

## **Decision of the European Ombudsman on complaint 2923/2004/IP against the European Commission**

Decision

**Case 2923/2004/IP - Opened on 21/12/2004 - Decision on 06/12/2005**

Strasbourg, 6 December 2005

Dear Mr B.,

On 28 September 2004, you made a complaint to the European Ombudsman against the European Commission concerning the latter's handling of your application made in response to the Call for expression of interest published in the Official Journal S 73 of 14 April 2001. On 5 October 2004, you sent me further information related to the complaint.

On 21 December 2004, I forwarded the complaint to the President of the European Commission . The Commission sent the Italian version of its opinion on 23 May 2005. I forwarded it to you on 6 June 2005 with an invitation to make observations by 15 July 2005, 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 are as follows:

On 27 April 2004, the complainant, the owner of the air transport company Heli2000, sent his application in response to the Call for expression of interest launched by the Commission to establish a list of pre-selected consultants in order to provide administrative and technical assistance to the Representation of the European Commission in Turkey (the "Commission's Representation").

On 30 May 2004, the complainant sent an e-mail to the Commission asking for information concerning the selection procedure. On the next day, Mr K., a Commission official, informed the complainant that the Commission was in the process of registering all the applications and that applicants would be informed as soon as possible as to the treatment of their applications.

On 20 September 2004, the complainant wrote a further e-mail to Mr K., in which he asked him



whether the selection procedure had been carried out by the relevant services. In his reply of 21 September 2004, Mr K. informed the complainant that the final results of the first evaluation had already been published on the Commission's web-site and that if the complainant's name was not included on the list, he had the possibility to apply for the following evaluation since the Call for expression of interest would be open for 33 months. On the same day, the complainant wrote a further e-mail to Mr K. in which he asked him whether all applicants had been informed of the outcome of the evaluation. In his reply of 22 September 2004, Mr K. stated that a letter had been sent to the complainant but that it had been returned to the Commission by the postal service. According to the postal service, it had not been possible to reach the complainant at the address indicated by him. Mr K. said that he was ready to send the relevant letter again to the complainant. On 22 September 2004, the complainant confirmed the same address that he had given in his application and pointed out that he had been living at that address since 1968.

In his complaint to the Ombudsman, the complainant alleged that *(i)* he had never received an acknowledgement of receipt of his application of 27 April 2004 and that *(ii)* he had not received any communication concerning the results of the evaluation of his application.

The complainant claimed that, when handling future evaluations of applications in the framework of the same Call for expression of interest, the Commission should either accept the application that he had already sent or award him compensation to the amount of EUR 550 for postal expenditure and for the time spent preparing his application.

## THE INQUIRY

### **The Ombudsman's approach**

When deciding on the admissibility of the present complaint, the Ombudsman noted that no prior administrative approaches had been made by the complainant concerning his claim. However, in view of the clear link between the allegations and the claim, he considered it reasonable to ask the Commission to submit an opinion also on the complainant's claim.

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

The Commission's opinion on the complaint could be summarised as follows:

In accordance with the rules of the Financial Regulation, on 14 April 2004 the Commission launched a Call for expression of interest to set up a list of pre-selected consultants to provide administrative and technical assistance in their respective fields of competence to the Representation of the European Commission in Turkey (the "Commission's Representation") (EUROPEAID/119722/C/SV/TR). A first deadline for the preliminary selection round was set for 7 May 2004.

The validity period of the list of pre-selected candidates was set at 3 years as from the date of dispatch of the notice to the Office for Official Publications of the European Communities. The list would remain open for new applications throughout the period of validity except for the last three months. Where such applicants fulfilled the pre-selection criteria, they would therefore be added to the list up to 3 months before the expiry of the validity period.



The Call for expression of interest was the first stage of the tender and had the purpose of establishing a pre-selected list of consultants and experts. All questions regarding the pre-selection of consultants had been answered by telephone or by e-mail. However, in the case of frequently asked questions, the answers, which could be of interest to all consultants, had been published on the website of the Commission's Representation.

For the Call for expression of interest concerned, the Commission's Representation had received on time 618 applications for the first round, including 3 147 experts' CVs. In order to guarantee an efficient management of the high volume of applications received, the acknowledgments of receipt which had been sent to all candidates stated that the results of the selection procedure would be published on the website of the Commission's Representation. Afterwards, for those who considered it necessary, there was the possibility to request additional information about the results of the selection.

In order to avoid the risk of handling an application in a discriminatory way, the evaluation committee strictly applied the requirements laid down in the Call for expression of interest. Any application that was submitted in a format different from the one provided for in point 9 of the Call for expression of interest, according to which *"candidates must send one copy of their application for each sub-list they wish to be included in"*, had therefore been rejected.

The reason for the requirement of sending separate applications for each sub-list was to facilitate the division of the work among the evaluators as they would evaluate expressions of interest for different sub-lots. Each application was evaluated by at least two evaluators.

The relevant Call for expression of interest was still open to new applications. The third evaluation round had been finalised on 14 March 2005 and the results had been published on the Internet (1) .

