

Decision of the European Ombudsman on complaint 3199/2006/MHZ against the European Commission

Decision

Case 3199/2006/MHZ - Opened on 28/11/2006 - Decision on 29/07/2008

Strasbourg, 29 July 2008

Dear Dr X,

On 13 October 2006, you submitted a complaint to the European Ombudsman against the European Commission concerning the recognition of Polish medical qualifications in Germany.

On 28 November 2006, I forwarded the complaint to the President of the Commission.

On 6 February 2007, the Commission asked for an extension of the deadline to submit its opinion, which I granted.

On 18 April 2007, the Commission sent its opinion in English, and, on 8 and 23 May 2007, the translation of the opinion into Polish.

On 9 and 24 May 2007, I forwarded to you the Polish version of the opinion, and, following your request dated 22 May 2007, I forwarded to you, on 24 May 2007, the English version of the said opinion with an invitation to make observations.

On 30 June 2007, you asked me for an extension of the deadline to send your observations, which I granted on 6 July 2007.

On 30 August 2007, you sent your observations.

On 20 November 2007, my services contacted you by e-mail as regards my proposal for a friendly solution on your complaint to which you replied on 26 November 2007.

On 21 January 2008, I sent the Commission a proposal for a friendly solution, in English. On the same day, I forwarded it to you together with its translation into Polish.

On 7 February 2008, the Commission sent me a copy of a letter, of the same date, which it addressed to you.



On 26 February 2008, you sent me additional documents concerning your complaint.

On 4 April 2008, the Commission sent its reply to my proposal for a friendly solution in English, and, on 16 April 2008, its translation into Polish both of which I forwarded to you for observations.

On 1 June 2008, you sent your observations on the above Commission's reply.

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

To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the Commission and not the German authorities.

THE COMPLAINT

According to the complainant, the relevant facts are as follows:

Background

The complainant is a Polish doctor who lives and works in Germany. Just before the 2004 enlargement of the EU, he applied to the relevant German authorities in order to obtain (a) recognition of his doctor's diploma in medicine, which was awarded in Poland, as from the date of enlargement and (b) a permanent license. He renewed his request after the enlargement. His application was accompanied by a series of documents including a certificate issued by the Polish authorities attesting to his qualifications and professional experience as a doctor in Poland, as provided for by Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, of 23 September 2003, in force since 1 May 2004 (hereinafter "the Directive") (1) .

The German authorities refused such recognition and stated that they were waiting for the European Commission to prepare a guide showing examples of diplomas awarded in the new Member States that were to be recognised under the Directive.

Then the complainant started an exchange of e-mails with the Commission. He referred to his case and asked the Commission, in summary, for an explanation concerning the recognition of



diplomas of doctors in the EU.

The Commission, *first*, informed him that the guide mentioned by the German authorities had an informative character only and that, according to the Directive, recognition should be automatic in the event that all formal conditions are fulfilled. *Second*, the Commission stated that it cannot resolve the problems of individual citizens who have the appropriate means of redress at national level (therefore, in the complainant's case, it would be much more useful for him to turn to a national court). *Third*, the Commission stated that, even if it were to initiate infringement proceedings and even if it were to decide to bring an action against a Member State (that is, against Germany) before the Court of Justice, this would not resolve the complainant's individual situation. Furthermore, the enforcement procedure takes a long time.

In its further e-mails to the complainant (dated between August and November 2004), the Commission referred to the certificate attesting to the period of the complainant's medical training which, on the basis of the Directive, the German authorities could require from the Polish authorities. The Commission stated that such certificates should, in general, enable the German authorities to recognise doctors' diplomas awarded in Poland.

At that point of time, given that (i) the German authorities maintained their refusal to recognise the complainant's diploma in medicine and (ii) to the complainant's knowledge, other Polish doctors also encounter problems with the recognition of their diplomas in Germany, the complainant sent an e-mail to the Commission on 31 March 2006, in which he asked it to investigate, on the basis of Article 226 of the EC Treaty, the infringement by Germany of the relevant Community rules concerning the recognition of doctors' diplomas awarded in another Member State. He also stated that it was not acceptable that, two years after enlargement, the German authorities still did not recognise the diplomas of Polish doctors. The complainant took the view that this was an instance of discrimination. Furthermore, he mentioned that the diplomas of Polish doctors are recognised in other Member States.

On 4 April 2006, the Commission replied to the complainant. The Commission treated the complainant's above complaint letter as normal correspondence. It stated that the German authorities considered that Polish doctors did not meet the requirements of professional qualifications as stipulated by the Directive and therefore the German authorities "do not always" accept the certificates on medical training issued by the Polish authorities. The Commission also noted that the German authorities had not accepted that the date which was declared by the Polish authorities in order to facilitate recognition was the date from which the diplomas awarded in Poland were in conformity with the requirements as described in the Directive ("the certificate of conformity"). In this respect, the Commission took the view that, according to the Directive, the Member States are not obliged to accept any such "conformity dates". Finally, the Commission also stated that it encouraged contacts between both countries in order to find a solution to this issue.

On 5 April 2006, in his further letter, the complainant asked the Commission what it meant when it stated that the German authorities "do not always" accept the certificates issued by the Polish authorities. The complainant was also astonished that it appeared from the Commission's



answer that, in its view, a Member State may freely decide whether or not to recognise a diploma awarded by another Member State or the relevant certificates issued by that state. Finally, the complainant pointed out that the Commission failed to do anything to help the EU citizens who were discriminated against by the German authorities.

