

Decision of the European Ombudsman closing the own-initiative inquiry OI/8/2013 concerning the Executive Agency for Small and Medium-sized Enterprises (EASME)

Decision

Case OI/8/2013/OV - Opened on 16/12/2013 - Recommendation on 17/10/2014 - Decision on 25/03/2015 - Institution concerned Executive Agency for Competitiveness and Innovation (Draft recommendation accepted by the institution) |

The Executive Agency for Small and Medium-sized Enterprises (EASME) manages a number of EU programmes for the European Commission, including part of the Horizon 2020 Research and Innovation Framework Programme, COSME, LIFE and EMFF [1].

The Ombudsman opened an own-initiative inquiry asking the EASME to consider establishing a procedure that would allow applicants who are dissatisfied with the way calls for proposals have been handled to turn to an independent Redress Committee. She made two draft recommendations asking the EASME to 1) establish an evaluation review procedure for applicants who respond to calls for proposals under the Horizon 2020 programme and 2) establish a similar review procedure for applicants who respond to calls for proposals launched under the other EU programmes. The Ombudsman recommended that the review procedure should cover cases where applicants put forward claims of (i) procedural errors, (ii) factual errors or (iii) a manifest error of assessment. The EASME accepted both draft recommendations and took timely and appropriate measures to implement them. The Ombudsman commended the EASME for its response. She also made two further remarks to improve the review processes, suggesting that the EASME make clear to applicants that the review of alleged "procedural shortcomings" can also cover manifest errors of assessment.

The background

1. On 16 December 2013, the Ombudsman opened an own-initiative inquiry inviting the Executive Agency for Competitiveness and Innovation (EACI) to consider establishing a procedure allowing applicants who are dissatisfied with the way calls for proposals have been handled to turn to an independent Review or Redress Committee. The Ombudsman pointed out that the EACI could draw on the review procedures in place at the Research Executive Agency (REA) and the European Research Council Executive Agency (ERCEA). With effect from 1



January 2014, the EACI was replaced and succeeded by the EASME [2] .

Establishing a review procedure within the EASME

The Ombudsman's draft recommendation

2. The Ombudsman's view is that each EU institution which is in frequent contact with persons who may have reason to complain should put in place a procedure that makes provision for grievances to be addressed and resolved rapidly by the institution itself, before those persons have recourse to other redress mechanisms, such as the Ombudsman and the courts. Because of its mandate, the EASME is in frequent contact with applicants who respond to calls for proposals under several EU programmes (the Horizon 2020 Programme (H2020), the COSME, LIFE and EMFF Programmes).

3. As regards the **scope of review** , the Ombudsman noted that the review procedure provided for in Article 16 of the H2020 Regulation is similar to those established by the ERCEA and the REA which are limited to " *procedural aspects* ", and do not cover the assessment of the merits of proposals. The fact that this provision limits the review by the evaluation review committee to " *procedural aspects* " should not, however, mean that the review should be limited to purely formalistic elements. If that were the case, the right of review would obviously not have much value. In this context, the Ombudsman pointed out that there are three grounds that should give rise to a full re-evaluation of a proposal: (i) if an applicant puts forward evidence of procedural errors, for example, if it is clear that a step in the procedure has been overlooked; (ii) if an applicant puts forward evidence of factual errors, for example, if the experts refer to the wrong proposal; or (iii) if an applicant puts forward evidence of a *manifest* error of assessment. The Ombudsman was of the view that the review procedure to be established by the EASME in the context of the Horizon 2020 Programme should cover those three situations. The Ombudsman also considered that the EASME should take the necessary steps to establish a similar review procedure for calls for proposals under the other EU Programmes.

4. On 17 October 2014, the Ombudsman therefore made the following two draft recommendations to the EASME:

" 1. *In accordance with Article 16 of Regulation 1290/2013 and Annex I to Commission Decision C(2013) 9414 final, the EASME should, as soon as possible, take the necessary steps to establish an evaluation review procedure for applicants who respond to calls for proposals under the Horizon 2020 programme and inform the Ombudsman of the date by which the review procedure will be in place.*

This review procedure should cover cases where applicants put forward claims of (i) procedural errors, (ii) factual errors or (iii) a manifest error of assessment.

2. *The EASME should take the necessary steps to establish a similar review procedure for*



applicants who respond to calls for proposals launched under the other EU programmes and inform the Ombudsman of the date by which the review procedure will be in place " .

5. When addressing the draft recommendations to the EASME, the Ombudsman took into account the arguments and opinion put forward by the EASME.
6. The EASME accepted both draft recommendations and described the measures it had taken to implement them:
7. As regards the **first draft recommendation** concerning the Horizon 2020 programme, the EASME stated that it set up two review procedures, namely (i) the Admissibility and Eligibility Review Committee, and the (ii) Evaluation Review Committee:

(i) The Admissibility and Eligibility Review Committee

8. The Admissibility and Eligibility Review Committee was set up by Decision of the Director of the EASME of 30 July 2014. This internal Committee is convened after complaints or requests for review on admissibility and eligibility of proposals have been received. The Committee examines only those complaints lodged *before an evaluation* , in cases of non-fulfilment of either the admissibility or eligibility criteria. The unsuccessful applicant has 30 days from the dispatch of the rejection letter by the EASME to lodge a complaint or request a review through a dedicated weblink (<https://webgate.ec.europa.eu/redress-frontoffice/work.iface> [Link]).

9. The Committee is composed of the Head of Unit or the call coordinator, a legal officer and a call coordinator of another call. In accordance with Article 6 of the Decision, the Committee will issue a reasoned recommendation to the Authorising Officer. In the event that the Committee considers that the proposal complies with all eligibility and/or admissibility criteria, it will recommend that the merits of the proposal be evaluated (Article 8). The Authorising Officer adopts a final decision on the basis of the Committee's recommendation.

10. The letter to the complainant on the outcome of the request for review will include information on the means of redress, including turning to the Ombudsman or the General Court. The EASME also pointed out that its Manual of Procedure for Horizon 2020 has a specific chapter on the Admissibility and Eligibility Review Committee.

(ii) The Evaluation Review Committee

11. The Evaluation Review Committee was set up by Decision of the Director of the EASME of 31 July 2014. This internal Committee examines requests for review received *after a proposal has been evaluated* . Under Article 4 of the Decision, requests for review can only be based on procedural failings (evaluating the merits of the proposal is outside the scope of the Committee). The relevant chapter of the Manual of Procedure of the EASME provides examples of procedural failings such as i) lack of technical competence of the experts, ii) factual errors in the Evaluation Summary report; iii) conflicts of interest, and iv) lack of coherence between scores and comments. The EASME however underlined that, as pointed out by the Ombudsman, the



notion of procedural failings is not limited to purely formalistic elements and covers the types of errors mentioned in the draft recommendation, namely (i) procedural errors, (ii) factual errors, or (iii) manifest error of assessment.

12. The unsuccessful applicant has 30 days after the evaluation results have been communicated to it to lodge a complaint or request a review through a dedicated weblink. The Committee is composed of at least four members, namely two permanent members (a legal officer and a Head of Sector Finance) and two floating members. In accordance with Article 8 of the Decision, the Committee will issue a reasoned recommendation to the Authorising Officer. There are three possible outcomes: a) lack of proof as regards the alleged procedural failure; b) evidence of a procedural failure but no causal link with the alleged evaluation result; and c) evidence of a procedural failure with a causal link with the evaluation result. As recommended by the Ombudsman, in the event that the Committee finds evidence of a procedural failure (such as a procedural error, a factual error or a manifest error of assessment), the merits of the proposal will be re-evaluated by independent evaluators. The Authorising Officer will adopt a final decision on the basis of the Committee's recommendation.

13. The letter to the complainant on the outcome of the request for review will include information on the means of redress, including turning to the Ombudsman or the General Court. The EASME also pointed out that the Central Legal and Support Service of the Commission drafted a *Vademecum* (a handbook/manual) which contains the relevant information for the review procedure in Horizon 2020 and is binding upon the EASME. If there is a discrepancy between the Commission's *Vademecum* and the EASME's Manual, the terms of the *Vademecum* prevail.

14. As regards the **second draft recommendation** concerning a review procedure for calls for proposals under the COSME, LIFE and EMFF Programmes, EASME stated that, by note of 16 December 2014, the Director requested the view and approval of the relevant parent Directorates-General (DGs) of the Commission to establish an internal Review Committee for these Programmes. The note referred to the Ombudsman's recommendation. The relevant DGs endorsed the setting up of a Review Committee. The draft "*Decision on the setting up of an Evaluation Review Committee for COSME, LIFE and EMFF*" (which refers to the Ombudsman's own-initiative inquiry) is similar to the Decision on the Horizon 2020 review procedure.

15. The Evaluation Review Committee will examine complaints and requests for review from unsuccessful applicants whose proposals have been rejected after their evaluation. The review will be limited to procedural aspects of the evaluation. EASME indicated that the Decision setting up the Review Committees for the three programmes would be adopted in February 2015, and implementation would begin immediately thereafter

The Ombudsman's assessment after the draft recommendations

16. The Ombudsman welcomes the EASME's acceptance of her draft recommendations and



considers that the EASME has taken timely and appropriate measures to implement them, with regard both to calls for proposals under the Horizon 2020 Programme and calls under the COSME, LIFE and EMFF Programmes. The speed with which the EASME has taken these measures is in itself an example of good administration and merits full praise. This is even more laudable considering that EASME itself has only recently been established.

17. By having acted in this way, EASME has demonstrated that it is committed to a genuine review process for dissatisfied applicants.

18. The Ombudsman however notes that, whereas for the Horizon 2020 Programme, the EASME set up both an *Admissibility and Eligibility Review* Committee and an *Evaluation Review* Committee, in the case of the three other Programmes (COSME, LIFE and EMFF) it refers to an *Evaluation Review* Committee only. The Ombudsman is of the view that, for reasons of consistency, it would make sense that, also for these other Programmes, the EASME considers setting up an Admissibility and Eligibility Review Committee. She will therefore make a further remark below.

19. The Ombudsman further notes that the EASME explained in its opinion to the Ombudsman that the notion of "*procedural shortcomings*" is not limited to purely formalistic elements, and that it covers (i) procedural errors, (ii) factual errors, or (iii) **manifest errors of assessment**. However, applicants to calls for proposals may not be aware that the concept of procedural shortcomings can also cover manifest errors of assessment. It would therefore be useful to inform them accordingly and clearly to indicate this in the relevant chapter of the EASME's Manual of Procedure (Section 2.6 "*Outcome of the Review Committee*"), as well as in all other documents intended for applicants. The Ombudsman will make a second further remark below.

Conclusion

The Ombudsman closes this own initiative inquiry with the following conclusion:

The EASME has adopted the Ombudsman's two draft recommendations and taken appropriate and timely measures to implement them.

The EASME will be informed of this decision.

Further remarks

1. For reasons of consistency with the Horizon 2020 Programme, the EASME could consider setting up an Admissibility and Eligibility Review Committee for the COSME, LIFE and EMFF Programmes also.

2. The EASME could consider amending the relevant chapters of the Manual of Procedure and other documents intended for applicants to make it clear that the review



of alleged "procedural shortcomings" can also cover manifest errors of assessment.

Emily O'Reilly

Strasbourg 25/03/2015

[1] COSME is the EU programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises; LIFE is the [EU programme for the Environment and Climate action](#); EMFF is the [European Maritime and Fisheries Fund](#) [Link].

[2] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's draft recommendation available at:

<http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/58120/html.bookmark> [Link]