

Decision of the European Ombudsman on complaint 3321/2004/(BB)DK against the European Commission

Decision

Case 3321/2004/(BB)DK - Opened on 16/12/2004 - Decision on 26/07/2007

Strasbourg, 26 July 2007

Dear Ms B.,

On 11 November 2004, you submitted a complaint to the European Ombudsman concerning allegedly misleading information provided by the Legal Service of the European Commission.

On 16 December 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 8 April 2005. On 14 April 2005, you sent an e-mail in which you inquired about the progress of the inquiry. I forwarded the Commission's opinion to you on 25 April 2005 with an invitation to make observations. By e-mail of 31 May 2005, you submitted a comment on one aspect of the Commission's opinion and requested a one-month extension of the deadline for submitting your observations. In my letter of 10 June 2005, I informed you of the extension of the deadline until 31 June 2005. You sent your observations on 29 June 2005.

On 29 September 2005, you sent an e-mail in which you inquired about the progress of the inquiry and about the date a decision in your case could be expected. In my letter of 5 October 2005, I informed you about the progress of the inquiry.

On 14 November 2005, I sent you a letter of further inquiries asking you to submit the original versions of the e-mails relating to the subject-matter of your complaint. On 15 November 2005, you sent an e-mail in which you included the text of the requested e-mails. On 14 November 2005, you also sent by post the printout of the requested e-mails.

On 15 December 2005, I sent a letter of further inquiries to the Commission and informed you in a letter of the same day. On 14 February 2006, the Commission sent its reply to my request for further information, which I forwarded to you with an invitation to make observations. You did so on 28 March 2006.

On 16 May 2006, I sent another letter of further inquiries to the Commission and also asked it to allow my services to take the testimony of Ms P. of its services. I informed you accordingly in a letter of the same day. On 14 August 2006, the Commission informed me that its reply would be delayed due to the complexity of the case. On 18 September 2006, the Commission sent its



reply to my request for further information, which I forwarded to you with an invitation to make observations. You did so on 7 November 2006.

On 10 November 2006, my services took testimony from Ms P. On 29 November 2006, the transcript of the testimony was sent to the official with a request to return the signed and dated version to me by 31 December 2006. On 31 December 2006, the official sent me the signed transcript of the testimony, which I forwarded to you with an invitation to make observations. You did so on 26 February 2007.

I am writing now to let you know the results of the inquiries that have been made.

I apologise for the length of time it has taken to handle your complaint.

THE COMPLAINT

According to the complainant, the relevant facts were, in summary, as follows:

In November 2003, the complainant contacted by e-mail the Marie Curie Actions Help Desk, at the European Commission's Directorate-General for Research ("DG Research") and inquired into the possibility of participating in a RTN-NUMBRA programme (1). The complainant indicated that she wanted to apply for a RTN position in the University of Padova (Italy). As the conditions determining the eligibility to participate in the programme were not very clear, the complainant asked whether, even though she had only Italian nationality, she could apply for a position in Italy, on the basis of the fact that she was born, lived and studied all her life in Belgium. According to the complainant, the Marie Curie Actions Help Desk forwarded her inquiry to the Legal Service of the Commission.

On 19 December 2003, Ms P. of DG Research, Development, Technology and Innovation ("DG RTD"), Unit RTD.D, dealing with RTN actions, informed the complainant about the mobility rules, and explained that the Marie Curie programme required that the researcher does not hold the same nationality as the host organisation, which, in this case, was the University of Padova. According to the complainant, the reply was not precise, as it did not answer her question as to whether, as an Italian national who never lived, worked or studied in Italy, she could apply for the position. The complainant therefore sent another e-mail on 19 December 2003 seeking more precise information as to her eligibility for the position.

By e-mail of 26 December 2003, Ms P. explained to the complainant that, if she held Italian nationality, but had not been living in Italy for the previous five years, she could apply for a position in an institution located in Italy.

After having received the clarification from the Commission's services that she was eligible for the programme, the complainant applied for the RTN position in the University of Padova. On 23 September 2004, the Programme Co-ordinator office in London formally notified the complainant that she had been chosen for the position. The notification also mentioned that the



nationality issue was only a formality.

In September 2004, the complainant then moved to Padova in order to prepare for her research. However, on 29 September 2004, the project co-ordinator informed her that a question had arisen over her eligibility as an Italian national to participate in the Marie Curie RTN programme in Italy. The complainant then contacted the Commission services in order to resolve the situation, without success however.

On 11 November 2004, the complainant lodged the present complaint with the European Ombudsman.

In her complaint, the complainant alleged that misleading information had been provided by the Legal Service of the Commission.

The complainant claimed that the Commission should:

- allow her to participate in the RTN-NUMBRA programme as the Programme Co-ordinator had informed her, or alternatively, propose a solution with equivalent research conditions.
- modify the eligibility requirements of the RTN programmes to allow nationals of one Member States who were born and live in another Member State to participate.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made, in summary, the following comments.

The Commission first recalled the facts of the case:

On 25 November 2003, the complainant sent an e-mail message to the Marie Curie Help Desk at DG Research, to ask for detailed information about her eligibility for a position in an Italian university within the framework of a Research Training Network.

According to the Commission, it was important to underline that this e-mail requested clarification on the eligibility rules for Marie Curie Actions on the nationality of researchers, and more specifically, on the basic rule that the researcher may not be of the same nationality as the host organisation, with the exception of researchers holding double nationality who have not lived in one of the countries of their nationality for the previous five years.

The Commission's services replied to the request on 19 December 2003 at 16:44:36 (see below for the relevance of date and time), explaining the mobility rules and the double nationality issue without explicitly focusing on a potential recruitment in Italy.

The Commission pointed out that, in her complaint, the complainant declared that she sent another e-mail message on the same day, apparently at 19:45, to Ms P. asking for more precise information. The complainant also declared that the Commission allegedly replied on 26 December 2003, at 14:05, confirming her eligibility for a position in an Italian university,



assuming that she had not been resident in Italy for the previous five years.

The Commission declared that, despite a full and extensive review of its available e-mail storage system, it could not find any trace of the complainant's e-mail allegedly sent on 19 December 2003, at 19:45, to Ms P., nor any trace of the e-mail sent on 26 December 2003, at 14:05, by Ms P. to the complainant. According to the complainant, her request was forwarded to the "Commission Legal Office" and this Office provided the purported reply of 26 December 2003. However, according to the complainant herself, such a reply was apparently provided by Ms P. of the operational Unit dealing with the RTN actions at DG RTD. Nowhere is the "Commission's Legal Office" mentioned. The Commission added that, since its services could not find any trace in its records of the exchange of these e-mails, no conclusion was possible as far as the Commission was concerned.