On 5 May 2006, the Commission replied to the complainant. It stated that, by using the phrase "*do not always*", it wanted to indicate that, in some cases, there were difficulties in recognising Polish diplomas in Germany. Afterwards, it pointed out that it had no information at its disposal on how the other Member States proceeded in the case of the recognition of Polish diplomas of doctors and whether they adopted the same approach as Germany.

The complainant was not satisfied with the Commission's replies and its position on his complaint of 31 March 2006. For this reason, on 13 October 2006, he turned to the European Ombudsman.

The complainant alleged that, with respect to Polish doctors, the Commission had failed to take appropriate action to assist the complainant and others affected by Germany's failure to comply with Community rules on the mutual recognition of the diplomas, certificates and other evidence of formal qualifications of doctors.

The complainant claimed that the Commission should deal properly with his complaint of 31 March 2006 and either pursue the infringement procedure against Germany, or provide him with adequate reasons for why it was not willing to do so.

The complainant also claimed that the Commission should institute an assistance or advisory mechanism in order to assist EU citizens to submit their claims against Germany for damages.

THE INQUIRY

The scope of the Ombudsman's inquiry

In his opening inquiry letter to the Commission, the Ombudsman asked the latter to include in its opinion information as to whether, in accordance with the Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (2) ("the Communication"), it had registered the complainant's communication of 31 March 2006 as a complaint, and if not, to state the reasons why it did not do so.

The opinion of the Commission

The opinion of the Commission may be summarised as follows:

First, the Commission provided with its opinion an overview of the correspondence exchanged between it and the complainant starting from 18 January 2004 to 5 May 2006, as well as copies of that correspondence. The Commission also stated that the complainant did not inform the Ombudsman about all these communications. Furthermore the Commission pointed out that, on 12 June 2006, the complainant obtained automatic recognition of his Polish qualification as a doctor but did not inform the Commission or the Ombudsman of this fact.



As regards the complainant's first allegation, the Commission stated that, from February 2004 to May 2006, it assisted the complainant in dealing with his application for recognition of his qualification ("the application") which he had submitted to the German authorities. Throughout the process of this application, the complainant had been in regular contact with the Commission by telephone and also by e-mail. The Commission added that it had replied to all of these e-mails.

The complainant was temporarily authorised to exercise his profession as a medical doctor in Germany as of 30 June 2004. From the start of his application for permanent authorisation and recognition of his Polish diploma, the German authorities informed him that he could obtain automatic recognition very easily on the basis of acquired rights, that is, by demonstrating three years of professional experience during the last five years. However, the complainant refused to submit the requested documents for this method of recognition but insisted on obtaining recognition on the basis of a certificate of conformity issued by the Polish authorities, which was not accepted by the German authorities. Only when his temporary license to practise was about to expire did the complainant submit the documents necessary in order to obtain recognition on the basis of acquired rights. On 12 June 2006, he obtained such recognition.

After a time of active correspondence between the Commission and the complainant, there was an interruption in correspondence for some months until 31 March 2006, when the complainant sent an e-mail to the Commission "*asking it to launch an infringement procedure against Germany.*" The Commission "*did not have the case registered as from 2004 onwards as a case detected through own investigations because the Commission had no legal grounds to launch an infringement procedure against Germany.*"

The Commission has replied to the complainant's e-mail of 31 March 2006 by e-mails of 4 April and 5 May 2006 explaining why it could not start proceedings against Germany.

As regards the complainant's first claim, the Commission took the view that, given that the complainant had, in the meantime, that is, on 12 June 2006, received automatic recognition of his Polish qualification as a doctor, his request had become redundant.

The Commission added that, in its e-mails of 4 April and 5 May 2006, it stated the reasons why it could not open an infringement procedure against Germany. The Commission reiterated these reasons in its opinion. First, the Commission explained that, after it became aware of the difficulties experienced by Polish doctors who applied for automatic recognition of their qualifications in Germany on the basis of a certificate of conformity issued by the Polish authorities, the Commission examined the legal issues thoroughly. It was found that the Polish authorities identified the year 1956-57 as the initial date from which the training of Polish doctors was in compliance with European law. However, on the basis of the information provided by Polish doctors who had applied in Germany for temporary licenses before Poland joined the EU, the German authorities found that their training was not compatible with EU requirements as contained in the Directive. For that reason, the German authorities did not automatically recognise the training acquired by Polish doctors (as from 1956-57) who applied



for German licenses after accession. This approach was independent of the subject of the certificate of conformity issued by the Polish authorities.

The training of doctors which took place before the date of accession was, in principle, considered as non-compliant with the minimum training requirements of the Directive. In the Accession Treaty of Poland, an exception to this principle was inserted in order to provide that persons who have finished or started their training before their date of accession and thus whose training was not EU compliant, could nevertheless benefit from automatic recognition of their qualifications as did doctors in other Member States. This exception could be applied if such persons provided a certificate stating that they had effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years prior to the date of the issuance of the certificate in question (the so-called "automatic recognition based on acquired rights"). Apart from automatic recognition on the basis of acquired rights, the new Member States could, in previous accessions, issue certificates of conformity establishing the date from which the training of doctors provided in the Member State concerned was in conformity with the minimum training requirements of the Directive, even though the training had started or finished before the date of accession. The possibility of indicating such a "date of conformity" served as a means for the host Member States to facilitate the automatic recognition of professional qualifications of doctors who started or finished their training before the date of accession instead of verifying each application. However, from a legal point of view, communicating a date of conformity had not been regulated as such in the Accession Treaty of Poland or in the Directive. In view of automatic recognition, the Directive did not oblige Member States to accept declared dates of conformity. In such circumstances, a case by case assessment of requests for recognition was not contrary to the Directive. Therefore the Commission had no legal basis to take legal action against Germany for its refusal to grant automatic recognition on the basis of a Polish certificate of conformity but rather on a case by case basis, which took account of the individual applicants' medical training.

