

Decision of the European Ombudsman on complaint 221/2004/GG against the European Commission

Decision

Case 221/2004/GG - Opened on 27/01/2004 - Decision on 05/05/2004

Strasbourg, 5 May 2004

Dear Dr. J.,

On 15 January 2004, you made a complaint to the European Ombudsman concerning the handling of your application of 2 October 2003 under the Leonardo da Vinci Programme (reference DE/04/C/P/RF-80502) by the Commission.

On 27 January 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 15 March 2004. I forwarded it to you on 19 March 2004 with an invitation to make observations, which you sent on 6 April 2004.

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

THE COMPLAINT

Background

The complainant, a German consultant, replied to the Commission's Call for proposals 2003-2004 under the Leonardo da Vinci programme. On 22 December 2003, the Commission informed the complainant that his pre-proposal could not be selected since he had failed to comply with the deadline for submitting pre-proposals.

The complainant considered that he had complied with this deadline (3 October 2003), given that he had sent his pre-proposal by registered mail on 2 October 2003.

The complainant therefore contacted the Commission by telephone on 29 December 2003. In a letter sent the same day, he requested the Commission to confirm by 5 January 2004 that his project had been submitted in time, failing which he would turn to the courts for help. In his letter to the Commission, the complainant also lodged complaints against the person in charge of his project and against the head of the relevant department of the Commission.

Complaint 33/2004/GG

The complainant forwarded copies of these two letters to the Ombudsman on 29 December 2003. In his cover letter, he asked the Ombudsman to examine the matter.



Given that the complainant's letter to the Commission had been sent on the same day as the letter to the Ombudsman, the Commission had obviously not yet had sufficient time to consider the matter. The complaint was therefore rejected by the European Ombudsman on the basis of Article 2 (4) of the Ombudsman's Statute on 13 January 2004.

The present complaint

On 15 January 2004, and in reply to the Ombudsman's letter, the complainant informed the Ombudsman that he wished to renew his complaint. This letter was therefore registered as a new complaint under reference 221/2004/GG. In this complaint, the complainant alleged that the Commission failed to handle his application of 2 October 2003 under the Leonardo da Vinci Programme (reference DE/04/C/P/RF-80502) properly.

The Ombudsman noted that in his letter to the Commission of 29 December 2003, the complainant had asked for an urgent reply. Given that no such reply appeared to have been given within the three weeks that had lapsed since, the Ombudsman considered that the complainant had in the meantime made the appropriate prior approaches. The complaint was therefore sent to the Commission for its opinion.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

In the framework of the evaluation of pre-proposals under Procedure C of the Leonardo da Vinci Programme, 3 October 2003 was set as the deadline for submitting such pre-proposals. On 22 December 2003, the complainant had been informed by Directorate-General Education and Culture ("DG EAC") that his pre-proposal had been judged not eligible since the Commission considered that it had failed to meet the relevant deadline.

On 29 December 2003, the complainant had informed the Commission that he had in fact respected the deadline of 3 October 2003 (and that he had lodged a "Dienstaufsichtsbeschwerde" – a complaint – against the Commission to the Ombudsman). A re-examination had proved the complainant right: there were three postmarks on the letter, of which one bore the date of 5 October 2003, one bore the date of 2 October 2003 and one that was unreadable. The Commission had based its verdict of non-eligibility on the postmark of 5 October 2003. This, upon closer inspection, had turned out to be the stamp of a regional mail distribution centre. The actual postmark of the post office was in fact dated 2 October 2003. Therefore, the proposal should have been declared eligible.

After having acknowledged this mistake, DG EAC had started preparing an "Exception Report" under which (1) the project pre-proposal DE/04/C/P/RF-80502 was selected for the presentation of a full proposal, (2) the full proposal was to be submitted by 1 March 2004, (3) the promoter was to receive all documents and information sent to the other successful promoters and (4) the promoter was to be fully informed of this decision.



On 23 January 2004, DG EAC had informed the complainant by e-mail that a decision in this sense was being prepared. On 28 January 2004, the Exception Report had been signed by a director in DG EAC. A note informing the complainant of the content of this report had been signed by the director on 2 February 2004. This note had also been sent to the complainant by fax on 4 February 2004.

On 9 February 2004, the complainant had informed DG EAC that he did not accept the content of this report on the grounds that he had not been given the same number of days as other promoters of selected pre-proposals. Given that other promoters had been given the period from 23 December 2003 until 13 February 2004, while the complainant had been given the period from 4 February 2004 until 1 March 2004, there was indeed a case of unequal treatment.

