



Decision in case 254/2014/PMC concerning the European Commission's role in relation to CAPITA-ERANET, a network of European research authorities

Decision

Case 254/2014/PMC - Opened on 26/02/2014 - Decision on 09/07/2015 - Institution concerned European Commission (No maladministration found) |

The complaint concerned the Commission's role in relation to CAPITA, a network of six European countries' research authorities encouraging transnational research cooperation. CAPITA received EU funding to support its coordination of research programmes. The complainant raised concerns that CAPITA's selection of projects to be funded might not have been made in a transparent, fair and impartial manner. The Ombudsman found that the Commission has a duty to act where recipients of EU funding do not fulfil their obligations. However, in this case the Ombudsman considered that the Commission acted appropriately in satisfying itself that the projects had been selected in a transparent, fair and impartial manner and that there had not been any misuse of EU funding on the part of CAPITA. She thus closed the case with a finding of no maladministration.

The background to the complaint

- 1.** The complaint, submitted by a researcher from Greece, concerns the Commission's role in relation to CAPITA ERA-NET [1], a network of ministries, funding agencies and research councils from six European countries, aiming at establishing transnational cooperation in research on manufacturing technology for chemicals, materials and energy. CAPITA started as a project under the 7th Framework Programme [2], which was the EU's main instrument for funding research in Europe during the period 2007-2013. EU funding for CAPITA covered the coordination costs of the network but not the funding of any individual research project.
- 2.** In June 2013, the first CAPITA call for project proposals was launched, aimed at stimulating European public-private collaborative research. The call expressly stated that there would be no funding from the European Union. The proposals were first examined by external reviewers. The applicants were given a possibility to write a rebuttal in relation to the external review concerning their projects. The CAPITA Call Steering Committee later ranked the proposals on the basis of the reviews and the rebuttals. The complainant submitted a project proposal which was not selected for funding.
- 3.** The complainant subsequently approached the European Commission alleging certain irregularities in the evaluation of his proposal, as well as conflicts of interest. The Commission replied that it is not directly involved in the evaluation of project proposals, but



that it would contact the CAPITA coordinator in order to provide the complainant with more information on the evaluation and the redress procedure. The complainant did not agree with the Commission's position that it is not involved in evaluating project proposals. In the complainant's view, given the fact that the Commission provides funding to the network, it has a certain responsibility to guarantee that these public funds are properly spent.

4. Following a reply from the CAPITA coordinator, the Commission wrote to the complainant again in December 2013, informing him that the "*CAPITA call for proposal documents and corresponding national annexes have been duly published on CAPITA's website. The coordinator reconfirmed that the evaluation procedure had been carried out according to international evaluation standards. The work of Capita ERA-Net as EU-funded project and the implementation of joint calls through ERA-Nets have been explained*". The Commission suggested that the complainant could submit a request for review to the CAPITA coordinator, which he did. In its reasoned reply, CAPITA explained in what way the relevant selection and evaluation procedure complied with international standards.

5. Dissatisfied with the Commission's position, the complainant turned to the Ombudsman. The inquiry

6. The Ombudsman opened an inquiry into the complainant's allegation that the Commission had failed to supervise adequately the use of EU funds by CAPITA and, in particular, failed to prevent certain conflicts of interest in the evaluation of proposals. The Ombudsman also opened an inquiry into the complainant's claim that the Commission should have ensured proper supervision of CAPITA's use of EU funds, having special regard to the need to prevent potential conflicts of interest.

7. In the course of the inquiry, the Ombudsman received the Commission's opinion. The complainant did not submit observations. The Ombudsman's decision takes into account the arguments and opinions put forward by both parties. Moreover, the Ombudsman inspected the relevant CAPITA Grant Agreement and its annexes.

The Commission's alleged failure to supervise adequately the use of EU funds

The arguments presented to the Ombudsman

8. In its opinion, the Commission stated that the EU's ERA-NET [3] actions under the 7th Framework Programme support and fund the *coordination* of research programmes by the competent national and regional agencies, but that the EU does not provide any financial support to the research programmes as such.

9. The Commission also stated that while the EU funds the coordination activities in the CAPITA network, the evaluation, selection, and funding of the selected projects fall within the exclusive competence of CAPITA, in line with the relevant ERA-NET Grant Agreement, which does not provide for any role for the Commission in this regard. Therefore, the Commission may not intervene in the procedures for evaluating and selecting proposals under ERA-NET actions. The Commission thus considered that it had not failed to supervise the use of EU funds by CAPITA.



10. Although the Commission was not obliged to monitor CAPITA's procedures for selecting projects, it analysed the information received from the complainant and CAPITA. The Commission stated that CAPITA's first call for proposals was based on a Memorandum of Understanding between the funding partners (that is, the countries' research authorities), which is a non-legally binding statement of intentions. According to the Memorandum of Understanding and the call for proposals, each partner awards and administers funding according to the terms and conditions laid down for that particular partner, taking into account the applicable national rules. The proposals are funded in accordance with a ranking order established at a Call Steering Committee assessment meeting.

11. The CAPITA ERA-NET Executive Board provided the complainant with detailed information addressing the issues he had raised concerning the evaluation of his proposal.

12. As regards the alleged conflicts of interest, the Commission noted that the national and/or regional agencies, members of the CAPITA network, had decided that they themselves were allowed to submit proposals to the call, provided that the physical person representing the agency in question was not also a member of the CAPITA Call Steering Committee. Two members of the CAPITA Call Steering Committee had declared a conflict of interest and were therefore not allowed to participate in the evaluation of the proposals submitted following the call in question. The Commission thus concluded that CAPITA had applied an appropriate procedure to avoid conflicts of interest.