As regards the complainant's allegations that he had never received an acknowledgement of receipt for his application of 27 April 2004 and that he had not received any communication concerning the results of the evaluation of his application, the Commission stated that the complainant's application had been received on 5 May 2004. On 30 May 2004, the complainant had sent a request for information about his application by e-mail. The official responsible for his application had replied to him on the following day, 31 May 2004, and informed him that the process for registration of all applications was ongoing and that all applicants would be informed about the registration of their applications as soon as possible.

In accordance with point 10 of the Call for expression of interest, on 10 June 2004, the Commission's Representation had sent out letters in order to inform all the applicants about the registration of their applications. Candidates had been directed to a specific link of the Commission delegation's web site to find information about the results of the evaluation process.

Unfortunately, due to a typing error, the letter addressed to the complainant had contained an incomplete address and, as a consequence, the Italian postal system had been unable to



deliver the letter to the complainant. The letter had therefore been returned to the Commission's Representation. The letter had then been forwarded to the relevant official, who had been preparing to re-send it to the complainant. In the meantime, the latter had sent a further e-mail asking for information concerning his application. A reply by e-mail was sent to the complainant on 21 September 2004. On 22 September 2004, the complainant was informed about the registration of his application, of the unfortunate fact that the letter of 10 June 2004 had been sent to an incomplete address and of the reasons for the rejection of his application, that is, the fact the complainant had submitted only one application in order to apply for several sub-lists.

The complainant was further informed that he had to submit proof of not having any grounds for exclusion, such as documents received from the Justice Authority, the Tax Authority and the Social Security Administration. However, after a more in-depth examination, carried out by the Commission's Representation, of the legal requirements in Italy for providing the documentation in question, it appeared that the documents already provided by the complainant could most likely be considered as acceptable. Finally, the complainant was given guidelines on how to make a new application, since the Call for expression of interest was open for 33 months and the evaluation of the applications received in the meantime was carried out every 3 months.

The Commission was of the opinion that its services had acted properly in the complainant's case. Although it recognised and regretted that an error had occurred in sending the letter of 10 June 2004 to an incomplete address, the complainant had eventually been informed about the registration of his application, of its rejection and of the reasons for it by e-mails of 21 September and 22 September 2004. The complainant had been provided with the information required by the Call for expression of interest in accordance with the relevant procedure.

As regards the complainant's claim, the Commission considered it to have no grounds. The fact that the complainant's application did not comply with the requirement of point 9 of the Call for expression of interest did not justify a reimbursement for postal expenditure and for the time spent preparing the application.

The Commission's Representation would be ready to evaluate any further application submitted by the complainant in due course, if he so wished.

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

No observations on the Commission's opinion were received from the complainant.

## **THE DECISION**

### **1 Alleged failure by the Commission to acknowledge receipt of the complainant's application of 27 April 2004**

1.1 On 27 April 2004, the complainant sent his application in response to the Call for expression of interest launched by the Commission on 14 April 2004 to set up a list of pre-selected consultants in order to provide administrative and technical assistance to the Representation of the European Commission in Turkey (the "Commission's Representation"). In his complaint to the Ombudsman, he alleged that he had never received an acknowledgement of receipt of his application.



1.2 In its opinion, the Commission stated that, on 10 June 2004, the Commission's Representation sent out letters in order to inform all the applicants about the registration of their applications. However, due to a typing error, the letter addressed to the complainant had contained an incomplete address and, as a consequence, the Italian postal system had been unable to deliver the letter to the complainant. The letter had therefore been returned to the Commission's Representation. The Commission regretted this unfortunate fact. The letter had then been passed on the relevant official, who had been preparing to re-send it to the complainant. In the meantime, the latter sent a further e-mail asking again for information concerning his application. By e-mail of 21 September 2004, the complainant was informed that the Commission had already published the final results of the first evaluation on its website and that he could still apply for the next evaluation if his name was not on the relevant list. By a further e-mail of 22 September 2004 the complainant was also informed about the registration of his application and about the unfortunate fact that the letter of 10 June 2004 had been sent by the Commission's Representation to an incomplete address and that it had therefore been returned to the Commission.

1.3 Point 10 of the Call for expression of interest provides that candidates will be informed of the registration of their application by an acknowledgement of receipt. In the present case, it emerges from the inquiry carried out by the Ombudsman that an error was made by the Commission when sending the letter acknowledging receipt of the complainant's application. As recognised by the Commission, the relevant letter was sent to an incomplete address and was therefore not delivered to the complainant.

1.4 Principles of good administration require that when a public administration makes an error, it should adopt measures in order to correct it. In the present case, the Ombudsman notes that the Commission, in its opinion, recognised that a typing error had occurred concerning the complainant's address, that the relevant letter had therefore been sent to an incomplete address and that, as a consequence, the Italian post had returned it as undeliverable to the Commission.