According to the Commission, "*the German authorities are obliged to examine each application of recognition of Polish doctors within the timelines set out by Directive 93/16/EEC, and grant recognition, which must not be granted automatically in case of justified doubts about the conformity of the training with the minimum training requirements of the Directive 93/16/EEC.*" On 24 July 2006, the Commission sent a letter to the German authorities reminding them of "this obligation" (the Commission attached a copy).

No other cases concerning the above matter have been referred to the Commission since that date.

In order to find a solution valid for all applicants holding such a certificate of conformity, the Commission contacted the Polish authorities with a view to assessing whether the medical training as from 1956-57 was to be considered as a general rule in compliance with the minimum training requirements of the Directive as claimed by the Polish authorities. Within this context the Commission received "hundreds of pages" of documentation in Polish and, subsequently, thoroughly examined their content. Afterwards, on 8 June 2006, it met the Polish authorities in order to clarify the remaining issues. According to the Commission,



" [t]here is still a lot of information to be sent by the Polish authorities in particular as to the mandatory character and information on internships and pre-clinical placement programmes of all universities and corresponding spreadsheets for the period as of 1956-7. This also includes for the 1985-93 period programmes of all universities (it was already sent for three universities: Poznan, Katowice and Krakow) and information on summer placements and the five-month period of training. "

In its opinion, the Commission also mentioned that the general issue of the recognition of Polish doctors in Germany had also been the subject of Written Question 2006/1418 submitted to the Commission by a Polish MEP. On 27 April 2006, the Commission replied to that question in a manner similar to its position in the present opinion (the Commission attached a copy of that reply).

The Commission concluded that it had taken appropriate action in order to assist the complainant and others affected and was still pursuing its action in order to restore mutual trust between Poland and Germany. The Commission went on to say that *" [t]hanks to the Commission's replies to queries from Polish doctors applying for recognition of their qualification in Germany, many of these persons finally obtained recognition in Germany on the basis of acquired rights. "*

As regards the claim concerning the establishment of the advisory mechanism or assistance, the Commission stated that potential compensation for damages by Germany was an issue that should be dealt with by the competent German courts. Even if an infringement of EU law by Germany were proved, the settling of compensation for damages would still not fall within the competence of the European institutions.

The complainant's observations

The complainant's observations may be summarised as follows:

The complainant referred to the Commission's statement that, on 12 June 2006, his professional qualifications as a doctor were recognised automatically in Germany. In this regard, the complainant stated that this phrasing exemplified, to a certain extent, the Commission's understanding of correct administration, as it termed the acceptance of an application two and a half years after it was lodged to be "automatic". In this respect, the complainant noted and did not understand the Commission's view, formulated in the context of his complaint to the Commission against the German authorities, that he should have informed the Commission or the Ombudsman about Germany's recognition of his qualification of 12 June 2006.

The complainant acknowledged that the Commission replied to all his communications. However, he did not consider that, in its answers, the Commission provided him with due assistance as regards his application submitted to the German authorities. The complainant underlined therefore that, in his complaint, he did not allege a lack of reply by the Commission to his e-mails, but rather the refusal to initiate appropriate proceedings. The complainant added that, in the entire correspondence between him and the Commission, which was indeed attached to the Commission's opinion, he could not find anything that was (or was meant to be)



of assistance to him. On the contrary, he took the view that this correspondence was drafted in an attempt to dissimulate the Commission's failure to act, and constituted *de facto* encouragement to the German authorities to continue discriminating against Polish doctors.

The complainant also noted that, while the Commission mentioned in its opinion that, on 30 June 2004, he had been granted temporary permission to practise in Germany, it failed to mention that Germany did not prolong that permission for the period from 14 April 2004 to 30 June 2004. As a result, the complainant lost his job and had to change his place of residence.

Moreover, the complainant noted that the Commission failed to mention in its opinion that, in his case, the refusal to grant permission to carry out his profession was particularly discriminatory because, as the Commission knew, he held a German specialisation in surgery and a German title of medical doctor, in addition to an equivalent medical education and uninterrupted practise acquired in Poland.

The complainant took the view that the Commission accepted, as a justification for Germany's discrimination of Polish doctors, the doubts of the German authorities as regards the quality of medical education in Poland which started as from the period 1956-1957. In this regard, the complainant stated that "*it is hard to find better evidence of bad work and bad administration by the Commission.*" He went on to say therefore that individuals who had begun their medical training in the period 1956-1957 had long since reached the age of retirement and, reasonably, were not among those who currently applied for permission to carry out their profession abroad. The complainant found such justification to be "poor" and did not consider that, on the basis of it, the Commission could excuse itself from dealing with the subject-matter of the requests for help from Polish doctors in Germany. Nevertheless, the complainant noted that the Commission did not explain why the German authorities had "justified doubts" as to the equivalence of the medical education the complainant had completed.

The complainant stated that the Commission "boasted" of its success by underlining that, since July 2006, it had not received any further complaints from Polish doctors. According to the complainant, this would not be surprising given that the Polish doctors had no reason to lodge any further complaints with the Commission in view of the fact that for the first two years following accession, the Commission proved to be inefficient in respect of Germany's recognition of Polish doctors' qualifications.