DG EAC would therefore prepare a supplementary Exception Report, the decision of which would state that the complainant's full proposal was to be submitted within the same number of working days as for the other successful promoters. The deadline for sending the full proposal would thus be set at 19 March 2004.

On 11 February 2004, the complainant had been contacted by EAC, by telephone and by e-mail, informing him of this approach, with which he had agreed.

The Commission submitted copies of all the relevant documents to the Ombudsman.

The complainant's observations

In his observations, the complainant thanked the Ombudsman and made the following comments:

The actions the Commission had taken since the complaint had been lodged had not resulted in him being treated in the same way as other applicants. The Commission had first decided that the full proposal would, contrary to the rules applicable to other applicants, have to be submitted by a certain date in Brussels. This disadvantage was only removed after he had complained again.

Much more importantly, and contrary to what the Commission had said in its opinion, he had not benefited from the same amount of information as other applicants since the Commission had not transmitted any information as to how, in the view of the Commission, the project could be improved in the full proposal, something which the Commission had done with regard to all other applicants. This was a serious disadvantage that he would take into account in his final appraisal after the application procedure had terminated and in order to decide as to whether any further steps would be necessary to defend his rights.

It should also be noted that the "Dienstaufsichtsbeschwerde" had been lodged not with the Ombudsman but with the Commission itself and that no reply had been given to this complaint yet.

THE DECISION



1 Introductory remarks

1.1 In his observations, the complainant noted that he had not yet received a reply to the “Dienstaufsichtsbeschwerde” he had lodged with the Commission on 29 December 2003.

1.2 It appears from the Commission's opinion that the Commission seems to have assumed that this complaint had been lodged with the Ombudsman. In view of the fact that the Commission has reacted rapidly and constructively to the main issue raised by the present complaint (see 2 below), the Ombudsman assumes that the Commission will correct this oversight as soon as it is brought to its attention. The Ombudsman notes in this context that the complainant has sent a copy of his observations to the Commission.

1.3 In the Ombudsman's view, there is therefore no need to pursue this issue in the present inquiry. The complainant is of course free to submit a new complaint to the Ombudsman, if he should consider that the Commission has failed to provide a satisfactory answer to his “Dienstaufsichtsbeschwerde”.

2 Failure to handle application properly

2.1 The complainant, a German consultant, replied to the Commission's Call for proposals 2003-2004 under the Leonardo da Vinci programme. On 22 December 2003, the Commission informed the complainant that his pre-proposal (reference DE/04/C/P/RF-80502) could not be selected since he had failed to comply with the deadline for submitting pre-proposals, which had been set at 3 October 2003. The complainant pointed out that he had sent his pre-proposal by registered mail on 2 October 2003. In his complaint to the Ombudsman, he therefore alleged that the Commission failed to handle his application properly.

2.2 In its opinion, the Commission informed the Ombudsman that a re-examination of the matter had shown that the complainant was right and that his pre-proposal should have been selected. The Commission pointed out that it had taken a decision pursuant to which (1) the project pre-proposal DE/04/C/P/RF-80502 was selected for the presentation of a full proposal, (2) the full proposal was to be submitted by 1 March 2004, (3) the promoter was to receive all documents and information sent to the other successful promoters and (4) the promoter was to be fully informed of this decision. It added that further to a complaint made by the complainant, it had been decided to grant him the same number of working days for submitting the full proposal as for the other successful promoters. The deadline for sending the full proposal had thus been set for 19 March 2004.

2.3 The Ombudsman considers that the Commission has thus acted rapidly and constructively in order to correct the mistake that had occurred.

2.4 In his observations, the complainant submitted that contrary to what the Commission had said he had not received as much information as other applicants. The Ombudsman considers that the complainant has thus submitted a new, additional allegation. In his view, it would not be appropriate to deal with this new allegation in the present inquiry for at least two reasons. First, the complainant does not appear to have raised this issue with the Commission before submitting it to the Ombudsman. The Commission thus has not yet had the possibility to consider the matter. Second, the complainant remains free to submit a new complaint to the



Ombudsman in case the Commission's alleged failure to provide him with information should negatively affect the Commission's decision on his full proposal.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, and subject to what is said in point 2.4 above, there appears to be no maladministration on the part of the Commission. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS