



Emily O'Reilly
European Ombudsman

Decision

in case 1848/2018/KR on the European Commission's rejection of an organisation's application in a call for proposals which aimed to establish support for European networks active in the area of rights of persons with disabilities

The case concerned a 2017 grant procedure organised by the European Commission under the Rights, Equality and Citizenship programme. The complainant is the European Network on Independent Living ('ENIL'), a Europe-wide network of people with disabilities, who applied for a grant under this procedure.

The Commission assessed ENIL's application and decided not to recommend it for funding. The complainant alleged that the Commission had not evaluated its application fairly. The complainant also argued there was a lack of transparency preventing it from establishing in what respect its application for funding failed to meet the different evaluation criteria.

The Ombudsman inspected documents in the Commission's file on the grant procedure and found no evidence of unfair treatment of the complainant. The Ombudsman concluded that the Commission's reasoning and scoring in the assessment of the proposals was plausible and consistent.

The Ombudsman also assessed whether the Commission had provided the complainant with enough information about why its proposal was rejected. The Ombudsman found that the Commission had informed the complainant about why its bid was unsuccessful, including by meeting the complainant after the rejection letter had been sent out.

The Ombudsman closed the inquiry finding no maladministration. She noted, however, that the Commission should give an entity seeking funding a full copy of the Commission's overall assessment of the proposal, on request, including the marks awarded for each criterion and an explanation as regards why that mark was awarded.



Background to the complaint

1. The European Commission allocates grants to civil society organisations ('CSOs') in the area of disabilities. The Disability and Inclusion Unit ('the Disability Unit') within the Commission's DG Employment, Social Affairs, and Inclusion (DG EMPL) is responsible for coordinating this work.
2. Between 2010 and 2017, the Commission awarded the European Network on Independent Living (ENIL)¹ two three-year operating grants and one action grant to promote the right to independent living of persons with disabilities in the EU. ENIL was audited twice by the Commission, in 2013/14 and 2016/17, with a successful outcome.
3. In 2017, ENIL reapplied for funding under the 'Rights, Equality and Citizenship programme' grant procedure², this time for four years. The procedure was as follows:
 1. three staff members from the Disability Unit evaluated its application;
 2. the final assessment of all applications was carried out by the Evaluation Committee, consisting of three staff members from the Disability Unit and one other Commission staff member. DG EMPL's Financial Unit approved the evaluation report;
 3. the Head of the Disability Unit took the final decision³, after ensuring that no manifest errors of assessment had occurred in the evaluation, and after further internal consultation within the Commission to ensure that the procedure had been conducted properly.
4. On 8 December 2017, the Commission informed the complainant that its application was not successful, citing a number of reasons. On 13 December, the complainant had a meeting with the Disability Unit during which it was informed that its application had been rejected due to weaknesses in the proposal⁴.
5. ENIL then asked the Head of the Disability Unit for the evaluation sheets drawn up by each evaluator. The complainant subsequently submitted a request for public access to the evaluation sheets. The Commission refused to

¹ ENIL's mission is to advocate for independent living values, principles and practices, namely for a barrier-free environment, provision of personal assistance support and adequate technical aids, which together should make full citizenship of disabled people possible. See <http://enil.eu/>.

² VP/2017/014 regarding the establishment of four-year Framework Partnership Agreements to support European networks active in the area of rights of persons with disabilities & Operating grants for 2018.

³ Final decisions on grant applications are taken by the responsible Head of Unit (as the authorising officer) in line with the Financial Regulation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1046>.

⁴ Of the nine proposals that had been submitted, three were rejected because they do not reach the quality threshold. As a result, only 2.7 million EUR was allocated out of a total budget available for the programme of 3.5 million EUR. The remaining 0.8 million EUR would have been sufficient to fund the three rejected applications, if they had reached the quality threshold.



give public access due to the need to protect personal data, to protect the Commission's decision-making process and to protect commercially sensitive business information⁵. The complainant did not ask the Commission to review this decision, as it is entitled to do under the EU's rules on public access to documents.

