local time"* ). On 13 May 2002, in his reply to the complainant's letter, the Director-general confirmed the ineligibility of the complainant's proposal. He stated that the non-respect of commitments made by courier companies cannot be accepted, from a legal point of view, to consider eligible, submissions of proposals delivered after the deadline.

On 14 April 2002, the complainant lodged a complaint with the European Ombudsman. She alleged that the decision of the European Commission to exclude her from the evaluation of the proposals was unjustified, as she was not responsible for the delay in the delivery of her proposal. She also alleged that the fact that the Commission provided for an additional 48-hours delay for electronic submissions compared to paper submissions by mail was unfair.

The complainant claims that her proposal should be considered eligible.

## THE INQUIRY

### The Commission's opinion

The opinion of the European Commission on the complaint was in summary the following:

Concerning the allegation of its unjustified decision to exclude the complainant from the evaluation of the proposals, the Commission argued that, in order to ensure transparency and the equality of treatment, all proposals had to be treated under the same rules. It added that in the Marie Curie Individual Fellowships Guide for Proposers, it was clearly stated that *"Proposals must arrive at the Commission according to the relevant deadline. It is therefore highly recommended to submit proposals well in advance of the deadline for the submission."*

As already explained to the complainant in two letters dated 8 and 13 May 2002, the non-respect of commitments made by delivery companies cannot be accepted, from a legal point of view, to consider eligible, submissions of proposals delivered after the deadline. The Commission's Legal Service had confirmed this.

Concerning the allegation that the additional 48-hours delay for electronic submissions was unfair, the Commission argued that it was not founded. For both paper and electronic



submissions, the essential conditions are the same: the proposal must be completed and a delivery (paper proposal or validation file) made to the Commission before the deadline of the call for proposals. For an electronic submission to be considered valid, the proposer must obtain a digital certificate, complete a sealing and validation procedure and send the validation file to the Commission before the expiry of the deadline of the call for proposals. The unmodified proposal file must be received electronically within 48 hours after the deadline. The aim of this 48-hours deadline is to ensure that the delivery of the much larger proposal file is not blocked by congestion within the servers. Neither method has therefore a temporal advantage over the other one. Proposers are free to choose the method by which they submit their proposal.

The Commission stated finally that, from the correspondence of the complainant, it was clear that she was aware of these options.

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

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her observations, the complainant maintained her complaint. She alleged that the proposer should not be considered responsible for the non-respect of commitments made by delivery companies as far as the eligibility of the proposal is concerned. The fact that the Commission does not consider eligible, submissions of proposals delivered after the deadline when delivery companies are responsible for the delay can lead to discriminatory situations. Local proposers have more time for their project and spend less money compared with other proposers who live further and have to use delivery services. Proposals submitted by local proposers are therefore more likely to be considered for evaluation.

She also maintained that there was a temporal difference between the two methods of submissions. In the electronic submission, the proposal file must arrive by 48 hours after the deadline, that is to say by 15 March at 5 p.m. Such an extension of the deadline does not apply to paper submissions. Proposals sent by mail can be delivered after the deadline for reasons beyond the control of proposers.

She finally argued that proposers only seem to be free to choose the method by which they submit their proposal. Actually, the electronic submission of the proposal requires that the proposer have technical resources. Special software ("ProTool") has to be downloaded. The sealing and validation procedure to obtain the digital certificate requires the respect of other rules. All this procedure has to be followed by both the proposer and the director of the project.

## **THE DECISION**

### **1 The alleged unjustified decision of the Commission to exclude the complainant from the evaluation of the proposals**

1.1 The complainant alleges that the decision of the Commission to exclude her from the evaluation of the proposals was unjustified, as she was not responsible for the delay in the delivery of her proposal.

1.2 The Commission argued that in order to ensure transparency and the equality of treatment,



all proposals had to be treated under the same rules. The non-respect of commitments made by delivery companies cannot be accepted, from a legal point of view, to consider eligible, submissions of proposals delivered after the deadline.

1.3 The Ombudsman notes that in the call for proposals, proposers are recommended to submit proposals well in advance of the deadline for submissions. It is also stated that all proposals arriving late for the relevant deadline will not be considered for evaluation. In the present case, the evidence available to the Ombudsman is that the complainant sent her proposal to the Commission on 12 March 2002. It was however delivered on 14 March 2002 due to a major problem in the delivery on part of the courier service.

1.4 The Ombudsman considers that the call for proposals properly informed the proposers of the requirements and conditions to be fulfilled for the evaluation of their proposals. The Commission recommended to the proposers to submit their proposals well in advance of the deadline. In refusing to accept the non-respect of commitments made by delivery companies, to consider eligible, submissions of proposals delivered after the deadline, the Commission ensured that all proposals were treated under the same rules in accordance with transparency and the equality of treatment.

1.5 On the basis of the Ombudsman's inquiries, there appears, therefore, to be no instance of maladministration on the part of the Commission.

## **2 The alleged unfair additional 48-hours delay provided by the Commission for electronic submissions**

2.1 The complainant alleges that the fact that the Commission provided for an additional 48-hours delay for electronic submissions compared to paper submissions by mail was unfair. The complainant did not herself make use of this procedure.

2.2 The Commission argued that this allegation was not founded. The aim of this 48-hours delay is to ensure that the delivery of the much larger proposal file is not blocked within the servers.

2.3 The Ombudsman notes that it is stated in the call for proposals that, concerning deadlines for electronic submissions, *"the validation file must arrive at the Commission before the relevant deadline and the electronic proposal file must arrive by 48 hours after the deadline"*. In its opinion on the complaint, the Commission added that the electronic proposal file could not be modified and that the 48-hours delay aimed to ensure that the delivery of the much larger proposal file was not blocked within the servers. The Ombudsman considers that the conditions for electronic submissions with its 48-hours delay appear to be reasonable and within the limits of the institution discretion.

2.4 In view of the above, the Ombudsman considers that there appears to be no instance of maladministration on the part of the Commission in this aspect of the case.

**3** In view of the findings of no maladministration in sections 1 and 2 of this decision, the Ombudsman does not consider it necessary to inquire further into the complainant's claim.



#### **4 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission.

The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN