

Decision of the European Ombudsman on complaint 2411/2003/MHZ against the European Commission

Decision

Case 2411/2003/MHZ - Opened on 13/01/2004 - Decision on 12/01/2005

An NGO registered in the UK, applied for funding under the Commission's AGIS framework programme for police and judicial co-operation in criminal matters. This application was rejected.

In its complaint to the Ombudsman, the NGO alleged, among other things, that the funding procedure was overly complex and difficult to understand. According to the complainant, the Commission had obliged it to undertake expensive and time-consuming activities in order to meet formal admissibility criteria although the Commission had known from the start that the complainant would not be able to fulfil the eligibility criterion of having partner organisations involved in its project. The complainant explained that it worked with lawyers throughout the EU and beyond on behalf of EU citizens and, as such, did not have partner organisations. It claimed that the Commission should compensate it for the losses it incurred.

According to the Commission, a high proportion of applications under the AGIS programme had had shortcomings as regards the requirements set out in the call. It acknowledged that the use of a single application form for two different types of grants may have contributed to these shortcomings. Because of this, and because the complainant's project had appeared to meet the policy priority of improving assistance in the field of fundamental rights, the proposal had been pre-selected. When the complainant's application for an operating grant was not ready in time to meet the deadline, the Commission had proposed to the complainant to modify its application and apply for a project grant instead. However, since the complainant, among other things, had failed to attach a partnership declaration, the Commission had not selected his proposal.

The Ombudsman considered it regrettable that the application procedure under the AGIS programme appeared to have led to difficulties. However, he noted that the Commission had recognised these difficulties and had taken corrective action. Furthermore, he considered that the Commission had provided a reasonable explanation of why it had advised the complainant to apply for a project grant instead of an operating grant.

However, the Ombudsman recalled that principles of good administration require an official, where necessary, to advise the public on how a matter which comes within his or her remit is to



be pursued and how to proceed in dealing with the matter. He took the view that the Commission should have ensured that the advice it gave to the complainant was appropriate to its particular situation. The Commission's failure to draw the complainant's attention to a fundamental condition of eligibility, namely the requirement to have partner organisations, was therefore an instance of maladministration. A critical remark was made.

As regards the complainant's claim for compensation, the Ombudsman noted that the complainant had neither quantified its claim nor submitted any evidence. He therefore took the view that, if the complainant wished to pursue this claim, it should address the Commission directly in the light of his finding of maladministration.

Strasbourg, 12 January 2005

Dear Mr J.,

On 17 December 2003 you made a complaint to the European Ombudsman against the European Commission, on behalf of Fair Trials Abroad. The complaint concerns the procedure for funding projects under the AGIS framework programme for police and judicial co-operation in criminal matters and the handling by the European Commission of your application for such funding.

On 13 January 2004, I forwarded the complaint to the President of the European Commission.

On 30 April 2004, the Commission sent its opinion, which I forwarded, to you with an invitation to make observations.

On 2 July 2004, I received your observations.

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

THE COMPLAINT

The complaint was submitted on behalf of Fair Trials Abroad (1) , a non-governmental organisation.

The facts according to the complainant can be summarised as follows:

On 19 and 24 February 2003, the complainant asked the Commission to advise it about which kind of AGIS application forms it had to fill in order to apply for AGIS funding (2) . The Commission answered by e-mails of 19 and 24 February 2003.

On 4 March 2003, the complainant submitted an application for funding to the Justice and Home Affairs Directorate of the European Commission, under the framework programme AGIS "Global support to the activities of an organisation". The application was for a one-year operating grant. The funding requested was EUR 150 000.



On 9 April 2003, the complainant received an acknowledgement of receipt with the file reference (2003/AGIS/022).

On 24 June 2003, the Commission informed the complainant that its project would be considered for co-financing and that the grant requested would be reduced to EUR 80 000. The Commission also requested a number of additional documents to be submitted (two pages of requirements), but did not mention that the application was not complete.

Afterwards, the complainant requested, by different e-mails, a clarification of the aforementioned requirements. In the absence of a reply from the Commission, the complainant submitted a new budget estimate, with the modifications requested by the Commission as understood by the complainant, marked as "draft for discussion only".

On 8 July 2003, the Commission informed the complainant that its initial application did not include any detailed budget estimate. To the complainant's surprise, the Commission revealed that the CD that was attached to its initial application contained an empty Excel budget form.

In September 2003, the complainant met with the Commission.

On 16 October 2003 by telephone and on 17 October 2003 by letter, the Commission advised the complainant to apply for different funding, i.e. a backdated project grant starting from September 2003, for the amount of EUR 68 297 and for a duration of seven months. With this end in view, the Commission asked the complainant to change the budget estimate within seven days.

On 5 and 6 November 2003, the complainant submitted its modified application for a project grant, according to the Commission's requirements.

On 20 November 2003, the Commission sent a letter to the complainant and explained, for the first time, that the operating grant for which it had applied (i.e. the EUR 80 000 application) could not be considered, because the complainant had missed a deadline: all documents, including the budget estimates should have been sent before 31 July 2003. The Commission also informed the complainant that its application for a project grant (i.e. the EUR 68 297 application) could not be considered either, given that the complainant had failed to provide the required declaration of partnership. In this context, the Commission stated that when, in October 2003 and *"in the heat of the moment"*, it proposed to the complainant to modify its original application for an operating grant in order to apply for a project grant, one principal admissibility criterion had been overlooked: to have at least two partners, based in two different Member States or two Member States and one candidate country, involved in the same project.

On 17 December 2003, the complainant lodged a complaint with the Ombudsman.

It alleged that the funding procedure was overly complex and difficult to understand.



As regards its own application, the complainant alleged that the European Commission changed the parameters for evaluation, applied inappropriate deadlines and did not state adequate reasons for its decision.

Finally, the complainant alleged that the Commission obliged it to undertake expensive and time-consuming activities in order to meet formal admissibility criteria although, from the beginning of the process, the Commission knew that it was not able to fulfil the substantive criterion of having partner organisations involved in its project. In this regard, the complainant explains that it is an EU wide organisation, working with lawyers around the EU and beyond on behalf of EU citizens and, as such, does not have partner organisations.

The complainant argued that it lost an opportunity to secure funds elsewhere for its activity because the Commission falsely maintained its expectations.

The complainant claimed that the Commission should compensate it for the losses occasioned by its maladministration.

THE INQUIRY

The Commission's opinion

The Commission's opinion can be summarised as follows:

Firstly, the Commission outlined the legal status of the complainant (an NGO registered as charity in the UK) and its main activity. The Commission also recalled that the complainant had already received grants from the Commission in the past (under the "Europeanisation" programme in 2001 and under the Grotius programme in 1997, 1998 and 1999).

Secondly, the Commission explained in general terms the AGIS funding and the 2003 call for proposals. The AGIS funding is based on Council Decision 2002/630/JHA of 1 August 2002 (3) and was implemented in 2003. According to Article 3.5.b of the Decision, to be eligible for funding, NGOs had to pursue activities with a European dimension involving as a general rule at least half of the Member States. The AGIS call for proposals covered both project grants and operating grants for NGO activities, in accordance with Art. 3.5 of the Decision. One single application form and one single budget form was published for use for both types of grants. According to the Commission, a high proportion of applications had shortcomings as regards the requirements set out in the call (specifically in providing requested documents and using the Excel template for the budget form). The Commission therefore decided to examine all the proposals with similar failings. The applicants were then asked to send the missing documents within a short period of time because the Commission aimed to ensure that all applicants were able to fulfil all requirements before the end of the evaluation procedure. Afterwards, the Commission evaluation committee evaluated the proposals and checked whether they complied with the requirements set out in the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002) (4) and whether their content corresponded to the funding applied for. Then it presented a list of pre-selected proposals to the AGIS Committee. On 28 May 2003, the AGIS Committee expressed its opinion. Afterwards, the Commission evaluation committee



formally adopted a list of pre-selected projects for which the contracts to the promoters could be issued and the Director General of DG Justice and Home Affairs took individual decisions which were communicated to applicants.

The Commission acknowledged that this first year of the programme was a "learning period" for candidates and that difficulties appeared with the programme's implementation. In particular, the Commission recognised that the use of one single application form for two different types of grants may have contributed to the widespread failure of applicants to fulfil all the requirements. For that reason, the Commission admitted all applicants with the same failures to the pre-selection stage of the procedure. The Commission also explained that it provided two separate application forms and budget forms, one for project grants and another for operating grants for the 2004 call for proposals. The Commission also stated that it is examining further means of improving the overall processing of applications for grants.

Thirdly, the Commission referred to its handling of the complainant's applications for an operating grant and for a project grant.

On 7 March 2003, the complainant submitted an AGIS 2003 application for an operating grant. According to the Commission, the application did not comply with the requirements published in the call (lack of detailed budget form, lack of specified timetable, failure to indicate outputs clearly, failure to provide copies of several documents).

However, given that the project appeared to meet the policy priority of improving assistance in the field of fundamental rights, the complainant's proposal was pre-selected by virtue of the decision of the Director General of DG Justice and Home Affairs dated 10 June 2003. Then the Commission asked the complainant to complete the file in order to move from the pre-selection stage to the contract stage (in particular, to provide a clear description of the activities planned) and sent a letter with detailed questions on 24 June 2003. The Commission also asked other applicants in the same situation to complete their files.

On 8 July 2003, the Commission reminded the complainant to provide further information.