The complaint further noted that, according to the Commission, on the one hand, the equivalence of education could be confirmed by the country which offered it, and, on the other hand, such confirmation did not have any meaning and was not binding on the host country. The complainant wondered how the above could comply with the principles of good administration.

Furthermore, the complainant stated that he had become aware of a report issued by the German authorities with respect to a meeting they had had with the Commission (probably on 14 April 2005) in which it was mentioned that the Commission's representative stated that "*the German authorities should not worry about lawsuits possibly brought against them by Polish*



doctors who were discriminated against, for the likelihood of the outcome of such suits to be [sic] favourable for [sic] the Polish doctors be [sic] not high. " The complainant then stated that, from the information he possessed, it became clear that the above statement by the Commission representative resulted in the adoption of a more uncompromising approach on the part of the German authorities in relation to the applications for recognition of Polish doctors' qualifications.

Finally, the complainant took the view that the Commission did not (a) provide reasons as to why it did not pursue his complaint of 31 March 2006 as such and did not start investigations concerning the discriminatory practices in question, and (b) failed to take a position on his claim that an assistance or advisory mechanism be established in order to help Polish doctors with their actions for damages against Germany.

The friendly solution

On 21 January 2008, the Ombudsman made *two proposals* for a friendly solution, in accordance with Article 3(5) of the Statute of the Ombudsman.

The *first proposal* for a friendly solution

The *first proposal* read as follows:

(1) The Commission could consider re-examining the complainant's e-mail of 31 March 2006 and addressing it in accordance with its Communication on Relations with the Complainant in Respect of Infringements of Community Law, namely recording his e-mail as a complaint and, in case it does not consider it adequate to start an infringement procedure, informing him of the reasons underlying such a decision.

The first proposal of a friendly solution was then made on the basis of the following *considerations* :

1 The complainant claimed that the Commission should deal properly with his complaint of 31 March 2006 and pursue the infringement procedure against Germany concerning the alleged infringement of Community law in respect of the recognition of the medical qualifications of Polish doctors, or provide him with adequate reasons for why it is not willing to do so.

The complainant therefore took the view that the German authorities refused to recognise automatically the qualifications of Polish doctors on the basis of a certificate of conformity issued by the Polish authorities and stating that the medical training of Polish doctors, if started as from 1956-57, was compliant with the minimum training requirements set out in the Directive.

2 The Commission took the view that the complainant's request had become redundant, given that, in the meantime, that is, on 12 June 2006, he had received automatic recognition of his Polish qualification as a doctor.

The Commission also stated that it did not register as a complaint the complainant's e-mail of 31 March 2006 " *asking it to launch an infringement procedure against Germany* " and did not do so as regards the complainant's previous e-mails because it had no legal grounds to launch an infringement procedure against Germany. According to the Commission, its replies of 4 April



and 5 May 2006 explained to the complainant why it could not start infringement proceedings against Germany.

According to the Commission, the training of Polish doctors which took place before the date of accession is, in principle, considered to be non-compliant with the minimum training requirements of the Directive. The Commission found, in summary, that the German authorities were not obliged by Community law to take into consideration the certificates of conformity issued by the Polish authorities. The Commission also stated that the German authorities had "justified doubts" (following their experience with some Polish doctors who acquired their qualification as from 1956-57) as regards the conformity of the training received by Polish doctors with the minimum training requirements set out in the Directive. They therefore do not recognise the qualifications of Polish doctors on the basis of such certificate of conformity.

According to the Commission, the German authorities are obliged to examine each application of recognition of Polish doctors within the time-limits provided for in the Directive, and grant recognition, but they are not obliged to grant that recognition automatically in case of justified doubts about the conformity of the training with the minimum training requirements of the Directive. On 24 July 2006, the Commission sent a letter to German authorities reminding them of "this obligation". No other cases have been referred to the Commission since this date.

The Commission noted that the recognition of the qualifications of Polish doctors on the basis of acquired rights, that is, on the basis of a certificate stating that its holder had practiced medicine during three consecutive years within the five-year period prior to the issuance of that certificate, constituted another option for recognition that was agreed in the Accession Treaty of Poland.

3 At the outset, the Ombudsman points out that, while the complainant's earlier correspondence with the Commission was focused mainly on the recognition of his own medical qualification, by contrast, his e-mail of 31 March 2006 categorically referred to the general issue of the recognition of the qualifications of Polish doctors and not to his personal situation.

The Ombudsman does not therefore agree with the Commission's statement that, given that the complainant had, in the meantime, received automatic recognition of his Polish qualification as a doctor on 12 June 2006, his request had become redundant.

4 Furthermore, as regards the procedural aspects of the present aspect of the complaint, the Ombudsman finds it difficult to understand why the complainant's e-mail of 31 March 2006 was not registered as a formal complaint by the Commission, in conformity with the Commission's Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (3) ("the Communication"). In that Communication, the Commission published the rules applicable to its relations with persons complaining to it about infringements of Community law. The first paragraph of point 3 (Recording of complaints) of this Communication provides:

" Any correspondence which is likely to be investigated as a complaint shall be recorded in the central registry of complaints kept by the Secretariat-General of the Commission. "



The second paragraph of point 3 contains an exhaustive list of reasons, on the basis of which

" [c]orrespondence shall not be investigable as a complaint by the Commission, and shall therefore not be recorded in the central registry of complaints, if :

(...)

