

Decision of the European Ombudsman closing his inquiry into complaint 271/2009/VL against the European Commission

Decision

Case 271/2009/VL - Opened on 10/03/2009 - Decision on 15/12/2009

THE BACKGROUND TO THE COMPLAINT

1. The complainant is an employee of the European Consumer Centre in Germany ('the German ECC'). The German ECC has two sites, Kehl and Kiel. The complainant works in the ECC's office in Kiel. The German ECC forms part of a network of ECCs throughout the EU (the 'ECC-Net'). The ECC-Net is co-financed, through grants, by the Member States and the European Union. The EU grants, which are provided on the basis of a grant agreement signed by the European Commission and the beneficiary, usually have a duration of one year, with the exception of 2007 and 2008, when one grant agreement covered both years.
2. The complainant was employed by the German ECC on the basis of a project-based temporary contract of employment ending at the end of 2008. His employer assured him that his contract would be extended as soon as it received the grant agreement signed by the Commission, confirming the latter's financial support for the year 2009. According to the complainant, the renewal of his contract of employment was thus dependent on the Commission's approval of the grant agreement for 2009.
3. The procedure related to applying for a grant is governed by Decision No.1926/2006/EC of the European Parliament and the Council of 18 December 2006, establishing a programme of Community action in the field of consumer policy [1] . Member States have to submit their applications for a grant by a certain deadline, which, for grants relating to 2009, was 14 August 2008. Applications had to be submitted on paper, and the determining factors as to whether the deadline was adhered to were either the postmark or the date on which the application was delivered by hand to the Commission.
4. On 1 July 2008, the German ECC requested that the deadline for the submission of applications be extended until 14 September 2008. On 23 July 2008, following the request of several other Member States, the Commission extended this deadline to 5 September 2008. The Commission, nevertheless, encouraged those Member States able to do so to submit their



applications by the date originally foreseen, so as "to facilitate the processing of the applications and ensure that all grant agreements can be signed in time. This is to ensure a prompt start of the ECC's activities in 2009."

5. On 5 September 2008, Mrs G., the Director of the German ECC, sent the German ECC application to the Commission. The application was also sent to the Commission electronically the same day.

6. On 3 December 2008, the Commission sent a list of questions to the German ECC concerning its application. On 12 December 2008, the German ECC replied to these questions and submitted, as suggested by the Commission, an amended application. On 16 December 2008, the Commission asked for further information, which the German ECC provided on 17 December 2008.

7. On 22 December 2008, the German ECC informed the Commission by e-mail that it needed the signed grant agreement for 2009 in order to ensure the normal operation of its Kiel office. It explained that, in the absence of a signed agreement three employees, one of whom was the complainant, would be unemployed as of 2 January 2009.

8. On 22 and 23 December 2008, the Commission informed the German ECC that, as a result of the need to clarify certain questions, the examination of its application had taken longer than expected. It regretted the delay and stated that it should be in a position to sign the agreement in "early January".

9. On 5 January 2009, the complainant turned to the Ombudsman (complaint 1/2009/NM). This complaint concerned the same issue as the present complaint. However, the complainant subsequently informed the Ombudsman that he wished to drop his complaint. Against this background, complaint 1/2009/NM was closed on 19 January 2009, and the complainant was informed accordingly.

10. On 20 January 2009, the Commission informed the German ECC that the grant agreement for 2009 had been approved. On 21 January 2009, the grant agreement was sent to the German ECC for signature. After the German ECC had signed, the grant agreement was signed by the Commission's Authorising Officer on 30 January 2009.

11. On 21 January 2009, the complainant was able to resume his work at the ECC's office in Kiel.

12. On 1 February 2009, the complainant lodged the present complaint with the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

13. In his complaint, the complainant alleged that the Commission's handling of the 2009 grant agreement for the German ECC was significantly delayed.



14. The complainant claimed that the Commission should either approve or reject future applications before 1 January, so as to provide a legal basis for the implementation of the project, and for the conclusion of employment contracts at the national level.

THE INQUIRY

15. On 10 March 2009, the Ombudsman opened an inquiry and asked the Commission for an opinion on the complaint.

16. The Commission sent its opinion on 29 June 2009. The opinion was forwarded to the complainant with an invitation to make observations, which he sent on 30 August 2009.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation of delayed handling of the grant agreement for 2009

Arguments presented to the Ombudsman

17. The complainant alleged that the Commission's handling of the 2009 grant agreement for the German ECC was significantly delayed.