From the evidence in the Ombudsman's possession, it is not possible to ascertain the date on which the undeliverable letter was received by the Commission. However, given that the Ombudsman takes the view that there has in any case been maladministration by the Commission (see point 1.5 below), he does not consider it necessary to conduct further inquiries in order to ascertain when the Commission received the relevant letter.

1.5 The Ombudsman notes that the Commission informed the complainant, in its e-mail of 21 September 2004, that "*if you confirm your address, we can send the letter once again*". On the basis of the Commission's e-mail, the complainant confirmed his address on 22 September 2004. In such circumstances, the complainant could thus reasonably assume that the relevant letter would be sent to him. However, it appears that this letter was never sent to the complainant.

In view of the above, the Ombudsman considers that the Commission's failure to send an acknowledgment of receipt of his application to the correct complainant's correct address



constituted an instance of maladministration. A critical remark will be made in this regard.

## **2 The alleged failure by the Commission to communicate the results of the evaluation of the complainant's application**

2.1 In his complaint, the complainant alleged that he had received no communication concerning the results of the evaluation of his application.

2.2 In its opinion, the Commission stated that, on 22 September 2004 the complainant had been informed that his application had been rejected since he had submitted only one application in order to apply for several sub-lists.

The Commission added that the complainant had further been informed that he had to submit evidence to show that there were no grounds for exclusion, such as documents received from the Justice Authority, the Tax Authority and the Social Security Administration. However, after a more in-depth examination, carried out by the Commission's Representation it had emerged that the documents already provided by the complainant could most likely be considered as acceptable. The complainant had also been given guidelines on how to make a new application, since the Call for expression of interest was open for 33 months and the evaluations of the applications received were being carried out every 3 months.

2.3 The complainant has not sent observations on the Commission's opinion.

2.4 In view of the allegation submitted by the complainant, the present inquiry was limited to ascertaining whether the complainant was informed by the Commission of the results of the evaluation of his application. The present inquiry therefore does not deal with the question of whether the reasons given by the Commission when informing the complainant of the results of the evaluation of his application were correct or sufficient.

2.5 It emerges from the information in the Ombudsman's possession that in its reply of 22 September 2004, the Commission informed the complainant of the results of the evaluation of his application, that is, that it had been rejected.

2.6 The Ombudsman therefore considers that there has been no maladministration by the Commission in so far as this aspect of this case is concerned.

## **3 The complainant's claims**

3.1 In his complaint, the complainant claimed that, when handling future evaluations of applications in the framework of the same Call for expression of interest, the Commission should either accept the application that he had already sent or award him compensation to the amount of EUR 550 for postal expenditure and for the time spent preparing his application.

3.2 In its opinion, the Commission stated that the complainant's application had been rejected because it did not comply with the requirements of point 9 of the Call for expression of interest. There was thus no reason to justify the complainant's claim.

3.3 The complainant claimed that, when handling future evaluations of applications in the framework of the same Call for expression of interest, the Commission should accept the



application that he had already sent. With regard to this claim, the Ombudsman notes that the rejection of the complainant's application was based on the fact that the complainant had failed to comply with the requirements laid down in the Call for expression of interest since he had submitted only one application in order to apply for several sub-lists instead of sending separate applications, one for each sub-list for which he wished to apply. It appears that the Commission's decision to reject the complainant's application was taken in conformity with the conditions set out in the Call for expression of interest. In these circumstances, the Ombudsman takes the view that the complainant's claim cannot be sustained.

As regards the complainant's claim that the Commission should award him compensation to the amount of EUR 550 for the postal expenditure and for the time spent preparing his application, the Ombudsman recalls that he has reached the conclusion (point 1.5) that there has been maladministration by the Commission as regards the failure to send an acknowledgment of receipt of his application to the complainant. However, this instance of maladministration cannot be considered to have caused the costs allegedly incurred by the complainant. Given that the complainant has not established any other basis for his view that the Commission should pay him the requested compensation, the Ombudsman considers that the complainant's further claim cannot be sustained either.

#### **4 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 that when a public administration makes an error, it should adopt measures in order to correct it. In the present case, the Ombudsman notes that in its opinion the Commission recognised that a typing error had occurred concerning the complainant's address, that the relevant letter had therefore been sent to an incomplete address and that, as a consequence, the Italian post had returned it as undeliverable to the Commission.

In its e-mail of 21 September 2004 to the complainant, the Commission wrote to the complainant that *"[i]f you confirm your address, we can send the letter once again"*. On the basis of the content of the Commission's message, the complainant, who, as had been requested, confirmed his address on 22 September 2004, could thus reasonably assume that the relevant letter would be sent to him. However, it appears that this letter was never sent to the complainant.

In these circumstances, the Ombudsman considers that the Commission's failure to send an acknowledgment of receipt of his application to the complainant's correct address constituted an instance of maladministration.

Given that this aspect of the case concerns procedures relating to specific event in the past, it is not appropriate to pursue a friendly settlement of the matter.

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

Yours sincerely,



P. Nikiforos DIAMANDOUROS

(1) <http://www.deltur.cec.eu.int/english/consultantsinfo.html> [Link]