13. The Commission further stated that the CAPITA coordinator had explained that, during the evaluation of proposals, the CAPITA Call Steering Committee paid special attention to proposals which had obtained substantially different scores from the different reviewers, which was the case with the complainant's proposal. As regards the complainant's proposal, the Call Steering Committee concluded that some reviews were too harsh and some were too optimistic. It therefore decided to take all of them into account when assessing the average score. The complainant's proposal was ranked fifth. However, the Dutch research agency informed the other CAPITA members that, due to budgetary constraints, it could not fund the proposal ranked fourth and therefore neither could it fund the complainant's proposal. On the basis of its national rules, Spain also decided not to grant a budget for the complainant's proposal. Only two partners from Greece remained committed to provide funding to the complainant's proposal. Given that the rules require a proposal to be supported by at least three CAPITA partners, from at least two countries participating in the call, the complainant's proposal was not eligible.

The inspection of documents

14. Given that the Commission's opinion referred to the ERA-NET Grant Agreement, the Ombudsman considered it appropriate to inspect that Agreement. The Commission provided a copy of the Grant Agreement, as well as its Annexes I and II, on 20 May 2015. The Commission identified the Grant Agreement and Annex I to be confidential. [4]



The Ombudsman's assessment

15. The complainant alleged that the Commission had failed to supervise adequately the use of EU funds by CAPITA and, in particular, failed to prevent certain conflicts of interest. The Ombudsman understands this allegation to mean that the complainant considers that the Commission has a certain duty to oversee the work of the CAPITA network, given that it receives EU funds to carry out its activities.

16. The Ombudsman notes that the following facts of the case appear to be undisputed: The CAPITA network received EU funding to support its *coordination* activities, but not to finance the selected projects. The funding of the research programmes selected by the CAPITA network was provided by the various regional and national research authorities, not by the EU. The procedure for selecting projects to be funded by the CAPITA network was carried out by the authorities funding the projects. The Ombudsman agrees with the Commission's position that the Grant Agreement, which was concluded between the CAPITA network and the Commission, does not set out any specific duty for the Commission to oversee the individual procedures for selecting proposals for funding. Nevertheless, as the Ombudsman will show below, the relevant rules impose certain obligations on the CAPITA network. The same rules also give the Commission the right to act if the CAPITA network does not meet these obligations. Any failure, on the part of the Commission, to act in such circumstances could result in the EU's financial interests not being appropriately safeguarded. On this basis, failure by the Commission to act with a view to protecting the financial interests of the EU could well amount to maladministration. The Regulation [5] governing the 7th Framework Programme requires that the relevant programmes - such as the one implemented by the CAPITA network - are carried out in accordance with certain basic principles. The Regulation specifically states that "[w] here the grant agreement requires participants to carry out activities that benefit third parties, the participants shall advertise this widely and identify, evaluate and select third parties transparently, fairly and impartially [6] " (emphasis added). These basic principles are also enshrined in the Grant Agreement signed between the Commission and the CAPITA network, which explicitly requires the network to carry out the process transparently, as well as to take every necessary precaution to avoid any risk of conflicts of interest [7] .

17. The Grant Agreement also gives the Commission certain supervisory rights. The Commission *may* suspend the whole or part of the CAPITA coordination project *where it considers that CAPITA is not fulfilling its obligations* [8] . While this provision grants the Commission *discretion* to intervene and to sanction the CAPITA network in case of breach of contract, principles of good administration may well require the Commission to take appropriate action in the event that the CAPITA network were to fail to comply with its duties under the Grant Agreement.

18. It is clear from the above that the Commission has a general duty to control the use of the funding it grants. The Ombudsman considers this duty to include taking appropriate action on the basis of sufficiently substantiated information or concerns submitted to it by third parties, depending on the individual circumstances of the case. The question remains whether the Commission respected this duty in the present case.



19. The Ombudsman notes that the Commission acted upon the complainant's concerns by approaching the CAPITA network, seeking information and clarifications.

20. As regards the complainant's concern that the selection procedure was vitiated by conflicts of interest, the Ombudsman considers reasonable the Commission's conclusion that the procedure in place in the CAPITA network ensured a fair and transparent selection procedure which excluded the possibility of conflicts of interest. Moreover, the complainant did not bring forward any arguments to challenge the procedure.

21. The Commission also obtained convincing explanations from the CAPITA network on the differences in the scores awarded to the complainant's proposal and the Call Steering Committee's decision on the basis of these scores, as well as on how the lack of funding from the national authorities made the proposal ineligible.

22. On the basis of the above, the Ombudsman finds no maladministration by the Commission as regards this case.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

There was no maladministration by the Commission.

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

Emily O'Reilly European Ombudsman Strasbourg, 09/07/2015

[1] <http://www.era-capita.eu/about+CAPITA>

[2] http://cordis.europa.eu/fp7/home_en.html

[3] The objective of the ERA-NET scheme is to develop and strengthen the coordination of national and regional research programmes.

http://cordis.europa.eu/fp7/coordination/about-era_en.html

[4] In accordance with Articles 5(2), 13(3) and 14(2) of the Implementing Provisions of the European Ombudsman, the Ombudsman's inspection must not result in third parties or any other person, including the complainant, obtaining access to any documents which the institution identifies as confidential during the inspection, or to any information contained in such documents.

[5] Regulation (EC) 1906/2006 of the European Parliament and of the Council of 18



December 2006 laying down rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013), OJ L 391, p. 1

[6] See Article 19(6) thereof.

[7] See Article II.3(m) and Article II.3(n) of Annex II, respectively.

[8] See Article II.8(3) of Annex II to the Grant Agreement.