The Commission annexed to its opinion an e-mail document sent by the complainant to the co-ordinator of the RTN programme in order to support her application for a researcher position at the University of Padova. This document clearly gives a different date and contains some textual differences from what is purported to be the same message sent by the complainant to the co-ordinator and attached by her to her complaint. The complainant declared that she had received an answer from the Commission services on 26 December 2003. However, a copy of the same message attached to the letter sent to the NUMBRA Research Administrator, that is, the Network co-ordinator, when presenting her application for the University of Padova, is dated 19 December 2003, time 16:44:36. This is exactly the same date and timing of the Commission's first reply and the only one available in the Commission's records. Moreover, the message attached to the above-mentioned application showed that the Commission's reply was sent before the applicant's request was made.

After having obtained the above information, the complainant applied for a young researcher position at the University of Padova. By e-mail of 23 September 2004, the complainant was informed that that she had been selected and was supplied with information concerning a potential recruitment. However, the same e-mail also informed her that her eligibility conditions were still being examined. The complainant then moved to Italy in September 2004, even though she had not yet received a formal contract for the position. In late September, the project co-ordinator informed her that doubts as to her eligibility for the position in Italy had arisen when carrying out eligibility verifications for the finalisation of her contract and recruitment. These doubts were later confirmed by the Commission's services.

On the substance of the complaint, Commission made the following observations:

According to the Commission, the crucial point of the entire question of misleading information is the legal relevance of the information provided by the Commission services through e-mail messages sent in reply to questions addressed by the complainant. The Commission underlined that, contrary to what the complainant has declared, the complainant has never received legal advice from the "Legal Service of the European Commission" nor from any other "Commission Legal Office". Furthermore, the Commission stated that nowhere is the "Commission Legal Office" mentioned in the correspondence between the complainant and the Commission's



services.

From a general point of view, the Commission emphasised that the services provided by the Commission, even through specialised Help Desk services, are for general information purposes only, as they are provided on the basis of requests from applicants, and without the possibility to verify all the relevant aspects of each request. This implies that, although the Commission makes all reasonable efforts to ensure the reliability and quality of its replies, any information provided in such a way is merely indicative and cannot, per se, give rise to rights or legitimate expectations for the applicant in violation of the legally binding rules applicable to the relevant case.

The Commission recognised the need for a clearer explanation about the effective legal value of the information provided through specialised Help Desk services. In light of the need for greater clarity and for the benefit of the potential users, the Commission stated that a disclaimer would be automatically added in the future to any information concerning the Marie Curie Actions addressed to applicants.

Consequently, in the present case, the decision of the complainant to undertake the necessary steps to move her residence to Padova, should be considered as her autonomous decision. The Commission can in no way be considered, from a legal point of view, responsible for the consequences of such a decision, especially since the complainant had not received any formal confirmation from the host institution about her recruitment.

This conclusion is true, *a fortiori*, in the present case, considering that for the Research Training Networks and assimilated Marie Curie Actions, it is not the Commission's task to check the eligibility of the researcher. This task is the responsibility of the host institution. For this purpose, the eligibility rules are included in the contract signed between the host institution and the Commission.

According to the Commission, after a closer examination of the case, the project co-ordinator detected that, because of her Italian nationality, the complainant could not be considered for a position in Italy. When the project co-ordinator raised this issue, the Commission confirmed this interpretation.

With regard to the documents attached by the complainant, the Commission stated that the complainant would have been eligible for recruitment in Italy if she had held double nationality, namely, Belgian and Italian, provided that she had not resided in Italy during the five years prior to her recruitment. Although the Commission services, in their reply of 19 December 2003 at 16:44:36, did not directly address the question of recruitment in Italy for the complainant and focused on her situation in Belgium, there was no ambiguity regarding the explanations provided concerning the nationality and mobility rules and, in particular, the double nationality exception.

On the basis of the above, the Commission reached the following conclusions:



Although for the above-mentioned reasons the complainant is not eligible for an RTN position in Italy, there are no obstacles to the complainant's having a research position in another country, excluding Belgium, assuming that the relevant rules are fulfilled. However, the Commission underlined that the recruitment falls under the responsibility of the host institution, whose task it is to select the potential eligible candidates through an open competition and based on their scientific merits and professional qualifications. The Commission therefore is not in a position to propose any alternative post to the complainant.

As regards the complainant's suggestion to change the nationality and mobility rules, the Commission pointed out that these are included in the Work Programme, and are therefore adopted through a Commission decision, following the opinion of a Programme Committee composed of representatives of all the Member States and associated countries. These rules represent the implementation in the Work Programme of the general principles laid down in the Rules for Participation in Regulation (EC) No 2321/2002 of the European Parliament and of the Council of 16 December 2002, concerning the rules for participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006) (2). Furthermore, these rules are reflected in the relevant contractual clauses, adopted through a Commission decision. Therefore, a modification of the mobility and nationality rules cannot be reasonably envisaged at this stage.

The Commission recognised that, although the information provided to the complainant through its Help Desk recalled correctly the nationality rules applicable to the RTN scheme, it did not address the specific question posed by the complainant, namely, whether an Italian national who had always lived in Belgium would be eligible for a position in an Italian university.

The complainant's observations

In her e-mail of 31 May 2005, the complainant made the following comments on the point of the allegedly missing e-mails.

The complainant could not accept the insinuation made by the Commission that two versions exist of the same e-mail message sent by the Commission official to her. She also stated that even if the e-mail were destroyed, a trace of it should exist in the computer system backups. An inspection should be carried out on the e-mail records of the Commission for the end of 2003, which should prove the existence of the allegedly missing e-mails. Moreover, the date and time of the Commission's e-mail reply was unusual, since 26 December is normally a holiday in Belgium.

The complainant explained that the document attached to the application sent to the NUMBRA Research Administrator, that is, the Network co-ordinator, diverged from the one attached to her complaint because in the former case, it went through a "cut and paste" procedure in order to be put in a "pdf" (Acrobat Reader) file format as requested in the application. If the Commission's services found the missing e-mails, there would be no doubt as to the time they were sent and as to their wording.

The complainant stated that the insinuation made by the Commission is offensive and that she



would not compromise her integrity.

In her observations of 29 June 2005, the complainant maintained the complaint and made, in summary, the following points:

The complainant observed that the Commission acknowledged the fact that its reply of 19 December 2003 did not address the issue of her potential recruitment in Italy. The complainant thus had to send an e-mail repeating the same question.

