

Decision of the European Ombudsman on complaint 1851/2002/OV against the European Commission

Decision

Case 1851/2002/OV - Opened on 13/11/2002 - Decision on 05/06/2003

Strasbourg, 5 June 2003

Dear Mr L.,

On 25 October 2002, you made a complaint to the European Ombudsman against the Commission on behalf of Intercom Consulting s.r.l. concerning the rejection of the proposal that you submitted further to the call for Exploratory Awards within the 5th Framework Programme (1998-2002).

On 13 November 2002, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 21 January 2003 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

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

The complainant, who complains as Director of Intercom Consulting s.r.l, submitted a proposal further to the Call for Exploratory Awards within the 5th Framework Programme (1998-2002), managed by the Research DG of the European Commission. On 5 July 2002, the Research DG of the Commission rejected the complainant's proposal stating that the Call was closed on 18 April 2001, whereas the complainant's proposal was received only on 8 April 2002.

The complainant has, however, a confirmation letter from the Commission acknowledging that it received the complainant's proposal on 15 March 2002. Furthermore, on the Cordis website it was clearly mentioned that the closing date for receiving proposals was 15 March 2002. The complainant therefore considers that its proposal was valid and should have been examined.

On 15 July and 2 August 2002 the complainant wrote letters to the Commission stating that his proposal was made further to the Call published on 15 December 2001 on the Cordis website. It



was therefore obviously impossible to be within the deadline of 18 April 2001. On 20 August 2002, the complainant received an e-mail from Mrs B. of the Commission stating that *"we would herewith like to inform you on an informal basis that, following a thorough evaluation by the Commission services with the help of independent experts, the proposal could not be selected for financial contribution. As a result the project has not been retained for funding. An official letter enclosing results of the evaluation will be sent to you soon"* .

Two months later, on 20 October 2002, the complainant sent another e-mail to Mrs B. stating that he had still not received a formal letter.

On 25 October 2002, the complainant lodged the present complaint with the European Ombudsman alleging that his proposal was rejected by mistake and has not been properly assessed.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission gave a detailed chronology of the facts from 15 December 2001 to 5 November 2002. The Commission observed that, further to the publication of the 3rd Call for Innovation Projects in the Official Journal C 358/13 of 15 December 2001 (closing date 15 March 2002), 158 proposals were received by the Directorate General for Enterprise. The complainant's proposal "Connecting Worlds", introduced together with Protext Translations B.V. was received before the deadline and was given the registration number IPS-2001-42089 in accordance with internal procedures. The appropriate services of the Commission, namely DG Enterprise, acknowledged receipt of the complainant's proposal on 26 March 2002.

All proposals were evaluated according to the rules laid down in the "Manual of proposals evaluation procedures". Based on the published eligibility criteria, 15 proposals were rejected, including the proposal introduced by the complainant, because neither the form (1) nor the content of this proposal was in accordance with the general objectives (2) of the 3rd Call for Innovation Projects. This Call is not a Call for Exploratory Awards. Eligibility criteria, content and presentation format are different for each Call. The proposal prepared by the complainant was clearly targeted towards Exploratory Awards by its form and content.

Considering the potential and the presentation format of the proposal "Connecting Worlds", and following the administrative check on eligibility, a copy of the proposal IPS-2001-42089 was sent on 4 April 2002 to the Research DG, where possible funding could have been available through the "Exploratory Awards" action line. There the proposal was registered on 8 April 2002 under reference number EXAW-1999-02724.

However, given that the open Call for Exploratory Awards, which had been launched on 1 April 1999, was closed on 18 April 2001, the complainant was informed by letter of the Research DG of 5 July 2002 that his application could not be considered and a copy of his proposal was returned.



The Commission observed that the applicable procedures had been followed and that the confusion the complainant might have made between the two different action lines had been corrected. In his further correspondence with the Research DG asking for more explanations concerning the refusal of the project, the complainant did not refer to the appropriate reference number EXAW-1999-02724, but still to the project proposal IPS-2001-42089.

Although clear indications of the appropriate address for additional information concerning the 3rd Call for Innovation Projects were published in the Call text on 15 December 2002, the complainant contacted the wrong services (Helpdesk of the Research DG) indicating the proposal reference number given by the services of the 3rd Call (DG for Enterprise). Throughout the correspondence of the complainant (letters and e-mails), reference has been made to "Project proposed reg. No IPS-2001-42089", addressing the issue to the Research DG. It was only after the e-mail exchange of 20 August 2002 with DG for Enterprise that the complainant stated that he was not aware of who was competent in this matter.