6. As it was dissatisfied with this outcome, on 27 October 2018, the complainant turned to the Ombudsman.

The inquiry

7. The Ombudsman opened an inquiry into the following aspects of the complaint, namely:

- 1) whether the Commission, and in particular the Disability Unit, had fairly and impartially evaluated the complainant's grant application;
- 2) whether there had been a lack of transparency preventing the complainant from establishing in what respect its proposal failed to meet the different selection criteria for funding.

8. In the course of the inquiry, the Ombudsman's inquiry team met with the Commission to discuss the concerns raised in the complaint. The meeting report was shared with the complainant, who provided the Ombudsman with comments.

9. The Ombudsman also inspected part of the Commission's file on the grant procedure. Documents inspected by the Ombudsman included:

- five applications (without the annexes), including the complainant's application;
- the sheets evaluating these five applications, three of which were not recommended for funding;
- nine letters to applicants, including the letter addressed to the complainant. All of these letters had the "summary conclusions" listing strengths and weaknesses.

⁵ In accordance with the relevant exceptions set out in Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, see: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>.



The evaluation of the complainant's grant application

Arguments presented to the Ombudsman

By the complainant:

10. The complainant contended that its grant application had been evaluated in a biased manner. It pointed to the Disability Unit's central role under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)⁶. The complainant has critically scrutinised this activity in the past⁷. It implied therefore that the Disability Unit wished to 'retaliate' against it by not recommending its application for funding, in an attempt to influence its advocacy agenda.

11. The complainant went on to say that the Disability Unit is in a "*conflict of interest*" situation, as it is both responsible for coordinating UNCRPD implementation at EU-level and for allocating funding to CSOs. In order to mitigate against this conflict, the complainant suggested that the Commission use external evaluators, for example independent experts on the rights of persons with disabilities.

12. The complainant noted that it, as a 'grassroots organisation', is in a particularly vulnerable position when it openly criticises the Commission, as it operates without the support of national councils of persons with disabilities or of national governments.

13. The complainant furthermore said that it had not received feedback indicating that its previous work was of inadequate quality⁸. The complainant stated that its proposal in this case was a continuation of its work that had previously enjoyed the support of the Commission.

14. Finally, the complainant stated that the format for responding to the call for proposals for a Framework Partnership Agreement had changed in 2017. Proposed activities had to be presented differently compared to previous grant procedures. It contended that it had faithfully followed this new approach. The Commission had not acted in good faith when it assessed parts of its proposal as confusing, it said.

⁶ The Commission is the focal point for the EU under Article 33(1) of the UNCRPD.

⁷ ENIL published the 2015 Shadow report on the implementation of Article 19 UNCRPD in the EU and organised meetings, where it set out its concerns in relation to the Commission's failure to meet its obligations under the UNCRPD. In particular, ENIL says that its "EU Funds for Our Rights Campaign", launched in 2016 and funded by the Open Society Foundations, was very critical of the Commission.

⁸ By way of example, the external evaluation of the complainant's 2015 – 2017 operating grant had described ENIL's work as 'good value for money'.



By the Commission:

15. The Commission explained that three evaluators had, independently from each other, evaluated the complainant's application based on the award criteria. The complainant's application obtained a total score of 61.67/100, 8.33 points short of the 70/100 minimum quality threshold. All evaluations were based on the complainant's application, without any comparison being made with previous grants or applications submitted by other organisations.

16. The Commission indicated that the criteria had not changed when compared to previous grant procedures. As regards making sure that applicants knew what was expected, the Commission had organised an information session for all interested organisations. In this session, the Commission explained priorities, quality requirements, financial procedures, practical issues and the importance of "*concrete actions and EU added value*".

17. As regards involving external disability experts in the evaluation, the Commission said that it has sufficient expertise in house. The Commission had considered consulting external experts in an advisory capacity but decided against it on the grounds that this had, in the past, led to lengthy and cumbersome procedures and unconvincing results. Such a practice could furthermore create the risk of conflicts of interest due to the relatively few organizations active in the field of rights of persons with disabilities.

The Ombudsman's assessment

18. The Ombudsman has carefully examined the proposals made by various CSOs. Based on this examination, the Ombudsman has found that the complainant's proposal was treated in the same way as other proposals. There is no evidence of a lack of impartiality.