The complainant also observed that, after her e-mail of 25 November 2003 to the Help Desk of the official RTD Marie Curie Actions website, she was referred to the appropriate Directorate Office, and then by this Office to Ms P., the Project Officer in charge of the project. Therefore, the complainant was entitled to assume that, while strictly speaking Ms P. may not belong to the "Commission Legal Office", she had statutory responsibility to determine and make judgments on eligibility issues. The complainant was also led to believe that Ms P. was a legally-trained officer.

As regards the Commission's statement that services provided by the Commission, even through specialised Help Desk services, are for general information purposes only, the complainant observed that it is a feeble attempt to minimise the responsibility of the Help Desk. Since the Help Desk referred her to the appropriate Directorate, which in turn referred her to the Project Officer, she believed that the persons providing the answers were competent and responsible for the matter at hand.

The complainant also pointed out that she took the initiative to move to Padova on the basis of the advice given to her by the RTN Help Desk and after successfully passing the screening of the Padova candidates in August 2004. She did not wait for a formal contract to be signed because of the difficulty in finding and renting a flat after the summer recess. It is normal practice for students to organise accommodation in a convenient location before the end of the summer recess.

In reference to the Commission's statement that its services could not find any trace of the e-mails in question, the complainant requested that the electronic records of the Commission for the period November-December 2003 be made available for inspection. Ms P. did reply by e-mail on 26 December 2003 and she could have done so in a number of ways, including from home through a computer proxy.

The complainant further observed that guidance and decisions should be taken at the earliest stage in order to avoid raising expectations and commitments. It makes no sense to allow the candidate to advance through the selection process, with all that it entails, only to reject the candidacy at the last step before the award of a position.

As regards the allegedly missing e-mails, the complainant stated that she would not repeat the points already put forward in her e-mail of 31 May 2005. She added that if the only defence that the Commission had in response to the complaints of a *bona fide* student was to attempt to



slander her or to accuse her of libel, then it would become a matter for the courts and the press. If this argument were used again, the complainant would not hesitate to seek redress before the criminal courts.

Further inquiries *The Ombudsman's request for further information from the complainant*

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary as regards the complainant's statement that she had sent a second e-mail on 19 December 2003, at 19:45, to Ms P., and received a reply to that e-mail on 26 December 2003, at 14:05, from her. The Ombudsman therefore wrote to the complainant on 14 November 2005, asking her to provide him with the original versions of the above-mentioned e-mails, either by forwarding the original e-mails electronically to the Ombudsman's e-mail address or by sending to the Ombudsman's postal address the e-mails, printed directly from the e-mail programme, showing the header of the e-mails.

The complainant's reply

On 14 November 2005, the complainant sent the printout of the e-mail correspondence by post, and the next day, sent an e-mail message to the Ombudsman, in which the text of the entire e-mail correspondence in question was included.

The Ombudsman's request for further information from the Commission

On the basis of the information provided in the complainant's reply of 15 November 2005, it appeared necessary to ask the Commission for further clarifications as regards the issue of the allegedly missing e-mails. In his letter of 15 December 2005, the Ombudsman therefore asked the Commission (i) to consider the further information provided by the complainant as regards the date of the e-mail of Ms P. and to specify whether, on the basis of this further information, it was possible to locate the relevant message in its e-mail storage system; (ii) to specify what measures the Commission had taken in the context of " *the full and extensive review of its e-mail storage system* "; and (iii) to explain whether Ms P. had been asked to provide information as regards her e-mail exchange with the complainant.

The Commission's reply

In its reply of 14 February 2006, the Commission made, in summary, the following comments:

As regards questions (i) and (ii), the Commission explained that the "Enhanced Archiving System" ("EAS"), allowing for the electronic archiving of e-mails, had been installed in July 2004. It had therefore not been operational in December 2003, when the purported exchange of e-mails between the complainant and the Commission had taken place. Nevertheless, the IT Service had carried out an extensive search in this case, using not only the date in question, that is, 26 December 2003, but also other dates and keywords. It had also attempted to read directly the information stored in the relevant files using a text editor, a technique which usually makes it possible to recuperate deleted e-mails, if the file has not been compressed. The Commission added that, unfortunately, it had not been possible to read any clear text information due to the encryption used for these files. It followed that the only available documents with regard to the present complaint were those stored in Ms P.'s personal folder. In this regard, the Commission stressed that the large amount of data, which amounted to more than three gigabytes in three files, made available by Ms P. and stored in her personal folders suggested a systematic and thorough recording of her work-related e-mail exchanges. The Commission concluded that it was not possible to locate any data other than those already sent with its opinion of 8 April 2005.



As regards question (iii), the Commission underlined that Ms P. had voluntarily and actively offered her complete co-operation to clarify the circumstances relating to the complainant's allegations. She had also stated that she did not have any recollection of the complainant's purported request of 19 December 2003 for additional explanations, or of her purported reply of 26 December 2003. The Commission wished to point out, in this context, that it had found it regrettable that the complainant's observations of 29 June 2005 did not provide clarification as to the discrepancies between the different versions of the relevant e-mail message. The copy annexed to the complainant's additional letter of 14 November 2005 showed several differences compared to the copy of the e-mail annexed to the original complaint, or compared to the copy of the e-mail annexed to the complainant's application for the RTN position. These differences related to, for example, the layouts, the language of the headings, the times and dates, as well as spelling. The Commission concluded that it could not take a conclusive position on this aspect since its internal services were unable to locate the alleged e-mails to which the complainant had referred.

The Commission further added that, following the commitment given in its opinion of 8 April 2005 to the Ombudsman, a disclaimer is now added to all information provided by the services of the Marie Curie Actions Help Desk. The relevant services now explain to applicants for Marie Curie Actions (i) the fact that the information obtained from the Help Desk is merely indicative and (ii) cannot give rise to legitimate expectations or predetermine the result of the evaluation procedure, especially when, as in the present case, the verification of the fulfilment of the eligibility criteria must be carried out by the institution hosting the recruited researcher.

The complainant's observations

In her observations of 28 March 2006 on the Commission's reply, the complainant made the following remarks:

The complainant observed that the Commission admitted in its reply that an electronic archiving system did not exist until July 2004, thus implying that a search could not be done for e-mails sent and received prior to that date. The complainant also claimed that it had conducted an extensive search using different dates and keywords, and that it had even used text editors to attempt to read compressed files, but that, unfortunately, these were encrypted. The complainant was of the opinion that this was inexcusable because encrypted files can be decrypted and compressed files can be expanded. According to the complainant, this showed that the Commission was deliberately unwilling to explore the issue and find the truth about the allegedly missing e-mails. The complainant further alleged that the Commission had lost its e-mails or had been denying their existence on purpose. The complainant wondered whether Ms P. had been asked if she had accidentally or voluntarily deleted e-mails from her personal filing system.