- it fails to set out a grievance,

- it sets out a grievance with regard to which the Commission has adopted a clear, public and consistent position, which shall be communicated to the complainant (...). "

The fourth paragraph of point 5 (Acknowledgement of receipt) of the Communication provides:

" Where the Commission departments decide not to register the correspondence as complaint, they shall notify the author to that effect by ordinary letter setting out one or more of the reasons listed in the second paragraph of point 3. "

5 The Ombudsman notes that the complainant's e-mail of 31 March 2007 clearly refers to Germany's failure to respect the Community law and the complainant clearly claims that infringement proceedings should be instituted against Germany (4) .

The Ombudsman considers that it had to be clear to the Commission that the complainant wished his e-mail to be dealt with as an infringement complaint, so that the Commission would have had to handle it according to the Communication. However, even though, in its 5 May 2006 reply to the complainant's e-mail of 31 March 2006, the Commission stated that it could not open an infringement proceeding, it did not refer to any of the reasons foreseen under point 3 of the Communication, as required by the latter's point 4.

6 Moreover, the Ombudsman does not regard as "*clear, public and consistent*" the Commission's position, in its replies of 4 April and 5 May 2006 to the complainant's e-mail of 31 March 2006, as regards the German authorities' stance with respect to the recognition of Polish doctors' diplomas on the basis of the certificate of conformity issued by the Polish authorities. The Ombudsman forms this view on the basis of the following considerations:

First, the Ombudsman notes that, in its 27 April 2006 reply to the written question of a Polish MEP, the Commission only stated that the Directive does not oblige "other Member States to accept notified dates of conformity."

Second, in its earlier e-mail to the complainant sent on 16 February 2004, the Commission took the following position with respect to the automatic recognition of Polish diplomas certifying medical training. After Poland's accession to the EU and according to the Directive, there would be a possibility for the automatic recognition of diplomas, the study for which started or was completed before the date of accession, on the basis of a certificate issued by the Polish



authorities confirming that the requisite study corresponded to the minimum requirements (5) . In its further e-mail of 1 July 2004, the Commission stated that there is an obligation for an automatic recognition of a diploma if the relevant conditions are complied with (6) . Furthermore , in its e-mail dated 18 November 2004, the Commission referred to the complainant as someone who acquired his medical qualification before accession and stated that, "*in any event, Germany has to grant recognitions in conformity with the Directive when an appropriate certificate of conformity, meeting minimum requirements, is submitted*" (7) .

7 Further, as regards the substance of the present aspect of the complaint, the Ombudsman understands that the Commission maintains that there was no violation of the Directive by Germany since (i) in principle, the medical qualification awarded in Poland when it was a non-Member State (that is, prior to its accession) should not be automatically recognised, and (ii) according to the Directive and the Accession Treaty, the certificate on the conformity of the date on which the medical training complied with the minimum training requirements set out in that Directive as established by the Polish authorities should not necessarily be accepted by German authorities.

8 The Ombudsman further notes that, on the basis of the explanation provided by the Commission, it appears that Germany (i) took the view that the qualifications of Polish doctors who submitted the certificate of conformity issued by the Polish authorities should not, as a matter of principle, be recognised because of suspicions that their training might not correspond to the minimum requirements laid down in the Directive, and (ii) based that view on the contention that, in the past, the training of certain other doctors proved not to meet the minimum requirements.

The Ombudsman understands however that the Commission could not possibly have been referring to the reasoning of Germany set out above when it made the statement in the opinion that "*it had no legal grounds to launch an infringement procedure against Germany*".

9 The Ombudsman considers therefore it useful to recall Case C-110/01 *Tennah-Durez* (8) concerning the extent to which a Member State must accord automatic recognition to a medical qualification awarded to a Community national by the authorities of another Member State on the basis of training undertaken partly outside the Community. In his opinion on that case, Advocate-General Jacobs stated that

" [u]nder Article 22 (9) [of the Directive] the authorities of the host Member State may (...) in the event of justified doubts ask the issuing Member State for confirmation that the training was indeed in accordance with Article 23 (10) ; again recognition must be automatic and unconditional if such confirmation is given but if not the situation falls outside the scope of the Directive. I would stress however that Article 22 applies only exceptionally and in the event of justified doubts - such as might be raised by specific information contained in the application for recognition for example rather than mere suspicions derived from, say, the applicant's original nationality: it does not entitle national authorities to indulge in delaying tactics or fishing expeditions, conduct which would run completely counter to the spirit of the Directive. "



In this respect, the Ombudsman is pleased to note that, in its letter addressed to the Permanent Representation of Germany on 24 July 2006, the Commission referred to Case C-110/01 *Tennah-Durez* and stated itself (11) :

" (...) the German authorities have a duty to verify the recognition of degrees and to generally recognise degrees from the new Member States. A Member State cannot relieve itself of this duty simply because it has doubts (Bedenken). The Member State must resolve the issue with the other Member State concerned bilaterally, in conformity with the Tennah-Durez judgement. The Member State cannot simply remain inactive. Only in the case of reasonable doubt (which is to be decided case by case), are the German authorities able to question the conformity certification issued by the Polish authorities. In such an event, the German authorities still have a duty to recognise the degree in question. If required, they can impose balancing measures.

I would like to point out that every time the German authorities receive a request for a degree to be recognised, they have a duty to decide within a prescribed time limit and make an appropriate decision. (...)

We would thus be grateful to the German authorities if they used the afore-mentioned principles for every request for recognition from Polish doctors and Czech specialists doctors. I would be very grateful if you could provide us with the remarks from the German authorities to this question within two months of receiving this letter. "

10 Finally, the Ombudsman recalls that, in his letter to the Commission opening the present inquiry, he drew the latter's attention to the fact that the Communication could be applicable. Therefore he finds it difficult to understand why, in its opinion, the Commission did not refer to the Communication.

