

## **Decision in case 1065/2017/TE on the European Commission's failure to provide information about a review process and legal consultation carried out for the MEDIA programme**

Decision

**Case 1065/2017/TE - Opened on 28/07/2017 - Decision on 05/12/2017 - Institution concerned** European Commission ( Settled by the institution ) |

The case concerned the failure of the European Commission and the Education, Audiovisual and Culture Executive Agency (EACEA) to provide the complainant with information regarding a “review process and legal consultation” *in the context of the MEDIA programme that was referred to in a document attached by EACEA in its correspondence with the complainant.*

The Ombudsman inquired into the issue and asked the Commission to provide the complainant with the requested document(s) or set out the reasons as to why it would not be possible to send this information to the complainant. The Commission treated the complaint as an access to document application and, in the course of the inquiry, provided the complainant with a legal opinion corresponding to the request.

The Ombudsman found that the Commission had settled the issue of the complaint and, therefore, closed the case.

### **Background to the complaint**

1. The complainant is the managing director of a sales agency specialised in art house fiction and cinematic documentaries, based in the UK.
2. In November 2016, the complainant sent an email to EACEA with questions about funding for film distribution across Europe. He also asked for documentation on the Commission's research on the legal position of the MEDIA sub-programme [1] .
3. In January 2017, EACEA replied, explaining that EACEA's treatment of the MEDIA subsidy stems from the idea that EU funding is the exclusive property of the beneficiary (the distributor) and that MEDIA funding is therefore not considered as (film) revenue. All “ *sales companies* ” (Sales Agents) would be obliged to waive any right to the MEDIA subsidy. It noted that any



attempt to divert these funds through complex contractual arrangements was not permitted. It explained that EACEA and the Commission had taken this position in 2011 and attached a document to that effect.

4. On the same day, the complainant asked EACEA whether it would be possible to obtain a copy of the “*review process and legal consultation*” that was mentioned in the document sent by EACEA. Having not received a reply, he sent a reminder in February 2017.

5. On 6 February 2017, EACEA replied to the complainant, suggesting, “*in relation to the internal communication between the Legal Service and the respective Commission department*”, to get in contact with the Commission directly.

6. On 22 February 2017, the complainant sent an email to the Commission, asking, among others, whether it would be possible to get a copy of the legal review/consultation documents and the research related to it.

7. In April 2017, the complainant sent an email to the Commission, noting that it was impossible to obtain a copy of the “*legal consultation*”. The complainant sent reminders to the Commission in May and June 2017.

8. On 17 June 2017, the complainant turned to the Ombudsman.

9. On 7 July 2017, the Commission replied to the complainant, enclosing the Commission Decision [2] “*that led to the Selective Scheme moving to lump sums*”. It also stated that it was not aware of any “*external legal reviews*”. On the same day, the complainant sent an email to the Ombudsman, stating that he did not consider this to be the legal review/consultation document he was looking for.

## The inquiry

10. The Ombudsman opened an inquiry into the complaint and identified the following issue:

The Commission had not yet provided the complainant with a copy of the “*review process and legal consultation*”, which he had requested in his correspondence with the Commission and EACEA, or set out the reasons as to why it would not be able to send him this information.

11. In the course of the inquiry, on 28 July 2017, the Ombudsman contacted the Commission and asked it to reply to the complainant.

12. On 8 September 2017, the Commission replied to the complainant, explaining that his request would be treated as a new access to document application.

13. On 20 September 2017, the Directorate General for Communications Networks, Content and Technology (DG CNECT) informed the complainant that the access to document request



had been split and that it would now be handled by the Legal Service. It explained that “ *on the basis of our preliminary assessment, we have identified a document that prima facie seems to fall within the scope of your application. This file now needs to be assessed by the competent service, in this case the Legal Service of the European Commission, as the document identified originated from that service .*” As for DG CNECT, “ *we regret to inform you that no further document was found that would correspond to the description given in your application* ”.

**14.** On 13 October 2017, the Legal Service sent its reply to the complainant, in which it identified a “ *legal opinion of 22 November 2010 ... as responding to the terms of your request* ”. It also informed the complainant that “ *full access can be granted to it with the exception of the names and references of the Commission's staff not forming part of senior management as well as the signatures* ”. The legal opinion released by the Legal Service assesses “ *how film distributors should account for funds obtained through the MEDIA programme's Selective Scheme Grant (SSG)* ”.

**15.** Following the Commission's replies, there was further correspondence between the complainant and the Commission. The Ombudsman's decision takes into account all the arguments and views put forward by the parties.

## Arguments presented to the Ombudsman

**16.** The complainant argued that the legal opinion released by the Legal Service, on 13 October 2017, is not the “ *review process and legal consultation* ” he had requested. In his view, it was an opinion letter, put together in reply to his request.

**17.** On 20 October 2017, the Legal Service replied to the complainant, confirming that “ *no other legal opinion has been identified as corresponding to your request* ”.

## The Ombudsman's assessment

**18.** As a preliminary remark, the Ombudsman notes that the Commission delayed its reply until 8 September 2017 when it finally informed the complainant that his request would be treated as an access to document request.

**19.** This notwithstanding, the Ombudsman notes that the Commission has now replied to the complainant and granted access to a two-page legal opinion of 22 November 2010, which assesses “ *how film distributors should account for funds obtained through the MEDIA programme's Selective Scheme Grant (SSG)* ”.

**20.** It seems that this legal opinion, contrary to what the complainant seems to imply, corresponds to the ‘review process and legal consultation’ regarding the treatment of the Selective Scheme Grant (SSG) in relation to reporting to Sales Agents that the complainant had requested. The Legal Service confirmed that “ *no other legal opinion has been identified as* ”



*corresponding to [the complainant's] request ”.*

**21.** For these reasons, the Ombudsman considers that the Commission has settled the complaint.

## **Conclusion**

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**The Commission has settled the complaint.**

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

Lambros Papadias

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Strasbourg, 05/12/2017

[1] According to the website of EACEA, “[t] he MEDIA sub-programme of Creative Europe supports the EU film and audiovisual industries financially in the development, distribution and promotion of their work. It helps to launch projects with a European dimension and nurtures new technologies; it enables European films and audiovisual works including feature films, television drama, documentaries and new media to find markets beyond national and European borders; it funds training and film development schemes ”, see [https://eacea.ec.europa.eu/creative-europe/actions/media\\_en](https://eacea.ec.europa.eu/creative-europe/actions/media_en) [Link]

[2] Commission Decision of 18.12.2013 authorising the use of lump sums under the MEDIA Sub-programme within the Creative Europe Programme, C(2013) 9199 final