The complainant further noted that she had already asked whether Ms P. was a legally-trained official, and that the Commission had, so far, failed to reply to this question. According to the complainant, this was important because the Help Desk referred her to Ms P. through the appropriate Directorate-General and she was authorised to provide official opinions. The Commission had initially tried to contend that the opinions of Ms P. were not binding even



though she might be legally trained. The complainant therefore wondered why she had not been referred to the appropriate person, who could make decisions, or, alternatively, why Ms P. had provided advice when she was not qualified to do so.

The complainant pointed out again that the Commission raised the suspicion that the e-mails in question might have been manipulated. In this regard, the complainant explained that only the copy introduced in the application document sent to the Programme Co-ordinator office in London differed from the other copies. This was, as she had previously explained, the result of a "cut and paste" procedure, which was necessary in order to introduce the relevant e-mails in a "pdf" file format, as required by the application rules. During this procedure, an automatic spell-check corrected Ms P's mistakes in the text. Moreover, the complainant had already forwarded to the Commission the original e-mails and sent their hard copies as well, and therefore those e-mails should be considered for the inquiry. The complainant added that she was ready to sit with an expert and explain the above-mentioned differences one by one.

The complainant noted that, because of her initiative, the Commission had finally added a disclaimer, but that this merely confirmed the lack of diligence of the Commission's staff and did not solve her problem. The complainant wondered why Mr M., a Commission official working at DG RDT, Unit RTD. D.3, had decided on her eligibility if, according to the Commission, this task is the responsibility of the institution hosting the recruited researcher. The complainant pointed out that two professors in the London office, as well as her professors in Padova had all been in agreement as to her eligibility, and it was Mr M. who had stopped her application.

In the cover letter accompanying her observations, the complainant made the following additional remarks:

Through its comments, the Commission either showed a lack of diligence, determination and professionalism in the discovery of the true facts, or was trying to cover up facts, which *de facto* implied a certain amount of collective guilt.

The complainant further remarked that she introduced her complaint more than a year earlier in the hope that it would be solved in a few months and that she could then be integrated into the RTN programme, but that this was impossible now because of the lapse of time. The complainant was wondering what compensation would be appropriate for the damage she had suffered because of the Commission's "*frivolity and bureaucracy*".

The complainant finally added that it was a pity that in the European Community, where nationality should not be an obstacle anymore, situations like the present one still exist and harm young citizens.

Second round of further inquiries

After carefully considering the Commission's additional opinion and the complainant's additional observations on it, it appeared that further clarifications were necessary in order for the Ombudsman to be able to finalise his inquiries into the complaint.

The Ombudsman's request for further information from the Commission

The Ombudsman therefore asked the Commission:



- to specify in more detail why its services were unable to read any clear text information due to the encryption used for the files, considering that encrypted files can be decrypted and therefore it appears that they could have been read for the purposes of the present complaint;
- to declare whether Ms P. was working on 26 December 2003.

The Ombudsman also asked the Commission to carry out the necessary steps in order for his services to hear the testimony of Ms P.

The Ombudsman also asked the Commission to comment on the following points: (i) the complainant submitted information that could explain the date and time shown on the copy of the e-mail sent by her to the co-ordinator of the RTN programme, and (ii) consultations of experts have led to the conclusion that the differences between the other versions of the allegedly same e-mail could be explained by technical reasons, such as individualised set-ups in the computers with which the e-mail was handled. The Ombudsman also informed the Commission that, depending on the Commission's answer and on the testimony of Ms P., it might prove necessary to access the Commission's file as regards the check carried out by Mr M. in September and October 2004, concerning the complainant's eligibility for participating in the RTN programme.

In his letter to the Commission, the Ombudsman also made the following clarification. The complainant's complaint initially concerned the fact that misleading information had allegedly been provided by the Commission's Legal Service. However, in light of the information obtained in the course of the inquiry, it became clear that the person who allegedly provided this information did not work for the Legal Service, and therefore the Ombudsman considered that the body identified in the allegation should be understood as the Commission and not the Commission's Legal Service.

The Commission's reply

In its reply of 14 September 2006, the Commission made, in summary, the following comments:

As regards the encrypted files, the Commission stated that it had requested technical information from its internal IT service, which provided the following explanation:

The Commission uses Microsoft Outlook as its e-mail client, with Exchange mailboxes located on a server. This system imposes specific limits on the size of the mailbox of any user. In order for the user to stay operational, items have to be moved from the mailbox to so-called "personal folders". These folders are files stored on the user's computer, and are called Outlook data files ("pst" files). Upon creation, these files are automatically encrypted by the system. During the Commission's search in the context of the present complaint, these files were opened in Outlook and were searched using several keywords. The encryption does not hinder this method, but the e-mail in question could not be found. In a further attempt to retrieve deleted items, the Commission tried to open the files with a text-based application, but this attempt was unsuccessful due to the encryption. A second attempt had therefore been made using a different method, which allows recovering lost or deleted items still contained in the files. This method was used on all three personal folders files, but there was no trace of the exchange of e-mails in question. Since the Commission's central archiving system was not operational at the



time, the Commission could not investigate the matter further.

As regards the Ombudsman's second request, the Commission confirmed the presence of Ms P. in the office on 26 December 2003, and attached an official certification from the internal staff service in this regard.

As regards the taking of oral testimony, the Commission informed the Ombudsman that Ms P. was currently on leave on personal grounds for the period from 16 January 2006 until 15 September 2006. Notwithstanding this leave of absence, the Commission informed her about the Ombudsman's request, asking her to identify her availability for giving testimony.

The Commission offered its full co-operation to the Ombudsman with regard to potential access to the Commission's file on the check carried out by Mr M. It also pointed out that Mr M.'s reply of 26 October 2004 had been attached to the Commission's opinion on the complaint, recalling that the complainant had been made aware that, in accordance with the rules of the RTN programme, it was up to her potential host organisation to check and confirm her eligibility.

Finally, the Commission noted the Ombudsman's assessment that the differences between the e-mail versions could be due to technical reasons and declared that it did not allege any manipulation of these e-mails. It nevertheless repeated its earlier statement that, since the alleged e-mail had not been found in its database, no final position could be taken by the Commission in this instance.

The complainant's second additional observations

In her second additional observations of 7 November 2006, the complainant made the following comments:

The Commission finally admitted that computer archives can be inspected even if they are compressed or encrypted. The same IT services of the Commission previously stated that it was not possible to read any clear text information due to the encryption used for those files. Furthermore, the complainant found it hard to believe that an organisation such as the Commission would not have a backup system in order to archive its files. The complainant therefore alleged that the Commission was unco-operative and unforthcoming with regard to the search carried out for the e-mails in question.