Instead, the Commission took the view that the complainant's e-mail of 31 March 2006 could not have been registered as a complaint because the Commission had no legal grounds to launch an infringement procedure against Germany. However, in light of his findings in point 3.8 above and specifically of the Commission's own statements in its letter to the Permanent Representation of Germany quoted in point 3.9 above, it would seem, at first sight, that that reason, as it stands, is not entirely convincing. The Ombudsman also notes in this respect that, as referred to in point 3.6 above, the Commission itself appeared to have discussed the question of a potential infringement of Community law in its previous letters to the complainant. Moreover and as referred to in point 2.2 above, the Commission appears to be examining now the information requested by it from Polish authorities which, in substance, appears to be challenged by the German authorities and to be the reason for their refusal for the recognition of Polish doctors' qualifications on the basis of the certificate of conformity. In addition, for the reason explained in point 3.3 above, the Ombudsman does not agree with the Commission that it could not comply with the claim because the complainant had, in the meantime, that is, on 12 June 2006, received automatic recognition of his Polish qualification as a doctor and therefore his claim had become redundant.

On the basis of these considerations, the Ombudsman arrived at the preliminary conclusion that



the Commission has failed to handle the complainant's e-mail of 31 March 2006 in accordance with its Communication and has failed to explain why it could not do so. This failure appeared to be a first instance of maladministration.

The *second proposal* for a friendly solution

The *second proposal* for a friendly solution read as follows:

(2) The Commission could consider completing its reply to the complainant and duly addressing his claim that the Commission should institute an assistance or advisory mechanism designed to assist EU citizens to submit their claims against Germany for damages as regards the recognition of their doctor's training in Poland.

It was based on the following further considerations:

11 The complainant claimed that the Commission should institute an assistance or advisory mechanism designed to assist EU citizens to submit their claims against Germany for damages.

12 The Commission stated that the question of potential compensation for damages by Germany is an issue that should be dealt with by the competent German courts. It went on to add that, even if an infringement of EU law by Germany were to be proved, the settling of compensation for damages would not fall within the competence of the European institutions.

13 Although the above statement made by the Commission is true, it does not appear to be exhaustive in the context of the present claim.

First, the Ombudsman pointed out that citizens who have problems with the national administration may address their grievances to the national ombudsmen (or, in the case of Germany, to the committee on petitions of the Bundestag) and it is not excluded that their claims could be satisfied following the ombudsmen's mediation. This avenue of redress constitutes for citizens an alternative avenue of redress to the courts.

Second, in the Ombudsman's view, the present claim also concerns the issue of what the Commission could do to better inform citizens of one Member State who encounter problems with the recognition of their medical qualification in another Member State (in this particular case, problems of Polish doctors in Germany) on how they should proceed. The Ombudsman considers that one potential mechanism for the above issue is the development of the Commission's EURES website.

The Commission could also have referred to its recent reform of the system for the recognition of professional qualifications which, in the meantime, on 20 October 2007, ended with the replacement of the relevant directives on the recognition of professional qualification by a new Directive 2005/36/EC (12) (in particular as regards the establishment of contact points in the Member States which could provide citizens with information concerning the recognition of their professional qualification).

The Commission failed to consider the complainant's claim in these terms. This could constitute



a second instance of maladministration.

The Commission's reply to the Ombudsman's proposals for a friendly solution (dated 27 February 2008 and sent to the Ombudsman on 4 April 2008)

The Commission welcomed both proposals for a friendly solution.

As regards the first proposal, the Commission stated that, as suggested by the Ombudsman, the complainant's e-mail of 31 May 2006 was registered under reference 2008/4115 as a complaint. The complainant was sent an acknowledgement of receipt on 7 February 2008 (the Commission submitted a copy of that acknowledgement of receipt). "*In the same context*", the Commission sent a letter to the complainant in which it invited him to provide further information in order to re-examine his complaint. The Commission also stated that it had completed the examination of the general issue of the date of conformity which had been communicated by Poland. In light of that, "*the case of the complainant would be reviewed*." The Commission also stated that the complainant would be informed of the relevant conclusions.

As regards the second proposal, the Commission noted that, in his proposal for a friendly solution, the Ombudsman made reference to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (13) ("Directive 2005/36"), which entered into force on 20 October 2007 and made it obligatory for Member States to designate a contact point whose task would be to co-operate with other contact points and with the competent authorities in the hosting Member State in order to assist citizens in obtaining the rights conferred on them.

The Commission went on to state that the list of contact points had been completed and would be made available at the "professional qualifications website" (http://ec.europa.eu/internal_market/qualifications/index_fr.htm), along with an appropriate explanation addressed to citizens. The Commission further clarified that this website would also provide a link to the EURES website and announced that steps were being taken to establish a link to the professional qualifications website on the EURES website.

The Commission also pointed out that each Member State, including Germany, had an obligation under Directive 2005/36 to designate a co-ordinator for the activities of the relevant authorities who, in turn, shall liaise with the contact person. The names of such co-ordinators would be also published on the above website. The Commission stated that "*[i]n our reply to the complainant, we will insert the contact details of the German contact point*" and of the German co-ordinator.

The complainant's comments on the Commission's reply to the Ombudsman's proposals for a friendly solution

The complainant attached to his comments (a) the letter sent to him by the Commission on 26 February 2008, that is, one day before the Commission's reply to the Ombudsman's proposal for a friendly solution, and (b) his letter of the same day answering the Commission. According to the complainant, the Commission had not replied to the questions raised in his letter.