On 16 July 2003, the complainant asked for a meeting. The Commission agreed (although it stated in its opinion to the Ombudsman that it was not a normal procedure) and the meeting took place on 10 September 2003.

The complainant completed its file on 6 October 2003, i.e. two months after the deadline established in Article 112.2 of the new Financial Regulation. According to this provision, the agreement on an operating grant may not be signed more than four months after the start of the beneficiary's budgetary year (in the case of the complainant, its budgetary year started on 5 April 2003, so the deadline was 5 August 2003).

The Commission acknowledged that it had informed the complainant that it was no longer possible to process the complainant's application for an operating grant only on 16 October 2003 by telephone and on 17 October 2003, by letter. On the same date and since the



complainant's application for an operating grant was not ready for processing in time to meet the deadline, the Commission proposed to the complainant to modify its application and apply for a project grant.

On 6 November 2003, the complainant sent the application for a project grant. However, the complainant failed to attach a partnership declaration even though such a declaration was a condition to apply for the project grant. In addition, the complainant did not include the summary of the budget corresponding to the changes made in the budget form and additional expenses, which had not been agreed upon previously (such as travel to Guantanamo Bay). Therefore, the Commission did not select the complainant's proposal for a project grant.

Finally, the Commission stressed that it never gave any assurance that the applicant was entitled to receive any funding and the possible expenditure of the complainant was at its own responsibility and risk. The Commission also pointed out that the complainant's stance that it lost the possibility to secure funds elsewhere does not concern the Commission but is a question related to the internal organisation of the complainant.

The Commission also pointed out that the complainant declared itself to be a Europe-wide organisation but was not able to provide, despite the Commission's explicit request, the declaration of partnership required on the basis of Article 3.2 of Decision 2002/630/JHA, as specified in the AGIS call for proposals.

The Commission stated that the application process involved numerous exchanges in the complainant's case because the complainant did not provide the basic information for evaluation in time and in accurate way, in spite of the Commission's suggestions in a series of written and oral exchanges.

The complainant's observations

In summary, the complainant maintained its original allegations and claims.

The complainant put forward that, in order to ensure that it abided by the requirements of the application process, it saw to it that one of its representatives attended an AGIS Funding Programme meeting organised by the UK Home Office on 6 October 2003. It added that it was the only NGO represented at that meeting. The complainant concluded that policy priorities were clearly focused on government bodies, that the application form allowed no flexibility and that it was not designed for NGOs in general.

THE DECISION

1 The alleged deficiencies of the funding procedure under the AGIS programme

1.1 The complaint concerns the procedure for funding projects under the AGIS framework programme for police and judicial co-operation in criminal matters. The complainant alleges that the funding procedure was overly complex and difficult to understand.

1.2 The Commission acknowledged that the first year of the programme (2003) was a "learning period" for candidates and that difficulties appeared with the programme's implementation. In



particular, the Commission recognises that the use of one single application form for two different types of grants may have contributed to the widespread failure of applicants to fulfil all the requirements. For that reason, the Commission admitted all applicants with the same failures to the pre-selection stage of the procedure. The Commission also stated that, for the 2004 call for proposals, it provided separate forms for the two different types of grant and that it is examining further means of improving the overall processing of applications for grants.

1.3 The Ombudsman considers it regrettable that the application procedure under the AGIS programme appears to have led to difficulties with the programme's implementation in 2003. However, the Ombudsman notes that the Commission has recognised these difficulties and took corrective action in the course of the 2003 procedure for the benefit of all applicants whose applications contained similar shortcomings at the pre-selection stage. The Ombudsman also notes that the Commission appears to have learnt from the problems that arose in 2003 and has improved the procedure for 2004 by providing separate application forms for separate types of grant. The Commission also appears to be committed to further improving the overall processing of applications for grants.

1.4 The Ombudsman considers, therefore, that no further inquiries are necessary as regards this aspect of the complaint.

2 The allegation of changed parameters for evaluation, inappropriate deadlines and failure to state adequate reasons

2.1 The complainant alleges that, when dealing with its applications, the Commission changed the parameters for evaluation, applied inappropriate deadlines and did not state adequate reasons for its decision.

2.2 The Commission states that the application process involved numerous exchanges in the complainant's case because the complainant did not provide the basic information for evaluation in time and in accurate way, in spite of the Commission's suggestions in a series of written and oral exchanges. According to the Commission, the complainant's initial application for an operating grant was incomplete and it asked the complainant for additional information by letters dated 24 June 2003 and 8 July 2003. At the complainant's request, in September 2003, the Commission met the complainant. The complainant's application for an operating grant was only completed only on 6 October 2003. This was beyond the deadline established by Article 112 (2) of the Financial Regulation which states that an agreement for an operating grant may not be signed more than four months after the start of the beneficiary's budget year. The Commission acknowledged that it informed the complainant of this fact only on 16 and 17 October 2003. The Commission then advised the complainant to modify its application so as to apply for a project grant instead. Finally, on 20 November 2003, the Commission informed the complainant that its application for a project grant could not be accepted because the complainant had failed to supply the necessary declaration of partnership.