The complainant noted that the Commission had acknowledged that Ms P. was working on 26 December 2003. In this regard, she observed that she had stated from the beginning that she had received on that day a final confirmation of her eligibility to apply for the programme. She therefore wondered how she, as an outsider, could have known, when she claimed that she had received a reply, that Ms P. was working on that day. She therefore alleged that the Commission was intentionally providing selective information and manipulating the facts. The complainant added that it had taken two years and a specific request from the Ombudsman before the Commission acknowledged that Ms P. was working on that day.

The complainant further noted the Commission's statement that it did not allege any manipulation of the e-mails in question. However, she pointed out that she would expect an



apology from the Commission as regards the insinuation made previously.

The complainant further observed that it was normal practice for the Ombudsman to close cases within one year, but that in the present case the Commission appeared to be slow in addressing the issues asked by the Ombudsman. In order to illustrate its point, the complainant provided an example, namely, while the Ombudsman requested the Commission to provide a reply to his request for further information of 15 May 2006 by 15 June 2006, at the latest, the Commission provided an answer only on 14 September 2006.

The complainant concluded by stating that, due to the misleading information provided by the Commission, she had foregone offers of co-operation in Louvain. Furthermore, in the course of the present case, the Commission had seldom been open or forthcoming but had made insinuations and provided selective information.

Taking of testimony

On 10 November 2006, the Ombudsman's services took the testimony of Ms P. The witness made *inter alia* the following statements:

In December 2003, she was working in the Marie Curie Fellowships Unit of Directorate D, DG Research as a legal advisor. Her work included (i) supervising the procedures for the selection of batches of projects, relating to the legal aspects of the procedure, in order to make sure that documents sent to the Commission for decision were complete and in conformity with the procedures, and (ii) the provision of advice to the project officers concerning the interpretation of rules. She was further involved in the preparation of the model contracts for the Marie Curie Fellowships for the Sixth Framework Programme ("FP6"). In addition, at the request of her Director, she was a leader of an internal working group dealing with the legal questions relating to the FP6, that is to say, giving advice on the Commission's work programme in relation to the Marie Curie Fellowships. In this regard, the Director organised a Help Desk to provide advice to external requests in such a way that the co-ordinator of the Help Desk forwarded the requests to a competent unit, which then forwarded them internally to a person who was competent to reply. The replies were then also sent to the co-ordinator both for archiving and for the purpose of keeping track of the questions that had been answered, in order to update the frequently asked questions. With regard to her answer of 19 December 2003 to the complainant's question in the e-mail of 25 November 2003, she acknowledged that she provided a reply as if the complainant had been asking about the situation in Belgium and not in Italy. She agreed that it was therefore likely that the complainant still wanted to seek the information that she had actually requested. Despite the fact that the rules were clear to her, as they applied to any country, the complainant might have wanted to ask another question if something were not clear. Nevertheless, she did not recall the complainant's e-mail of 19 December 2003, as she was receiving many e-mails during that period of the year. She could not say that she had not deleted them accidentally; however, her practice was to keep every e-mail to which she had provided a reply, including the requests from internal colleagues or external persons. As regards the complainant's alleged e-mail of 19 December 2003, she could not state whether she answered it or not. It was possible that she answered something since the complainant had her e-mail address and thus the complainant could have possibly written directly to her or they could have talked on the telephone, however, she could not recall what had happened.



The complainant's observations on the testimony

In her observations of 26 February 2007 on the Commission's official's testimony, the complainant made the following comments:

The Commission's official did not deny having received her e-mail of 19 December 2003 and having provided a reply to it on 26 December 2003. The official offered excuses when she was asked about the complainant's second e-mail, recalling that that period was very busy with many e-mails and that she could not remember everything. Furthermore, the official admitted that she had been acting in a legal capacity while performing her job, that is to say, when she provided the complainant with advice. The complainant referred to the Commission's submission, made in its opinion of 8 April 2005, in which the Commission rejected the complainant's statement that she had received legal advice from the Commission. It now appeared that the Commission did not bother to verify its statements in this regard before making them. She therefore alleged that the Commission's attitude was offensive.

The complainant also observed that it was Mr M. who had stopped her application without even consulting Ms P. about the advice that she had previously provided to the complainant. Since Mr M. had chosen not to consider this previous information, and had not tried to solve the complainant's problem by taking initiatives appropriate to his rank, he became the principal reason for the present complaint. She therefore claimed that Mr M. should be reprimanded for dereliction of duties.

The complainant concluded by saying that she believed that it was time for the Ombudsman to reach a conclusion in the present case and redress the wrong that she had suffered.

THE DECISION

1 The provision of the allegedly misleading information provided by the Commission

1.1 The complainant alleged that misleading information had been provided by the European Commission's Legal Service. According to the complainant, in November 2003, she contacted by e-mail the Marie Curie Actions Help Desk ("Help Desk") of the Commission's Directorate-General for Research ("DG Research"), since the conditions determining the eligibility to participate in a RTN-NUMBRA programme were not clear. In her e-mail, the complainant asked whether, even though she had Italian nationality, she could apply for a position in Italy, on the basis of the fact that she was born, lived and studied all her life in Belgium. According to the complainant, the Help Desk forwarded her inquiry to the Commission's Legal Service. On 19 December 2003, Ms P., a Commission official, working for DG Research, Development, Technology and Innovation ("DG RTD"), Unit RTD.D, dealing with RTN actions, informed the complainant about the mobility rules. In particular, Ms P. explained that the Marie Curie programme required that the researcher does not hold the same nationality as the host organisation. The complainant submitted that since the reply did not answer her specific question, she sent another e-mail on 19 December 2003 seeking more precise information as to her eligibility for the position. According to the complainant, Ms P. replied by e-mail of 26 December 2003, explaining to her that, if she held Italian nationality but had not been living in Italy for the previous five years, she could apply for a position in an institution



located in Italy. However, in reality, the complainant was not eligible under the relevant rules, since the above special condition (3) , referred to by Ms P., applies to researchers holding dual nationality, and the complainant only has Italian nationality.

1.2 In its opinion, the Commission argued that the complainant had never received legal advice from the "Legal Service of the European Commission" nor from any other "Commission Legal Office", and that nowhere was the "Commission Legal Office" mentioned in the correspondence between the complainant and the Commission's services. The Commission underlined that the services provided by the Commission, even through specialised Help Desks services, were for general information purposes only. Any information provided in such a way was merely indicative and could not, per se, give rise to rights or legitimate expectations for the applicant in violation of the legally binding rules applicable to the relevant case. The Commission added that there were no ambiguities regarding the explanations provided to the complainant concerning the nationality and mobility rules and in particular the double nationality exception. The Commission announced that, for the benefit of potential users, a disclaimer is now automatically added to any future response in order to better inform the applicants of the legal effect of information received from the Commission's services.