19. The Commission's reasoning and scoring in the evaluations of the applications inspected seems plausible and consistent. There is no evidence of a manifest error in how the Commission evaluated the complainant's proposal.

20. No errors were made as regards adding up the points awarded to the complainant.

21. The Ombudsman also finds no evidence that the Commission retaliated against any grant applicant, in an attempt to influence their advocacy agenda. The Ombudsman understands that all grant applicants that responded to this call, to varying degrees, scrutinise and criticise the Commission's work. The Commission, nevertheless, funded a number of these applicants. This shows that the Commission did not have a policy directed against CSOs that criticised it.



22. As regards the argument that the Commission should use external evaluators, the Ombudsman finds that it is appropriate for the Commission to rely on its staff, where possible, to carry out evaluations.

23. In light of the above, the Ombudsman considers that there is no evidence of maladministration.

Transparency of the Commission's evaluation

Arguments presented to the Ombudsman

By the complainant:

24. The complainant argued that the evaluation process was not sufficiently transparent, because it did not have access to the evaluation or scores, which it had asked the Commission for. This information, it argued, would have helped it to understand better why its application was not successful and would have enabled it to challenge the negative decision.

25. The complainant further argued that the Commission should have been able to demonstrate how it had reached its score, without having to disclose personal information of the evaluators or sensitive business information.

By the Commission:

26. The Commission explained that it was unable to grant access to the evaluation sheets at the time of the complainant's request as it had to protect personal data contained in the documents, the Commission's decision-making process and commercial interests of a natural or legal person⁹. Moreover, the rules of application related to the Financial Regulation that applied at the time prevented disclosure¹⁰.

27. The Commission provided the complainant with the substantive part of the evaluation in the letter informing it that its application had been rejected and in the subsequent meeting, albeit without disclosing the individual evaluation grids.

28. Although it had not provided the complainant with its score for each of the criteria, the Commission had disclosed the complainant's overall score. The Commission said that disclosing the scores for each of the criteria was not permitted under applicable Commission guidelines.

⁹ See Article 4 of Regulation 1049/2001.

¹⁰ Regulation 966/2012 on the financial rules applicable to the general budget of the Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0966>.



The Ombudsman's assessment

29. The Commission has stated that it provided the complainant with the substantive part of the evaluation in the letter informing it about the rejection of its application and in the subsequent meeting.

30. The Ombudsman welcomes the fact that the Commission took the initiative to meet with the complainant in person shortly after it sent the rejection letter.

31. As regards the complainant's request for access to documents, the Commission understood that the complainant asked for access to the **evaluation grids drawn up by each evaluator**.

32. The Ombudsman understands why it is not possible to disclose these documents as to do so would seriously undermine the decision-making process of the Commission. The individual evaluation sheets reflect the opinions of individuals and not of the evaluation committee itself. It is important that these evaluators feel free to express their individual views free from any form of external pressure. Disclosing such individual opinions would risk subjecting the evaluators to undue external pressure.

33. The Commission should, of course, give an entity seeking funding a full copy of the Commission's **overall assessment of the proposal**, on request¹¹. This should include the marks awarded for each criterion and an explanation as regards why that mark was awarded. To the extent that the applicable Commission guidelines do not permit the disclosure of this information (see paragraph 28 above), the Commission should change those guidelines.

34. The Ombudsman understands, however, that the complainant did not, subsequent to the Commission's letter refusing access to the evaluation grids drawn up by each evaluator, request the Commission to give it a copy of any overall assessment in the possession of the Commission.

35. The Ombudsman thus finds no maladministration as regards the lack of transparency in this case.

¹¹ This would also be in line with Commission guidelines on grant administration that state: "*Following the evaluation process, the members of the [evaluation] committee draw up a record listing all of the proposals that have been examined, assessing their quality and identifying those that are eligible for funding. [...] **The record is preserved for future reference and may be made accessible on request.***" (Highlight added.)



Conclusion

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

The evidence provided in the complaint and in the documents inspected do not indicate that there was maladministration by the Commission.

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

Emily O'Reilly
European Ombudsman

Strasbourg, 07/11/2019