

## Decision of the European Ombudsman on complaint 2239/2003/(AJ)TN against the European Commission

Decision

**Case 2239/2003/(AJ)TN - Opened on 12/01/2003 - Decision on 26/07/2004**

### *Summary of decision on complaint 2239/2003/(AJ)TN against the European Commission*

The complaint concerned an application by the Federation of European Motorcyclists Associations (FEMA) for a grant from the Commission for a project called "Initial rider training in Europe". According to FEMA, the Commission's reply to the application stated that FEMA had not been selected for a grant because "another proposal of a similar nature" had been awarded a higher score. However, during informal contacts with Commission officials, the complainant had been led to understand that there were no other applications concerning motorcycles and their riders. FEMA wrote to the Commission asking for clarifications, but received no reply. In its complaint to the Ombudsman, FEMA therefore alleged that the Commission had failed to reply to its request to be informed about the Commission's decision not to fund its proposal and about the successful candidate.

In its opinion, the Commission argued that FEMA had been sufficiently informed about all relevant aspects of the grant procedure within the framework of FEMA's regular informal contacts with the Commission. The Commission, therefore, did not deem it necessary to make a formal reply in writing.

In its observations, FEMA acknowledged that it had been in regular contact with Commission officials, but argued that these officials did not themselves have direct access to information regarding FEMA's application. According to FEMA, the officials had to make inquiries on FEMA's behalf, which sometimes led to inadequate and misleading information, despite the fact that these officials always did their best to help.

The Ombudsman closed the case with the following critical remark:

The Ombudsman considers, even taking into account the informal contacts between the Commission and the complainant, that it is clear from the content and structure of FEMA's letter that it required a written answer. If the Commission considered that the requested information had already been communicated to FEMA informally, this fact could have been mentioned in its written reply. The Commission's failure to reply to FEMA's letter in accordance with its own Code of Good Administrative Behaviour was an instance of maladministration.



Following the Ombudsman's critical remark, the Commission wrote to the Ombudsman, recognising that it had not replied to FEMA in writing and that it thereby had not fully respected its own Code of Good Administrative Behaviour. The Commission apologised for its omission in this regard.

Strasbourg, 26 July 2004

Dear Mr P.,

On 25 November 2003, you made a complaint to the European Ombudsman on behalf of the Federation of European Motorcyclists Associations (FEMA). Your complaint was against the European Commission and concerned FEMA's application for a grant under the call for proposals DG TREN/SUB/01-2003.

On 12 January 2004, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 20 April 2004. I forwarded it to you with an invitation to make observations, which you sent on 18 May 2004. In a telephone conversation on 14 July 2004, you provided my services with further information regarding your complaint.

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

Please note that the Legal Officer responsible for dealing with your complaint has changed and now is Ms Tina NILSSON (Tel: +32 (0)2 284 14 17).

## THE COMPLAINT

In November 2003, a complaint was made to the Ombudsman on behalf of the Federation of European Motorcyclists Associations (hereafter "FEMA") concerning its application for a grant under the call for proposals DG TREN/SUB/01-2003.

According to the complainant, the relevant facts are, in summary, the following:

FEMA is the leader of a consortium which applied for a grant from DG Transport and Energy (hereafter "DG TREN") to devise a European model defining quality standards for motorcyclists' training in the framework of a project called "Initial rider training in Europe". Its first application of 14 June 2002, was rejected. It appeared to FEMA that its application had been evaluated on the basis of criteria that both the consortium and the staff of the road safety unit in DG TREN (with which the consortium had been in direct contact) were unaware of. The rejection indicated, however, that a revised application would be welcome.

A revised application was therefore submitted on 14 August 2002. Throughout 2002, FEMA regularly contacted DG TREN to see whether the revised application had been considered. On all these occasions, FEMA was told that the application would soon be considered. However, at the beginning of 2003, DG TREN informed FEMA that it was considering whether the



application could be evaluated under the rules applicable in 2002, or whether a third application would have to be submitted to comply with the new Financial Regulation, which had come into force on 1 January 2003.