With regard to the e-mail correspondence, the Commission stated that it replied on 19 December 2003 at 16:44:36 to the complainant's request of 25 November 2003, explaining the mobility rules and the issue of double nationality, without explicitly focusing on a potential recruitment in Italy. The Commission also pointed out that, despite a full and extensive review of its e-mail storage system, it could not find any trace of the complainant's e-mail allegedly sent on 19 December 2003, at 19:45, to Ms P., nor any trace of the e-mail allegedly sent by Ms P. to the complainant on 26 December 2003, at 14:05. Further to the Ombudsman's specific request in this regard, the Commission explained that it proceeded to a full search by opening the encrypted content of the personal folders stored on Ms P's computer and used several keywords in order to find the alleged e-mails. In a further attempt to retrieve deleted items, the Commission also tried to open the files with a text-based application. Since this attempt was unsuccessful due to the encryption, a second attempt had been made, using a different method allowing the recovery of lost or deleted items. Despite these searches, no trace of the exchange of e-mails in question was found. Since the Commission's central archiving system was not operational at the time, the Commission could not investigate the matter further.

On the other hand, the Commission annexed to its opinion an e-mail document given to the co-ordinator by the complainant in order to support her application for a researcher position at the University of Padova. This document gives a different date and contains some textual differences from what is purported to be the same message sent by the complainant to the co-ordinator and attached by her to her complaint. The Commission pointed out that, while the complainant declared that she had received an answer from the Commission services on 26 December 2003, the copy of the same message attached to the letter sent to the NUMBRA Research Administrator, that is, the Network co-ordinator, when presenting her application to the University of Padova, is dated 19 December 2003, 16:44:36. This is exactly the same date and timing of the Commission's first reply and the only one available in the Commission's records. Moreover, the message attached to this application indicated that the Commission's



reply was sent before the applicant's request was made. Nevertheless, the Commission noted the Ombudsman's assessment made in his letter of 16 May 2006 that these differences could be caused by technical reasons.

The Commission nevertheless acknowledged that the information provided to the complainant in the e-mail reply of 19 December 2003 did not directly address the complainant's specific question of recruitment as to whether an Italian national who had always lived in Belgium would be eligible for a position in an Italian university.

1.3 The complainant replied that she could not accept the insinuation made by the Commission that two versions exist of the same e-mail message sent by Ms P. to her and submitted that even if the e-mail had been destroyed in the Commission's system, a trace of the message should still exist in the computer system backups. She claimed that an inspection should be carried out on the e-mail records for the end of 2003, which should prove the existence of the allegedly missing e-mails. The complainant further explained that the document attached to the application sent to the NUMBRA Research Administrator, that is, the Network co-ordinator, diverged from the one attached to her complaint because in the former case, it had gone through a "cut and paste" procedure in order to be put in a "pdf" (Acrobat Reader) file format as required by the application. If the Commission's services found the missing e-mails, there would be no doubt as to the time they were sent or as to their wording. The complainant argued that the insinuation made by the Commission was offensive and that she would not compromise her integrity. She concluded that, if the only defence that the Commission had in response to the complaints of a *bona fide* student was to attempt to slander her or to accuse her of libel, the issue would become a matter for the courts and the press. If this argument were to be used again, the complainant would not hesitate to seek redress before the criminal courts. In her observations of 7 November 2006, the complainant noted the Commission's statement that it had not alleged any manipulation of the e-mails in question. However, she pointed out that she would expect an apology from the Commission as regards the insinuation made previously.

1.4 In the context of the further inquiries conducted by the Ombudsman, the Commission stated that it still did not manage to find the e-mail of 19 December 2003 allegedly sent to it by the complainant or the reply the complainant had allegedly received from Ms P. on 26 December 2003. Moreover, Ms P. said that she could not recall whether she had replied, by e-mail of 26 December 2003, to the complainant's alleged e-mail of 19 December 2003. Nevertheless, the Commission confirmed that Ms P. was present in her office on 26 December 2003.

1.5 As a preliminary point, the Ombudsman would like to underline that it appears from the text of the e-mail reply of 19 December 2003 that the Commission's Legal Service did not intervene in the matter in question. The reply was sent by a Commission official, Ms P., and despite the fact that she was working as a legal officer within the Unit dealing with RTN actions, the information provided by her cannot be considered to have been provided by the Commission's Legal Service. For this reason, the Ombudsman, in his request for further information of 16 May 2006, clarified that the body identified in the complainant's initial submission regarding the provision of allegedly misleading information, that is, the Commission's Legal Service, should now be understood as the Commission.



1.6 In light of the above, and taking into account in particular that:

- the complainant provided copies of the e-mails of 19 and 26 December 2003 in question;
- the complainant gave a reasonable explanation for the discrepancies between the different versions of the same e-mails (4) ;
- this explanation has not been contested (and refuted) by the Commission;
- neither the Commission nor Ms P. has excluded the possibility that Ms P. received the complainant's e-mail of 19 December 2003 and that she replied on 26 December 2003; and
- the Commission confirmed that Ms P. was present in her office on 26 December 2003, which was an official holiday,

the Ombudsman considers that the information he has received from the complainant in relation to the e-mails of 19 and 26 December 2003 at issue is credible, and should be relied upon for the purposes of the present inquiry.

1.7 Having concluded the above, the Ombudsman has, first, to examine whether the Commission's e-mail of 19 December 2003 contained misleading information. In this regard, the Ombudsman notes that, in her e-mail of 25 November 2003, the complainant asked the following question:

" (...) I am fully Italian but I was born in Belgium and lived in this country all my life. I have attended my university years in a Belgian institution. May I apply and be accepted in an Italian university or am I forced to ask a Belgian nationality? (...) "

1.8 The Ombudsman further notes that, in its reply of 19 December 2003 to the complainant's e-mail, the Commission stated:

" The mobility rules of the Marie Curie programme request that you are not of the same nationality as the host organisation. Therefore, if you are an Italian citizen, you may apply for a position in a Network in Belgium. However, the mobility rule also requires that you have not resided or carried out your normal activities in Belgium for more than 12 months out of the last 3 years prior to your appointment. If you have lived in Belgium for all your life, you may not be eligible because of these two rules combined. Moreover, in case you also hold the Belgian nationality, you may only apply in a Belgian institution if you have not resided in Belgium for at least 4 out of the last 5 years in this country. "

1.9 The Ombudsman finds that the information provided to the complainant in the e-mail reply of 19 December 2003 did not directly address the complainant's specific question of recruitment, a fact that the Commission acknowledged in its opinion. However, the Commission did explain correctly the rules governing the nationality requirements, that is, the mobility rules, of the RTN scheme. In particular, the Commission clearly stated that the mobility rules require that *" you are not of the same nationality as the host organisation. "* The Ombudsman thus considers that the relevant information provided by the Commission's services in the e-mail reply of 19 December 2003 cannot be considered as misleading.