18. In its opinion, the Commission submitted that it did not breach any of its obligations. The Commission pointed out that Council Regulation No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [2] (the 'Financial Regulation'), did not oblige it to sign a contract before the end of the year. It added that Article 112(1) of the Financial Regulation foresees that "a grant may be awarded for an action which has already begun", provided that it could be shown that it was necessary to start such action, and that costs were not incurred before the submission of the grant application. Given that the German ECC submitted its application in September 2008, the Commission took the view that costs incurred in January 2009, prior to the signature of the grant agreement, would, therefore, have been eligible.

19. The Commission further explained that it had evaluated the applications in the chronological order of their arrival, starting with the many applications received by the initial deadline of 14 August 2008, and that it had only started dealing with the German ECC application in November 2008. According to the Commission, the alleged delay in handling the application was linked to the fact that the German ECC application arrived relatively late in comparison with other applications. Furthermore, several aspects of the application needed clarification, some of which were related to the complex nature of the German ECC and its difficulties in co-ordinating the two sites.



20. The Commission pointed out that it kept Mrs G. fully informed of all the steps in the process throughout December 2008, and January 2009, including the fact that the grant agreement would be signed in early January 2009.

21. The Commission stressed that it did not have any direct responsibility for the employment contracts of the staff of the ECC-Net. The fact that the host structure of the ECC's office in Kiel decided to offer an annually renewable contract to the complainant was not the Commission's responsibility. The Commission added that other staff members, such as Mr K., the head of the Kiel office, were employed on the basis of multi-annual contracts.

22. The Commission noted, however, that it was fully aware of the fact that some ECC beneficiaries may experience cash-flow problems. It, therefore, shared the complainant's conviction that, ideally, all grant agreements should be signed by the end of the year preceding the year for which the grant is requested.

23. In its conclusions, the Commission reiterated its view that it did not breach any of its financial obligations. The Commission added that it regretted if the handling of this file caused any inconvenience to the complainant.

24. In his observations, the complainant submitted that the request to extend the original deadline for the submission of applications was not due to any specific problems that might have existed in Germany. The Commission usually granted a fairly short period of time for making such applications, and the deadline coincided with the middle of the main holiday period. As a result, wishes for an extension of time were regularly expressed by many members of the ECC-Net.

25. The complainant further pointed out that the Commission recently entrusted an agency in Luxembourg with the task of examining applications, and that the procedure to select this body was carried out in the autumn of 2008. According to him, it could thus be presumed that the delay in handling the German ECC application was caused by the Commission.

26. The complainant further argued that the exchange of e-mails which took place in December 2008 between the Commission and Mrs G. did not constitute a sufficient basis for his employer to grant him an extension of his contract of employment. The Commission's statement, however, that costs incurred before the signature of the grant agreement could be eligible, might be of relevance in the future.

27. The complainant added that his situation could not be compared to that of Mr K., the head of the Kiel office, since this person had been working for the German ECC since 1998.

28. The complainant objected to the Commission's argument that it was not responsible for the employment contracts of the staff of the ECC-Net. He accepted that the contractual partner of the staff was the ECC concerned, and that the Commission could not be expected to take into account the labour law rules of 27 Member States, as well as those of Norway and Iceland. The



complainant stressed, however, that the proper functioning of the ECC-Net was of interest to the Commission and that it should, therefore, ensure that applications are handled in good time, and, in any event, before the end of the year preceding the year for which the grant is requested.

The Ombudsman's assessment

29. The Ombudsman notes that the Commission argued that it did not infringe any of its obligations arising from the Financial Regulation. This appears to be correct, and the complainant did not challenge the Commission's position on this issue. Given that the Commission, therefore, appeared to comply with its legal obligations in this case, it remains to be ascertained whether the way it handled the relevant application was also in conformity with principles of good administration.

30. As regards this question, the Ombudsman considers that good administrative practice requires decisions on ECC grant applications for a particular year to be taken before the start of the year to be covered by the grant agreement, unless objective reasons make it impossible to do so. The Commission correctly observed that it is not directly responsible for the employment of ECC staff. It does not, however, appear to dispute that the activity carried out by the ECCs, which consists of informing consumers of their rights, is in the EU's interest. The Commission, furthermore, does not appear to contest that the proper functioning of the ECCs, or at least the German ECC, is to some degree dependent on EU co-funding. Most importantly, the Commission did not challenge the complainant's main argument, namely, that his contract of employment could only be extended by the ECC in Germany if the Commission granted financial assistance to the German ECC for the year 2009.