In a letter from the Head of the road safety unit, received on 20 May 2003, FEMA was informed that, due to the expiry of the budget, its application had to be resubmitted under the new Financial Regulation. Since the deadline for applications was 10 June 2003, the consortium was given only two weeks to resubmit the application under a significantly different and considerably more complex legal framework.

Despite the information that unsuccessful applicants would be informed by mid July 2003, and successful applicants at the beginning of August 2003, FEMA heard nothing from the Commission until 19 September 2003. The reply from the Director of the inland transport unit was in a standard "tick box format", stating that FEMA had not been selected for a grant because "another proposal of a similar nature" had been awarded a higher score. However, during its informal contacts with officials in DG TREN, FEMA had been led to understand that there were no other applications concerning motorcycles and their riders. The reply from the Commission also stated that FEMA's proposal had been put on a reserve list.

Following further informal contacts with DG TREN, FEMA wrote to the Director of the inland transport unit on 9 October 2003, asking for clarifications regarding his letter of 19 September 2003. In its letter, which was enclosed with the complaint to the Ombudsman, FEMA states that it would appreciate receiving ".../ further information on the proposal which was awarded the EC grant /.../" and ".../ clarification as to the procedure, the criteria and the timetable [the Commission is] referring to for the reserve list in the event of budget availability". FEMA has received neither an acknowledgement of receipt, nor an answer to this letter.

The complainant alleges, on behalf of FEMA, that the Commission's DG TREN has failed to reply to FEMA's request to be informed about the Commission's decision not to fund FEMA's proposal and about the successful candidate.

## **THE INQUIRY**

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

In its opinion, the Commission makes the following comments:

The complainant puts into question several decisions and other acts by the Commission in the course of the application process for a grant under the call for proposals DG TREN/SUB/01-2003. FEMA submitted three grant applications: an initial application in 2002, a modified application in 2002 and a second modified application in 2003.

The complainant alleges that both the applicant consortium and the staff of the road safety unit in DG TREN were unaware of the rejection criteria of the initial grant application. The Commission points out that the initial application was evaluated by a committee consisting of two members from the road safety unit and one member from another unit within DG TREN.



The committee identified a lack of genuine European added value as well as a lack of structure and methodology in the application and therefore recommended its refusal while at the same time encouraging the submission of a modified proposal in view of the potential usefulness of the outcome of a study on initial motorcycle rider training. These reasons were communicated to FEMA by letter of 18 July 2002. It is therefore apparent that the rejection criteria were clearly identified by members of DG TREN and communicated in a transparent manner both within and outside the Commission.

The complainant states that after submission of the modified application, the road safety unit made FEMA believe that the new application would be considered within a short period of time, which in the end was not the case. The Commission explains that at the time of submitting the modified application, the budget for 2002 was already committed and any decision on the grant application had to be made under the 2003 budget. However, since the new Financial Regulation had entered into force, FEMA had to resubmit its application. The complainant was kept informed about the matter through his regular informal contacts with DG TREN. According to the complainant, this third application had to be submitted under "significantly different and considerably more complex requirements" within a short deadline of three weeks. The Commission points out that the rules governing the award of grants are laid down in the new Financial Regulation. Furthermore, the revised proposal's technical annex, which in general constitutes the most work-intensive part of project submissions, could and did remain unchanged.

The complainant further criticises the Commission for having missed the applicable deadlines for informing applicants about its decision and for sending out a letter merely containing a standard reply. According to the Commission, a standard reply was its operating procedure in view of the sheer volume of grant applications at the time.