1.10 The Ombudsman has, second, to examine whether the Commission's e-mail of 26 December 2003 contained misleading information. In this regard, the Ombudsman notes that, in her second e-mail of 19 December 2003, the complainant wrote: "*Thank you for your answer but my question was may I apply in an Italian University? I have never lived in Italy and I'm resident in Belgium.*" The Ombudsman further notes that, in its reply of 26 December 2003, the Commission replied: "*If you hold the Italian nationality but you have not been living in Italy for the last 5 years, you may apply for a position in an Institution located in Italy.*"

1.11 The Ombudsman further notes that Section 2.5.3 of the Work Programme for Marie Curie Actions (Research Training Networks RTN) (5) provides:

" Researchers must be [a] national of a State other than that of the host organisation. At the start of their fellowship/activity, researchers may not have resided or carried out their main activity (works, studies, etc) in the country of their host organisation for more than 12 months in the 3 years immediately prior to the start date. In the case of a national holding more than one nationality, he/she will be able to carry out a period of mobility in the country of his/her nationality in which he/she has not resided during the previous 5 years. "

1.12 In light of the above, the Ombudsman finds that the information provided to the complainant in the Commission's e-mail of 26 December 2003 was misleading. In this regard, the Ombudsman notes that (i) the complainant had not indicated (in her e-mails) that she had double nationality, but had rather stated: "*I am fully Italian but I was born in Belgium and lived in this country all my life.*"; (ii) the Commission had not specifically addressed in its e-mail of 19 December 2003 the query formulated by the complainant; and (iii) the information provided by Ms P. in her e-mail of 26 December 2003 could reasonably be understood by the complainant as meaning that she was eligible if she had not resided in Italy during the previous five years, despite the fact that she was a national of the state where the host organisation was located. Moreover, this understanding may be reasonable even though it may not be compatible with the rules referred to in point 1.11 above.

1.13 The Ombudsman notes that principles of good administration, reflected in point 4 of the Commission's Code of Good Administrative Behaviour (6) , require that the Commission answer inquiries in an appropriate way (7) .

1.14 The Ombudsman takes the view that, for the reasons explained in points 1.6 and 1.12 above, the Commission failed to comply with this requirement. This constitutes an instance of maladministration. Taking into consideration his conclusions in points 3 and 4 below, the Ombudsman will make a critical remark below.

1.15 Finally, it should be noted that, in its opinion of 8 April 2005, the Commission stated that the information provided by its services, even through specialised Help Desk services, are for general information purposes only, as they are provided on the basis of requests from applicants, and without the possibility of verifying all the relevant aspects of each request. This implies that, although the Commission makes all reasonable efforts to ensure the reliability and quality of its replies, any information provided in such a way is merely indicative and cannot, per



se, give rise to rights or legitimate expectations for the applicant in violation of the legally binding rules applicable to the relevant case. The Commission nevertheless recognised the need for a clearer explanation concerning the effective legal value of the information provided through specialised Help Desk services and stated that a disclaimer would be automatically added in the future to any information concerning the Marie Curie Actions addressed to applicants. Furthermore, in its reply of 14 February 2006 to the Ombudsman's request for further information, the Commission stated that following the commitment undertaken in its opinion of 8 April 2005 to the Ombudsman, a disclaimer is now added to all information provided by the services of the Marie Curie Actions Help Desk. Applicants are therefore made aware of the fact that the information obtained from the Help Desk services is merely indicative and cannot give rise to legitimate expectations or predetermine the result of the evaluation procedure, especially when, as in the present case, the verification of the fulfilment of the eligibility criteria must be carried out by the institution hosting the recruited researcher.

1.16 Relatedly, the Ombudsman remarks that, as suggested by the Commission, the provision of information to applicants or potential applicants, which is not consonant with the rules governing the participation in Marie Curie Actions, cannot lead to the creation of legitimate expectations or rights to participate in these actions. A disclaimer added to the document providing information in relation to the conditions of participation in such actions and indicating the above would be appropriate and compatible with good administration. Nevertheless, in accordance with the requirements of good administration, a relevant disclaimer cannot be formulated in a way that suggests that it relieves the Commission of its duty to give to (potential) applicants clear and accurate information that is not misleading. The Ombudsman will therefore make a relevant further remark below.

2 The claim to be allowed to participate in the RTN programme and the relevant subsidiary claims

2.1 The complainant claimed that the Commission should allow her to participate in the RTN-NUMBRA programme as the Programme Co-ordinator had informed her she could do, or alternatively, propose a solution with equivalent research conditions.

2.2 The Commission argued that, for the Research Training Networks and assimilated Marie Curie Actions, it is not the Commission's task to check the eligibility of the researcher. It is the responsibility of the host institution to verify the fulfilment of the eligibility rules. After a close examination of the case, the project co-ordinator detected that, due to her Italian nationality, the complainant could not be considered for a position in Italy. When the project co-ordinator raised this issue with the Commission, the latter confirmed this interpretation. The Commission concluded that, for the above reasons, the complainant is not eligible for an RTN position in Italy.

2.3 The Ombudsman finds that, since it appears that, on the basis of the applicable rules, the complainant was not eligible for participating in the research programme in question, the complainant's above claims cannot be accepted.

2.4 In her observations, the complainant appeared to claim compensation for the damages that she had suffered because of the Commission's "*frivolity and bureaucracy*".



2.5 As regards this claim and the Commission's potential liability, despite the fact that the complainant did not have a right or legitimate expectation to participate in the research programme in question, the Ombudsman considers it necessary to point out the following.

2.6 Principles of good administration require that the information the Community Administration gives to citizens, either upon request or on its own initiative, be accurate and sufficiently clear. This is particularly important in contexts like the present one, where the information concerns an eligibility condition for participating in the research programme concerned. The provision of misleading information to candidates may, under certain circumstances, be considered as a fault that can give rise to Community liability, provided that other conditions for recognising the non-contractual liability of the Communities are also met.

According to the established case-law of the Community Courts, the non-contractual liability of the Community for unlawful acts of its bodies depends on the fulfilment of a set of conditions, namely, (i) the unlawfulness of the alleged conduct against the institutions; (ii) the fact of damage; and (iii) the existence of a causal link between that conduct and the damage complained of (8) . If one of these conditions is not met, the claim for damages must be dismissed in its entirety without needing to examine the other conditions (9) .