2.3 The Ombudsman considers that the Commission has provided a reasonable explanation of why it advised the complainant to apply for a project grant instead of an operating grant. Furthermore, the Ombudsman notes that the deadline established by Article 112.2 of the Financial Regulation is binding on the Commission. Finally, the Ombudsman does not consider



that the complainant has succeeded in demonstrating that the Commission failed to state adequate reasons for rejecting the complainant's grant applications. The Ombudsman therefore finds no maladministration by the European Commission as regards this aspect of the complaint. The Ombudsman points out, however, that the question of whether the Commission failed to give adequate advice to the complainant is dealt with in the next part of this decision.

3 The allegation that the Commission induced the complainant to undertake expensive and time consuming activities and related claim

3.1 The complainant alleges that the Commission obliged it to undertake expensive and time consuming activities in order to meet formal admissibility criteria although, from the beginning of the process, the Commission knew that it was not able to fulfil the substantive criterion of having partner organisations involved in its project. In this regard, the complainant explains that it is an EU wide organisation, working with lawyers around the EU and beyond on behalf of EU citizens and as such does not have partner organisations. The complainant argues that it lost an opportunity to secure funds elsewhere for its activity because the Commission falsely maintained its expectations and claims that the Commission should compensate it for losses occasioned by its maladministration.

3.2 The Commission argues that it never gave any assurance that the applicant was entitled to receive any funding and that the possible expenditure of the complainant was at its own responsibility and risk.

The Commission also argues that the complainant's stance that it lost a possibility to secure funds elsewhere does not concern the Commission but is a question related to the internal organisation of the complainant.

3.3 The Ombudsman first notes that the Commission has stated that the complainant received grants from the Commission in the past (in 1997, 1998, 1999 and 2001). As regards the complainant's applications in 2003, the Ombudsman makes the following findings. In March 2003, the complainant applied for an operating grant. The Commission subsequently took action to seek to move the complainant's application, as well as other applications, from the pre-selection to the contract stage by advising the complainant as to the further information needed. At a later stage (October 2003), the Commission advised the complainant to apply for a project grant. The complainant did so, but its application was later rejected because the complainant had not submitted the required declaration of partnership. The Ombudsman notes in this context that the requirement to have partner organisations appears to be a condition for both operating grants and project grants.

3.4 The Ombudsman recalls that principles of good administration require an official, where necessary, to advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter (5) . The Ombudsman takes the view that, in the circumstances of the present case, the Commission should have ensured that the advice it gave to the complainant in October 2003 concerning the application for a project grant was appropriate to the complainant's particular situation. The Commission's failure to draw the complainant's attention to a fundamental condition of eligibility for project applications was therefore an instance of maladministration and a critical remark will be made as regards this



aspect of the complaint.

3.5 As regards the complainant's claim for compensation, the Ombudsman notes that the complainant has neither quantified the claim nor submitted evidence to prove either of the two kinds of loss that it argues it suffered. The Ombudsman takes the view, therefore, that if the complainant wishes to pursue its claim for compensation, it should address the Commission directly in the light of the Ombudsman's finding of maladministration. The complainant would naturally have the possibility to make a new complaint if it considers the Commission's response to any such claim to be unsatisfactory.

Conclusion

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

Principles of good administration require an official, where necessary, to advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter (6) . The Ombudsman takes the view that, in the circumstances of the present case, the Commission should have ensured that the advice it gave to the complainant in October 2003 concerning the application for a project grant was appropriate to the complainant's particular situation. The Commission's failure to draw the complainant's attention to a fundamental condition of eligibility for project applications was therefore an instance of maladministration.

The Ombudsman takes the view that if the complainant wishes to pursue its claim for compensation, it should address the Commission directly in the light of the Ombudsman's finding of maladministration and that it is not, therefore, appropriate to pursue a friendly settlement of the matter.

On basis of the above, the Ombudsman closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) According to its website, (<http://www.fairtrialsabroad.org> [Link]), Fair Trials Abroad seeks to help citizens of the European Union, who are accused of a crime in a country other than their own, to assert their rights to due administration of justice.

(2) The Ombudsman notes that the Commission's website (http://ec.europa.eu/justice_home/funding/agis/wai/funding_agis_en.htm [Link]) states that the AGIS framework programme is named after a king of ancient Sparta.



(3) OJ L 203, 01/08/2002 P. 0005-0008.

(4) OJ L 248, 16/09/2002 P. 0001-0048.

(5) Article 10 (3) of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link].

(6) Article 10 (3) of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link].