



Director

Brussels, 21.3.14.
easme.c.1.dir(2014)870381

Ms Emily O'Reilly
European Ombudsman
1 avenue du Président R. Schuman
CS 30403
B.P. 403
FR - 67001 STRASBOURG CEDEX

Subject: Own-initiative inquiry OI/8/2013/OV

Dear Ms O'Reilly,

Thank you for your letter of 16 December 2013 about this own initiative inquiry.

Please note that, as from 1st January 2014, the Executive Agency for Small and Medium-sized Enterprises (EASME) replaces and succeeds the Executive Agency for Competitiveness and Innovation (EACI).

I am pleased to transmit to you the enclosed comments of EASME on the above-mentioned own initiative inquiry.

EASME remains at your disposal for any further information you may require.

Yours sincerely,



Patrick Lambert

Enclosure: Comments of EASME on the European Ombudsman's Own-initiative inquiry

Brussels, 21 March 2014

COMMENTS OF THE EXECUTIVE AGENCY FOR SMALL AND MEDIUM-SIZED ENTERPRISES (EASME) ON THE EUROPEAN OMBUDSMAN’S OWN INITIATIVE INQUIRY - REF. OI/8/2013/OV

1. THE INQUIRY

By letter of 16 December 2013 the European Ombudsman invited EASME (former Executive Agency for Competitiveness and Innovation or EACI¹) to consider establishing a procedure by which an unsuccessful applicant could turn to an independent Review or Redress Committee.

Further, the European Ombudsman suggested taking inspiration from the established review procedures in place at the agencies REA and ERCEA that also deal with the assessment of scientific proposals in the framework of calls for proposals.

2. THE AGENCY'S COMMENTS

The Agency takes note of the comments of the European Ombudsman regarding the need to put in place a procedure to address and solve complaints from applicants in the framework of calls for proposals.

The Agency would like first, to provide the Ombudsman with a background of the current review procedures available at the level of the Agency.

2.1. Review of Agency’s acts by the Commission

The executive agencies are governed by Council Regulation (EC) No 58/2003 of 19 December 2002 (“Regulation of Executive Agencies”)².

In accordance with its Article 22 – Legality of acts, “*any act of an executive agency which injures a third party may be referred to the Commission by any person directly or individually concerned or by a Member State for a review of its legality.*”

Further, “*the Commission may suspend implementation of the act at issue or prescribe interim measures. (...) In its final decision the Commission may uphold the executive agency's act or decide that the agency must modify it either in whole or in part.*”

Therefore, the Regulation of Executive Agencies already foresees a procedure to address and solve complaints from any third party, including applicants of calls for proposals. Please see an extract of Article 22 in Annex 1.

¹ In accordance with the Commission Implementing Decision (2013/771/EU) of 17 December 2013 establishing the ‘Executive Agency for Small and Medium-sized Enterprises’ and repealing Decisions 2004/20/EC and 2007/372/EC (OJ L 341, 18.12.2013, P.73-76).

² COUNCIL REGULATION (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11/1)

In accordance with Article 97- Means of Redress- of the revised Financial Regulation³ that applies from 1 January 2013, EASME provides information on this mean of administrative redress in the letters to unsuccessful applicants and tenderers. The letter also provides detail on the procedures before the European Ombudsman and the Court of Justice. Please see model letter to unsuccessful applicants in Annex 2.

2.2. Review procedure of the Horizon 2020 programme

EASME is an executive agency that is entrusted by the European Commission with the implementation of parts of different Union programmes. With the new Act of Delegation adopted on 23.12.2013⁴, the Agency has been entrusted with the implementation of the parts of programmes and tasks for the programmes Horizon 2020, COSME, LIFE and the future EMFF. Each programme has its own legal basis and a different parent Directorate General.

The sole programme managed by EASME that incorporates in the legal basis a specific review procedure is Horizon 2020.

Its Rules for Participation⁵ foresee in Article 16 an evaluation review procedure for applicants “*which consider that the evaluation of their proposal has not been carried out in accordance with the procedures set out in this Regulation, the relevant work programme, work plan or the call for proposals*”. The examination of the request only covers the procedural aspects of the evaluation and not the merits of the proposal. An evaluation review committee provides an opinion on the procedural aspects of the evaluation process and may recommend one of the following:

- (a) re-evaluation of the proposal primarily by evaluators not involved in the previous evaluation;
- (b) confirmation of the initial evaluation.

Please see an extract of Article 22 in Annex 3.

The executive agencies REA and ERCEA only manage the programme Horizon 2020 and have set up the Horizon 2020 review procedure in accordance with its legal basis.