2.7 For deciding whether the misleading information provided to the complainant constituted a fault in the sense of the case-law just referred, the Ombudsman has to analyse whether (i) the information provided was inaccurate or incomplete and/or not sufficiently clear, so as to be potentially misleading; (ii) it originates from sources that the citizen may reasonably consider as authorised and reliable; and (iii) it would have led a normally diligent and prudent person to a reasonable, albeit inaccurate, conclusion about his or her legal situation in relation to her participation in the research programme (10) .

2.8 In the present case, as indicated above in points 1.12 to 1.14, the Ombudsman has considered that the information provided to the complainant in the Commission's e-mail of 26 December 2003 was indeed misleading. In fact, it originated from a source that the complainant could reasonably consider as authorised and reliable. In addition, this information was likely to lead a normally diligent and prudent person, in the position of the complainant, to the reasonable, albeit erroneous, conclusion that she was eligible for participation in the research programme in question. This constituted therefore a fault that, if it were to be considered sufficiently serious, would have justified the Commission's liability to pay damages.

2.9 However, the relevant damages that the complainant appears to claim are related to the expenses incurred following her moving to Italy. According to the above-mentioned case-law of the Community Courts in relation to the condition concerning the causal link between the fault and the damage, the Community may only be held responsible for a damage which constitutes a sufficiently direct consequence of the misconduct of the institution concerned (11) . By contrast, it is not the responsibility of the Community to pay compensation for every harmful consequence, even one that is remote from the conduct of its bodies (12) .



In this regard, the Ombudsman first notes that the complainant submitted no specific information or supporting documents about the expenses incurred due to her moving to Italy. More importantly, she appears to have taken the initiative to move to Italy although she had not received a formal offer for the researcher position by the host institution, which seemed to have, if not the exclusive, at least the primary responsibility for making the relevant decision. It follows that the complainant has not established the existence of a sufficiently direct causal link between the misleading information she received from the Commission and the damage claimed in relation to her moving to Italy. The condition requiring a causal link between the damage alleged and the Commission's conduct in order for the Community to incur non-contractual liability has therefore not been established in this case.

2.10 For these reasons, the Ombudsman does not consider it appropriate to make a friendly solution proposal or draft recommendation inviting the Commission to pay some kind of compensation to the complainant in relation to the instance of maladministration identified in point 1.14 above.

3 The claim to modify the eligibility requirements

3.1 The complainant claims that the Commission should modify the eligibility requirements of the RTN programmes to allow nationals of one Member State who were born and who lived in another Member State to participate in such programmes.

3.2 The Commission underlined that the nationality and mobility rules of the RTN scheme are included in the Work Programme and are adopted through a Commission decision, following the opinion of a Programme Committee composed of representatives of all the Member States and of associated countries. These rules represent the implementation of the general principles laid down in Regulation (EC) No 2321/2002 of the European Parliament and of the Council of 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006) (13) . Furthermore, these rules are reflected in the relevant contractual clauses, adopted through a Commission decision. Therefore, a modification of the mobility and nationality rules cannot be reasonably envisaged at this stage.

3.3 In this regard, the Ombudsman notes that it has been neither argued in a specific way by the complainant, nor shown that the existing rules in question amount to an instance of maladministration. The Ombudsman therefore finds no maladministration with regard to this aspect of the case.

4 Conclusion

On the basis of his inquiry in this case, the Ombudsman makes the following critical remark:

Principles of good administration, reflected in point 4 of the Commission's Code of Good Administrative Behaviour (14) , require that the Commission answer inquiries in an appropriate way. In the present case, for the reasons explained in points 1.6 and 1.12 above, it appears that the Commission failed to comply with this requirement as the information provided to the complainant in its e-mail of 26 December 2003 was likely to lead the complainant to the reasonable, albeit erroneous, conclusion that she was eligible to participate in the relevant



research programme. This constitutes an instance of maladministration.

The Ombudsman therefore closes the case.

FURTHER REMARK

As suggested by the Commission, the provision to applicants or potential applicants of information that is not consonant with the rules governing the participation in Marie Curie Actions, cannot lead to the creation of legitimate expectations or rights to participate in these actions. A disclaimer added to the document providing information in relation to the conditions of participation in such actions and indicating the above would be appropriate and compatible with good administration. Nevertheless, in accordance with the requirements of good administration, a relevant disclaimer cannot be formulated in a way that suggests that it relieves the Commission of its duty to give to (potential) applicants clear and accurate information that is not misleading. The Ombudsman would therefore appreciate it if the Commission could communicate to him the exact content of the disclaimer, which, according to its relevant statement, has now been added to all information provided by the Marie Curie Actions Help Desk services.

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Research Training Network, Numeracy and Brain Development programme.

(2) OJ 2002 L 355, p. 23.

(3) Work Programme of Human Resources and Mobility Marie Curie Actions, Section 2.5.3. Indent 15, at p. 39. This document was accessed online by the Ombudsman's services on 25 November 2005, but the link is no longer available (http://www.euresearch.ch/media/03_Documents/13_MarieCurie/Workprogramme_Jan2004.pdf).

The revised rules of the Programme are available on the Cordis website: (http://ec.europa.eu/research/fp6/mariecurie-actions/pdf/wp_feb2006_en.pdf [Link]).

(4) These discrepancies do not concern the substance of the e-mails, but the layouts, the language, the time and date, and the spelling of the e-mails.

(5) The revised rules of the Programme are available on the Cordis website: (http://ec.europa.eu/research/fp6/mariecurie-actions/pdf/wp_feb2006_en.pdf [Link]).



(6) Annex to Commission Decision of 17 October 2000 amending its Rules of Procedure, OJ 2000 L 267, p. 63.

(7) Similarly, Article 12 of the European Code of Good Administrative Behaviour provides that "*(...) When answering correspondence (...) the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.*"

(8) Case 26/81 *Oleifici Mediterranei v EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services v Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol v Commission* [1996] ECR II-1343, paragraph 30; and Case T-267/94 *Oleifici Italiani v Commission* [1997] ECR II-1239, paragraph 20).

(9) Case T-170/00 *Förde-Reederei v Council and Commission* [2002] ECR II-515, paragraph 37.

(10) Case 169/73 *Compagnie Continentale France v Council* [1975] ECR 117, paragraphs 21-23.

(11) Joined Cases 64/76 and 113/76, 167/78 and 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others v Council* [1979] ECR 3091, paragraph 21, and Case T-333/01 *Meyer v Commission* [2003] ECR II-117, paragraph 32.

(12) See, *Dumortier Frères and Others v Council* , paragraph 21.

(13) OJ 2002 L 355, p. 23.

(14) Annex to Commission Decision of 17 October 2000 amending its Rules of Procedure, OJ 2000 L 267, p. 63.