The complainant also calls into question the rejection of FEMA's third application on the basis of the wording "another proposal of similar nature having been awarded a higher score". The complainant submits that FEMA's contacts with DG TREN had given rise to the understanding that no other application addressed the same issue. The Commission points out that the wording in question referred to the call as a whole, which covered a wider range of domains. There was thus no other application concerning initial motorcycle rider training, but the wording referred to another proposal in the overall field of road safety. The relevant box in the letter of 19 September 2003 was ticked in order to prevent FEMA from being obliged to resubmit the application at a later stage since its project proposal had successfully passed the exclusion, selection and award criteria. Accordingly, subject to the availability of funds, FEMA's proposal may well be awarded a grant in the future.

Finally, the complainant alleges that the Commission did not reply to FEMA's letter of 9 October 2003, in which it requested information on the reasons for the refusal to consider its third application. The Commission asserts that the reasons for putting FEMA's third application on the reserve list were communicated to the complainant within the framework of his regular informal contacts with DG TREN. Since the complainant thus had been sufficiently informed about all relevant aspects of the procedure, the Commission did not deem it necessary to make



a formal reply in writing. The Commission underlines that the complainant himself describes his contacts with DG TREN as helpful. All relevant information was available to the complainant through his regular dialogue with officials in DG TREN.

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

In his observations, the complainant makes, in summary, the following remarks:

FEMA was informed about the rejection criteria only after its project proposal had been rejected. In view of the fact that its proposal was drawn up in line with advice from officials in DG TREN, and was still rejected, the complainant insists that the staff of the road safety unit were unaware of the criteria applied by the evaluation committee.

FEMA contacted DG TREN at least three times during 2002 regarding the evaluation of its second proposal, only to be informed that its application would be considered "by the end of the month". However, in January 2003, the Commission explained that it was considering whether a new proposal had to be submitted under the new Financial Regulation. FEMA was not informed of any decision in this regard until after the 2003 Call for Proposals had been published. The complainant then made another informal inquiry and was informed that FEMA's proposal had to be resubmitted.

The complainant acknowledges that he was regularly in contact with officials in DG TREN, but these officials did not themselves have direct access to information regarding FEMA's application. The officials had to make inquiries on FEMA's behalf, which sometimes led to inadequate and misleading information. The Commission's reference to the complainant's contacts with the officials in DG TREN as being enlightening and informative is therefore not correct, despite the fact that these officials always did their best to help. For instance, the Commission's understanding that the wording "another proposal of a similar nature" would cover all eligible grant applications was not shared by the officials in DG TREN with whom the complainant had informal contacts. FEMA thus wrote a letter to the Director of the inland transport unit in DG TREN, respectfully asking for information about the project "of a similar nature" and the consequences of its application being "put on a reserve list". According to FEMA's understanding, the only valid reason for not replying to a letter is that it is improper, repetitive, abusive or pointless. FEMA's letter was none of these.

After making the complaint to the Ombudsman, FEMA entered into a contract with the Commission. However, the complainant is not satisfied with the way in which FEMA has been treated by the Commission during the process leading to the award of the grant.

In a telephone conversation on 14 July 2004, the complainant explained to the Ombudsman's services that since FEMA has now been awarded a grant, he no longer finds it necessary to receive a reply to the letter of 9 October 2003. However, the complainant wishes the Ombudsman to confirm that the Commission acted inappropriately by not answering FEMA's request for information.

## **THE DECISION**



## **1 Preliminary remark**

1.1 The complaint concerns an application by the Federation of European Motorcyclists Associations (FEMA) for a grant under the Commission's call for proposals DG TREN/SUB/01-2003.

1.2 The Ombudsman opened an inquiry into the complainant's allegation that the Commission had failed to reply to a request for information. In his observations on the Commission's opinion, the complainant appears to extend the complaint to cover also the way in which the Commission treated FEMA throughout the whole grant application process. The Ombudsman initially considered the complainant's account of the course of events throughout the application process to merely constitute background information, leading up to FEMA's request for information and its subsequent complaint in that regard. The Ombudsman therefore considers that the complainant's observations contain new allegations and that it is not justified to delay a decision on the original complaint by making further inquiries into these new allegations.