Since EASME has been entrusted with the management of parts of Horizon 2020 as from March 2014, a review procedure for H2020 calls for proposals has to be set up in accordance with the Rules for Participation and the guidelines of our parent Directorate General, DG Research.

³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

⁴ Commission Decision C(2013)9414 final of 23 December 2013 delegating powers to the Executive Agency for Small and Medium-sized Enterprises with a view to performance of tasks linked to the implementation of Union programmes in the fields of energy, environment, climate action, competitiveness and SMEs, research and innovation and ICT, comprising, in particular, implementation of appropriations entered in the general budget of the Union.

⁵ Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” and repealing Regulation (EC) No 1096/2006.

The review procedure is currently being revised by the directorate general, but once the revision is finalized we will abide by the terms requested by the Common Support Service of DG Research to establish an evaluation review committee and the review procedure.

In the meantime, the review procedure by the Commission foreseen in the Regulation of Executive Agencies applies and can be used by third parties for any act of the Agency that could adversely affect them.

2.3. Other EU programmes managed by the Agency

For the remaining programmes managed by EASME (COSME, LIFE and the future EMFF not yet adopted), there is no legal basis for the establishment of a review procedure.

Therefore, the Agency applies the review procedure by the Commission and third parties can direct their complaints to the relevant parent Directorate General in charge of the programme to request a review of the Agency's act.

The establishment of a specific review procedure for the procedures launched in the framework of the programmes above mentioned would need the prior approval of the relevant parent Directorate Generals (DG ENTR, DG ENER, DG CLIMA, DG ENV, DG CONNECT and DG MARE in the near future) and it may also imply the amendment of the relevant legal basis to incorporate such procedure in their programmes.

3. CONCLUSIONS

EASME acknowledges the importance of having a procedure where applicants could request the review of adverse decisions taken by the Agency in the framework of the procedures launched by EASME.

Having said that, EASME as an Executive Agency of the Commission, has to comply with the rules and regulations applicable to the Agency that provide the framework to be used for the implementation of the programmes.

- In accordance with the Regulation that governs the statute of executive agencies, there is a general review procedure by the Commission for the review of acts of the Agency that could adversely affect any third party, including applicants of all calls for proposals launched by the agency.

This procedure is currently being indicated in the letters for unsuccessful applicants and tenderers, and it applies to all acts of the Agency including all the procedures launched by the Agency in the framework of the EU programmes managed.

- From March 2014, EASME has started managing parts of the Horizon 2020 programme, where its legal basis foresees a review procedure and the establishment of an evaluation review committee that will provide an opinion on the procedural aspects of the evaluation process of the call for proposals. DG Research, through its Common Support Centre, is currently revising the review procedure. Once the revision will be finalized, EASME will establish the specific review procedure for the programme and the evaluation review committee under the guidelines of the Common Support Centre and the legal basis,

- Regarding the other programmes managed by EASME as from 2014, there is no specific provision in their legal basis related to the establishment of a review procedure.

In addition to the existing review procedure by the Commission, EASME is currently analysing the possibility of having an evaluation review procedure similar to the one required by the Horizon 2020 that could apply to the remaining programmes. Should this be a feasible option, EASME will carry out a consultation with the relevant parent Directorate Generals to obtain the prior approvals for its implementation.

Enclosures: - Annex 1: Extract of Article 22 of the Regulation of Executive Agencies
- Annex 2: Template letter for unsuccessful applicants
- Annex 3: Extract of Article 16 of the Rules for Participation

COUNCIL REGULATION (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes

(Extract)

Article 22

Legality of acts

1. Any act of an executive agency which injures a third party may be referred to the Commission by any person directly or individually concerned or by a Member State for a review of its legality.

Administrative proceedings shall be referred to the Commission within one month of the day on which the interested party or Member State concerned learnt of the act challenged.

After hearing the arguments adduced by the interested party or by the Member State concerned and those of the executive agency, the Commission shall take a decision on the administrative proceedings within two months of the date on which proceedings were instituted. Without prejudice to the Commission's obligation to reply in writing giving grounds for its decision, the failure by the Commission to reply within that deadline shall be taken as implicit rejection of the proceedings.

2. On its own initiative the Commission may review any act of an executive agency. It shall decide within two months of the day on which that review, after having heard the arguments adduced by the agency.

3. Where an act is referred to the Commission in accordance with paragraphs 1 or 2, the Commission may suspend implementation of the act at issue or prescribe interim measures.

In its final decision the Commission may uphold the executive agency's act or decide that the agency must modify it either in whole or in part.

4. Executive agencies must take the necessary measures within a reasonable period to comply with the Commission's decision.

5. An action for annulment of the Commission's explicit or implicit decision to reject the administrative appeal may be brought before the Court of Justice, in accordance with Article 230 of the Treaty.