The Commission's letter of 26 February 2008

The heading of that letter was: "*Your complaint concerning the automatic recognition of your Polish qualifications (...)*" (emphasis added).



The Commission referred to its earlier correspondence with the complainant and stated that, in the meantime, it has obtained further information concerning the date proposed by the Polish authorities, as of which the training of Polish doctors complied with the minimum Community requirements ("the date of conformity").

The Commission stated that, on the basis of the above documents, it does not emerge that all diplomas in medicine awarded in Poland between 1985 and 1993 comply with the minimum education requirements as foreseen by the relevant Directive. It went on to note that "[i]t *could however be* " that, in the complainant's case, his education complied with the minimum requirements of the Directive. The Commission stated in this respect that " *it appears* " that the complainant received his doctor's diploma in Poland in 1992.

The Commission therefore asked the complainant to provide it with his university curriculum (including a plan of studies) for further examination of his complaint.

The complainant's reply of the same day (14)

The complainant stated that he could not understand the Commission's above request and could not see any reasons why, after four years of "idleness" on the part of the Institution, he should now be asked to provide it with the curriculum of the Warsaw School of Medicine. He further pointed out that:

First, such information is public and the Commission has enough means at its disposal to obtain such information.

Second, the Commission knows well that his qualifications have been finally recognised and he can now practise as a doctor in Germany. In this respect, the complainant recalled that, apart from medical education in Poland, he also holds a diploma in medicine issued by a German university and a German specialisation in surgery, and, that, as a result, no doubts should have been raised anyway by the German authorities as regards the equivalency of his medical education.

Finally, the complainant emphasised that the Commission had wrongly interpreted the subject-matter of his complaint to it. The complainant stated that he had complained as regards the discriminatory practice of Germany against Polish doctors and not as regards his own case. *The complainant's specific comments on the Commission's reply to the proposals for a friendly solution*

In summary, the complainant stated that he had agreed "in principle" with the proposal for a friendly solution but, in light of the above Commission's letter to him dated 26 February 2008, he was now considerably concerned by the Commission's response to that proposal.

The complainant took the view that the Commission's request, contained in its letter of 26 February 2008, that the complainant submit the curriculum of his studies on one of the Polish Schools of Medicine in 1986-1992 is not justified. By this point in time, the Commission should have been well aware of such a curriculum, given that the enlargement of the EU had already taken place four years earlier, that is, in May 2004, and, in addition, there had been a



long-standing dispute with respect to the German authorities' doubts concerning the qualifications of Polish doctors.

Moreover, the complainant pointed out that the essential issue in his case was the Commission's attitude in relation to the alleged fact that Germany infringed Community law. The complainant considers that there are no doubts that the German authorities infringed Community law by refusing to recognise the certificates of conformity issued by the Polish authorities, while all other EU Members recognised such certificates.

The complainant also underlined that, in this respect, he claimed that the Commission should establish a mechanism of assistance for Polish citizens who suffered damages as a result of the above discriminatory practice of the German authorities. In its reply to the friendly solution, however, the Commission referred to the information mechanism, which in the complainant's view, is not the same as an assistance mechanism.

The complainant requested that the present investigation should clarify whether or not Germany had violated Community law. In the event of a violation, the establishment of an assistance mechanism for Polish doctors would be justified. The complainant also pointed out that, once Community law is violated by a Member State, the Commission's reaction should be to take appropriate action against that Member State, instead of tolerating that violation and establishing a mechanism to inform the citizens about Community law. In that latter eventuality, citizens could no longer trust the Community and its organs.

THE DECISION

1 Preliminary remarks

1.1 The Ombudsman notes that, in his observations, the complainant stated that, during a meeting with German authorities, the Commission's representative stated that " *the German authorities should not worry about lawsuits possibly brought against them by Polish doctors who were discriminated against, for the likelihood of the outcome of such suits to be [sic] favourable for [sic] the Polish doctors be [sic] not high* ", and that, as a result, the German authorities had adopted a more uncompromising approach towards Polish doctors seeking for the recognition of their qualifications.

As far as the above complainant's statement could constitute a new allegation, the Ombudsman recalls that Article 2(4) of his Statute requires that a complaint " *must be preceded by the appropriate administrative approaches to the institutions and bodies concerned* ". The Ombudsman notes that the complainant does not appear to have contacted the Commission in relation to his new allegation. Therefore the Ombudsman is not entitled to deal with this allegation.

1.2 Moreover, although the Ombudsman notes that the complainant does not appear to be sure of the date of the above meeting and it is not clear when the complainant became aware of the relevant report on this meeting, he considers it useful to recall that, according to his Statute, there is a two-year time-limit for complaining to the Ombudsman starting from the date on which



alleged facts came to the attention of the person lodging the complaint.

2 Assistance to Polish doctors

2.1 The complainant alleges that the Commission failed to take appropriate action to assist the complainant and others affected by Germany's failure to comply with Community rules on the mutual recognition of the diplomas, certificates and other evidence of formal qualifications of Polish doctors.

The complainant referred to Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, of 23 September 2003, in force since 1 May 2004 (hereinafter "the Directive") (15) .