The Commission concluded that the proposal was not eligible for Innovation Projects and therefore could not be evaluated, according to the "Evaluation Manual". The Call suitable for Exploratory Awards was continuously open from 1 April 1999 until 18 April 2001, but the complainant missed this deadline and used another Call for introducing his proposal.

The complainant's observations

No observations have been received from the complainant.

THE DECISION

1 The alleged improper assessment of the complainant's proposal

1.1 The complainant alleges that his proposal was rejected by mistake and has not been properly assessed. The complainant has a confirmation letter from the Commission acknowledging that it received the proposal on 15 March 2002. Furthermore on the Cordis website it was clearly mentioned that the closing date for receiving calls was 15 March 2002. The complainant therefore considers that its proposal was valid and should have been examined.

1.2 The Commission argues that the complainant's proposal was targeted towards Exploratory Awards. It was thus rejected because neither the form nor the content were in accordance with the general objectives of the 3rd Call for Innovation Projects, which is not a Call for Exploratory Awards. However, the complainant's proposal was forwarded to the Research DG which deals with Exploratory Awards. The call for Exploratory Awards was continuously open from 1 April 1999 until 18 April 2001, but the complainant missed the deadline as he used another call for introducing his proposal.

1.3 The Ombudsman notes that the chronology of the case is as follows: The 3rd Call for Innovation Projects was published in the Official Journal C 358/13 of 15 December 2001 and on the same day on the Cordis Website. The closing date for receipt of proposals mentioned in both publications was 15 March 2002. A document in the file attests that the complainant's proposal was received on 15 March 2002 by the Enterprise DG of the Commission and given



reference number IPS-2001-42089. On 26 March 2002, an acknowledgement of receipt was sent to the complainant by the Enterprise DG. Given that the complainant's proposal was considered ineligible for the above call, it was forwarded on 4 April 2002 to the Research DG, which attributed a new reference number (EXAW-1999-02724) on 8 April 2002 and informed the complainant. However, the complainant was not informed of the fact that his proposal had been considered ineligible for the Call for Innovation Projects. On 5 July 2002 the Research DG then informed the complainant by letter that his application could not be considered, as the Call for Exploratory Awards (1998-2002) had been closed on 18 April 2001.

1.4 The Ombudsman understands that a certain confusion appears to be at the basis of the complaint. This confusion seems to have been caused by the fact that the complainant sent, within the specified deadline, a proposal further to the Call for Innovation Projects, but received a reply from the Commission with regard to another Call, namely the Call for Exploratory Awards, for which the deadline had already expired. The Ombudsman considers that the Commission has acted in line with Article 15 of the Code of Good Administrative Behaviour (3) by transferring the file to the competent service of the institution. The Ombudsman hopes that the Commission will avoid similar confusion arising in the future by duly informing applicants when such transfers occur. Given that this point has now been clarified in the Commission's opinion, no further inquiries into this aspect of the case appear to be necessary. The Ombudsman however makes the further remark below.

1.5 It appears that, in substance, the complainant's proposal has been properly assessed by the Commission. On 23 October 2002, the Commission sent a letter to the complainant including a copy of the evaluation report on his proposal. According to the summary of the conclusions *"the proposal applies for an Exploratory Award Scheme. Therefore it is not eligible for evaluation in the frame of the 3rd Call for proposals for Innovation Projects"*. In its opinion, the Commission has provided further clarifications with regard to the reason for the rejection of the complainant's proposal.

1.6 Considering the above, the Ombudsman found no instance of maladministration by the Commission.

2 Conclusion

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

FURTHER REMARK

The Ombudsman notes that a certain confusion has been caused by the fact that the complainant sent a proposal further to the Call for Innovation Projects, but received a reply from the Commission with regard to another Call. The Ombudsman considers that the Commission has acted in line with Article 15 of the Code of Good Administrative Behaviour (4) by transferring the file to the competent service of the institution. The Ombudsman hopes that the Commission will avoid similar confusion arising in the future by duly informing applicants when such transfers occur.



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Details of the "Exploratory awards", e.g. application forms, description and guidelines are given in <http://sme.cordis.lu/idea/infopack99.cfm> [Link]

(2) Details of the 3rd Call for Proposals for Innovation projects, e.g. Call text, work programme, guide for proposers and administrative forms are given in <http://www.cordis.lu/innovation-smes/calls/200102.htm> [Link]

(3) See the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link]).

(4) See the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link]).