31. In its opinion, the Commission stated that it would be possible, under certain circumstances, for such a grant agreement to cover expenditure incurred before it is signed. Whilst this possibility is, as the complainant accepted, certainly useful, the Ombudsman considers that no prudent economic operator could be expected to incur expenditure to be covered by a grant agreement before that agreement has been signed by the Commission. Besides, the Ombudsman points out that he has dealt with many cases where the Commission insisted that financial obligations on its part do not arise before a grant agreement has been signed, and that a beneficiary who incurs costs prior to that signature does so at his own risk. In light of the above, the Ombudsman considers it perfectly understandable that the ECC in Kiel preferred to await the conclusion of the grant agreement before extending the employment contracts of the staff concerned.

32. The Ombudsman, moreover, considers that the position of the complainant, a member of the German ECC's staff, can hardly be compared to the position of Mr K., the head of the latter's office in Kiel. The Ombudsman notes, in any event, that the Commission does not appear to dispute that the continued employment of the complainant at the German ECC was dependent on EU funding for 2009, whereas Mr K.'s employment was not.

33. The Ombudsman notes, moreover, that the Commission itself concedes that applications for



grants for the ECCs should be dealt with before the end of the year preceding the year for which the grant is requested.

34. As regards the present case, the Ombudsman notes that the Commission did not complete its handling of the grant application for the German ECC for the year 2009 until the second half of January 2009. It could be argued that the decisive date, in this respect, is 30 January 2009, namely, the date on which the Commission signed the grant agreement. However, the German ECC appears to consider that the relevant date is 20 January 2009, the date on which the Commission informed it that its application for a grant for 2009 had been accepted. The complainant seems to take the same view. The Ombudsman, therefore, considers that he should base his examination on the premise that 20 January 2009 is the relevant date.

35. On this basis, the Ombudsman notes that the handling of the relevant application was completed later than it ought to have been, for it to comply with principles of good administrative practice.

36. In its opinion, the Commission cited two reasons to explain this delay. First, that the German ECC application arrived relatively late in comparison with other applications, and second, that clarifications were needed regarding several aspects of the application.

37. As regards the first reason, the Ombudsman notes that the relevant application was submitted by the (extended) deadline set for this purpose by the Commission. The Commission was clearly responsible for organising its work in such a way as to ensure that all applications submitted by the deadline would be handled before the end of the year. However, it appears that the Commission did not start examining the German ECC application until November 2008, that is, more than two months after it was submitted. This is all the more surprising in light of the Commission's statement that many of the other applications were received by the original deadline of 14 August 2009. This suggests that the Commission would have had additional time at its disposal for handling applications.

38. As regards the second reason, the Ombudsman accepts that the Commission's handling of the German ECC grant application was delayed due to the need for clarifications. It should be noted, however, that from the first request for further information on 3 December 2008, until the last missing items of information were filed on 17 December 2008, precisely two weeks (14 days) elapsed. It took until 20 January 2009, however, for the Commission to inform the German ECC that the contract had been approved. The Ombudsman considers that the time needed for further clarifications is a side issue, since it does not affect the fact that the Commission took longer than it should have to handle the relevant application.

39. In view of the above, the Ombudsman concludes that the Commission failed to ensure that the relevant application was handled as rapidly as it should have been. This is an instance of maladministration. In its opinion, the Commission pointed out that it would like to express its regrets "if the handling of this file has caused any inconvenience to the complainant". The Ombudsman takes the view that this conditional expression of regret is not a satisfactory response. The complainant suffered a considerable amount of 'inconvenience', namely, the loss



of two thirds of a month's income. A critical remark will, therefore, be made below.

B. Claim concerning the handling of future applications

Arguments presented to the Ombudsman

40. The complainant claimed that the Commission should either approve or reject future applications before 1 January, so as to provide a legal basis for the implementation of the project and for the conclusion of employment contracts at the national level.

41. In its opinion, the Commission did not explicitly address this claim.

The Ombudsman's assessment

42. The Ombudsman notes that, even though the Commission did not explicitly address the complainant's claim, it accepted that applications for grants for the ECCs should be dealt with before the end of the year preceding the year for which the grant is requested. It can, therefore, be expected that the Commission will proceed accordingly regarding future applications.

43. In these circumstances, the Ombudsman takes the view that there are no grounds for further inquiries regarding the complainant's claim.

C. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following critical remark:

Good administrative practice requires decisions on ECC grant applications for a particular year to be taken before the start of the year to be covered by the grant agreement, unless it is impossible to do so for objective reasons. In the present case, the Ombudsman concludes that the Commission failed to ensure that the relevant application was handled as rapidly as it should have been, and that it did not put forward objective reasons to justify the delay that occurred. This is an instance of maladministration.

The complainant and the European Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 15 December 2009



[1] OJ 2006 L 404, p. 39.

[2] OJ L 248, p. 1.