EUROPEAN COMMISSION

Executive Agency for Small and Medium-sized Enterprises (EASME)

Director

Brussels,
Ares(2014)

[Address Block]

Subject: Grant procedure [insert call for proposals number and title]

Ref.: [Proposal title] [proposal number]

Dear Sir or Madam,

We regret to inform you that your application has not been successful in the above procedure, for the following reason: *[insert reason]*

[Your application was not reviewed as it was not submitted [within the deadline] [and] [to the address] [and] [using the electronic system] [and] [in one of the languages] specified in the call for proposals].

[insert admissibility requirement announced in the call which was not satisfied]

[You did not satisfy the following eligibility criteria *[indicate shortly which eligibility criteria announced in the call were not complied with and why, including when evidence was not submitted in due time]*.]

[You were excluded based on Article *[insert]* of the Financial Regulation *[explain shortly which exclusion criterion is being applied and why, including when a declaration on honour was not submitted in due time]*.]

[You did not satisfy the following selection criteria *[insert the full explanation from the Evaluation Report indicating shortly which criteria were failed and why, including when evidence was not submitted in due time]*.]

[Following evaluation on the basis of the award criteria, your application did not present the minimum required quality level *[insert the full explanation from the Evaluation Report indicating the scores attributed to the application and explaining shortly why those scores are below the minimum levels/thresholds required by the call for proposals]*.]

[In view of its place in the overall ranking, your application cannot be financed due to lack of budget *[insert the full explanation from the Evaluation Report indicating the scores attributed to this application]*.]

For your information, after evaluation of all received applications, the available budget is sufficient to finance only those which obtained a score higher than or equal to [*insert the score attributed to the last application in the ranking of the main list which could be financed within the available budget*].]

[Please be informed that your proposal is ranked in [*insert rank*] position in the reserve list. Should budget become available for your application to be financed, you will be duly informed thereof [at the latest by [*insert date not later than the end of year N+1 if global commitments, or else end of year N, when all commitments under the call should be established*]].]

You may refer the present decision for review of its legality by the Commission¹ within one month of notification of this letter at the address: [*insert address of parent DG*]

If you believe that there was maladministration you may lodge a complaint to the European Ombudsman for alleged maladministration within two years of the date when you became aware of the facts on which the complaint is based (see <http://www.ombudsman.europa.eu>).

Any request you may make and any reply from us or from the Commission and any complaint for maladministration will have neither the purpose nor the effect of suspending the deadline:

- a) for lodging an action for annulment of the present decision, which must be done within two months of notification of this letter or
- b) for lodging an action for annulment of the Commission decision, confirming the present decision, which must be done within two months of notification of the said Commission decision.

The court responsible for hearing annulment procedures is the General Court of the European Union:

General Court
Rue du Fort Niedergrünwald
L-2925 Luxembourg
tel.: (+352) 4303 1
fax: (+352) 4303 2100
e-mail: GeneralCourt.Registry@curia.europa.eu
URL: <http://curia.europa.eu>

Thank you for your interest in our programme. We hope that you will take part in future calls for proposals launched by EASME.

Yours faithfully,

Patrick Lambert

¹ See Article 22 – Legality of acts of Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11 of 16.01.2003, p. 1)

REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006

(Extract)

Article 16

Evaluation review procedure

1. The Commission or the relevant funding body shall provide a transparent evaluation review procedure for applicants which consider that the evaluation of their proposal has not been carried out in accordance with the procedures set out in this Regulation, the relevant work programme, work plan or the call for proposals.
2. A request for review shall relate to a specific proposal, and shall be submitted by the coordinator of the proposal within 30 days of the date on which the Commission or the relevant funding body informs the coordinator of the evaluation results.
3. The Commission or the relevant funding body shall be responsible for the examination of the request referred to in paragraph 2. The examination shall cover only the procedural aspects of the evaluation, and not the merits of the proposal.
4. An evaluation review committee composed of Commission staff or of staff of the relevant funding body shall provide an opinion on the procedural aspects of the evaluation process. It shall be chaired by an official of the Commission or of the relevant funding body, from a department other than that responsible for the call for proposals. The committee may recommend one of the following:
 - (a) re-evaluation of the proposal primarily by evaluators not involved in the previous evaluation;
 - (b) confirmation of the initial evaluation.
5. On the basis of the recommendation referred to in paragraph 4, a decision shall be taken by the Commission or the relevant funding body and notified to the coordinator of the proposal. The Commission or the relevant funding body shall take such decision without undue delay.
6. The review procedure shall not delay the selection process of proposals which are not the subject of requests for review.
7. The review procedure shall not preclude any other actions the participant may take in accordance with Union law.