1.3 The Ombudsman points out that FEMA has the possibility to submit a new complaint if it considers it useful to do so.

## **2 The alleged failure to reply**

2.1 According to the complainant, FEMA applied for a grant from DG TREN for a project called "Initial rider training in Europe". The application was rejected, revised and resubmitted and, due to the expiry of the yearly budget and the coming into force of the new Financial Regulation, revised and resubmitted yet again. On 19 September 2003, FEMA received a reply from the Commission to its application. The reply was in a standard "tick box format" and stated that FEMA had not been selected for a grant because "another proposal of a similar nature" had been awarded a higher score. However, during informal contacts with officials in DG TREN, the complainant had been led to understand that there were no other applications concerning motorcycles and their riders. The reply from the Commission also stated that FEMA's proposal had been put on a reserve list.

The complainant was regularly in contact with officials in DG TREN, but these officials did not themselves have direct access to information regarding FEMA's application. The officials had to make inquiries on FEMA's behalf, which sometimes led to inadequate and misleading information, despite the fact that these officials always did their best to help. FEMA therefore wrote to the Commission on 9 October 2003, asking for clarifications regarding the content of the letter of 19 September 2003. FEMA received no reply from the Commission.

The complainant alleges that the Commission's DG TREN has failed to reply to FEMA's request to be informed about the Commission's decision not to fund FEMA's proposal and about the successful candidate.

2.2 The Commission argues that the reasons for putting FEMA's third application on the reserve list were communicated to the complainant within the framework of his regular informal contacts with DG TREN. Since the complainant had therefore been sufficiently informed about all relevant aspects of the procedure, the Commission did not deem it necessary to make a formal reply in writing. The Commission underlines that the complainant himself describes his contacts



with DG TREN as helpful. All relevant information was available to the complainant through his regular dialogue with officials in DG TREN.

2.3 The Ombudsman points out that principles of good administration require the Community institutions to reply to letters from citizens (1) . The Ombudsman furthermore notes that according to Article 4 of the Commission's own Code of Good Administrative Behaviour, a reply to a letter addressed to the Commission shall be sent within fifteen working days from the date of receipt of the letter by the responsible Commission department (2) .

2.4 In the present case, the Ombudsman considers, even taking into account the informal contacts between the Commission and the complainant, that it is clear from the content and structure of FEMA's letter that it required a written answer. If the Commission considered that the requested information had already been communicated to FEMA informally, this fact could have been mentioned in its written reply. The Ombudsman therefore finds that the Commission's failure to reply to FEMA's letter in accordance with its own Code of Good Administrative Behaviour was an instance of maladministration.

2.5 On 14 July 2004, the complainant explained to the Ombudsman's services that FEMA has been awarded a grant and therefore no longer finds it necessary actually to receive a reply to the letter of 9 October 2003. However, the complainant wishes the Ombudsman to confirm that the Commission acted inappropriately by not answering FEMA's request for information. The Ombudsman therefore considers that it is not appropriate to seek a friendly solution and will therefore close the case with a critical remark.

### **3 Conclusion**

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

The Ombudsman considers, even taking into account the informal contacts between the Commission and the complainant, that it is clear from the content and structure of FEMA's letter that it required a written answer. If the Commission considered that the requested information had already been communicated to FEMA informally, this fact could have been mentioned in its written reply. The Commission's failure to reply to FEMA's letter in accordance with its own Code of Good Administrative Behaviour was an instance of maladministration.

Given that this aspect of the case concerns procedures relating to specific events in the past, and that the complainant no longer considers it necessary actually to receive a reply, it is not appropriate to pursue a friendly solution. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS



(1) Article 13 of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link]

(2) Code of Good administrative behaviour of the Commission, available on the Commission's website: [http://www.europa.eu/comm/secretariat\\_general/code/index\\_en.htm](http://www.europa.eu/comm/secretariat_general/code/index_en.htm) [Link]