2.2 In its opinion on the complaint, the Commission stated that, from February 2004 to May 2006, it had assisted the complainant in dealing with his application for the recognition of his qualification which he had submitted to the German authorities and replied to all his communications. The Commission stated that "*[t]hanks to the Commission's replies to queries from Polish doctors applying for recognition of their qualification in Germany, many of these persons finally obtained recognition in Germany on the basis of acquired rights.*"

The Commission also stated that (i) on 24 July 2006, it sent a letter to the Permanent Representation of Germany in Brussels concerning the recognition of Polish doctors' qualifications on the basis of the certificate of conformity issued by the Polish authorities; (ii) it contacted the Polish authorities in order to assess whether the medical training provided as from 1956-57 is, as a general rule, to be considered to be in compliance with the minimum training requirements of the Directive and is now examining the information provided by them; and (iii) it is still pursuing its action in order to restore mutual trust between Poland and Germany.

2.3 On the basis of the evidence available, it appears that the Commission has undertaken a number of actions in order to assist Polish doctors.

First, the Commission contacted the German authorities in order to resolve the individual problems of a number of Polish doctors (including the complainant) who wished to work in Germany, with regard to the recognition of their qualifications on the basis of the acquired rights. This action by the Commission appeared to constitute an immediate solution to their problem. In this respect, however, the Ombudsman wishes to point out that the present complaint does not refer to the recognition of the qualifications of Polish doctors on the basis of the acquired rights considered in each individual case, that is, on the basis of a certificate confirming that they have worked as doctors during three consecutive years out of the preceding five years. Rather, this complaint concerns the recognition of their qualification on the basis of the certificate of conformity issued by the Polish authorities, in general. In that certificate, the Polish authorities declare that the medical training of Polish doctors, if started as



from 1956-57, is compliant with the minimum training requirements set out in the Directive ("the certificate of conformity").

Second, the Commission concentrated on the general issue of the automatic recognition of the Polish doctors' qualifications, granted on the basis of the certificate of conformity issued by the Polish authorities. With this in mind, it contacted both the German and Polish authorities and maintained an intensive dialogue with them. The Ombudsman also understands that the Commission encouraged bilateral contacts on this matter between the relevant Polish and German national authorities, and notes that such action appears to correspond to the spirit of the Directive (16). The Ombudsman also notes that, in its letter to the German authorities dated 24 July 2006, the Commission stated that "*[t]he problem concerning the recognition of Polish medical degrees has already been the subject of numerous correspondence exchanges between the German Federal Ministry of Health and [the Commission's] services.*" Furthermore, the Ombudsman notes that the Commission contacted the Polish authorities with a view to assessing whether the medical training as from 1956-57 was, as a general rule, to be considered as being in compliance with the minimum training requirements of the Directive as claimed by the Polish authorities.

Finally, the Commission examined the documentation provided by the Polish authorities. In its further reply to the Ombudsman's proposal for a friendly solution, the Commission informed the Ombudsman that it had just ended its examination of the information provided by the Polish authorities and that it would inform the complainant of the results of that examination. In its letter to the complainant dated 26 February 2008, the Commission stated that, on the basis of the information provided by the Polish authorities, it appears that not all diplomas of medicine studies issued by the Polish authorities in the years 1985-93 comply with the minimum requirements of the Directive.

2.4 In light of the above, the Ombudsman considers that the Commission's actions thus far appear to be appropriate and no further inquiries are justified into this aspect of the complaint. However, in the Ombudsman's understanding, the Commission could be reasonably expected to continue its efforts to resolve the problem of the recognition of the qualifications of Polish doctors in Germany, taking into account a fact often underlined by the complainant in the course of the inquiry, to wit, that other Member States appear to recognise their qualifications on the basis of certificates of conformity. The Ombudsman trusts that the conclusions the Commission has reached until now, on the basis of the information provided by the Polish authorities, will receive a due and timely follow-up. This would be in conformity with that the Commission communicated to the complainant, in part, in its letter of 26 February 2008. The Ombudsman will make a further remark below concerning this matter.

3 Handling of the infringement complaint

3.1 On 21 January 2008, the Ombudsman, based on his considerations contained in points 1-10 of the part entitled "THE FRIENDLY SOLUTION" above, made a proposal for a friendly solution ("the *first* proposal for a friendly solution"), which suggested that the Commission could consider re-examining the complainant's e-mail of 31 March 2006. He also suggested that the Commission could consider addressing that e-mail in accordance with its Communication to the European Parliament and the European Ombudsman on relations with the complainant in



respect of infringements of Community law (17) ("the Communication"). Doing so would imply recording the e-mail in question as a complaint and, in case it does not consider it appropriate to launch an infringement procedure, informing the complainant of the reasons underlying such a decision.

3.2 The Ombudsman welcomes the fact that the Commission accepted his *first* proposal for a friendly solution to the extent that, on 7 February 2008, acting in accordance with the Communication, it registered the complainant's e-mail of 31 March 2006 as a complaint under reference 2008/4115.

3.3 In his further observations, however, the complainant did not appear to be entirely satisfied with the Commission's above action taken in response to the Ombudsman's *first* proposal for a friendly solution. The complainant cited the content of the Commission's subsequent letter to him dated 26 February 2008 as the reason for not being entirely satisfied with the Commission's action.

3.4 In his observations, he pointed out, in summary, that, in its 26 February 2008 letter, the Commission referred to his complaint 2008/4115 as concerning the automatic recognition of his individual qualifications, while his complaint referred to the general issue of the recognition of the qualifications of Polish doctors and not to his personal situation. In that letter, the Commission also expressed its readiness to assess whether the complainant's qualifications acquired in Poland between 1985 and 1993 complied with the minimum requirements of the Directive while it was perfectly aware that, in 2006, the complainant's qualifications had already been recognised by the German authorities.

He requested, therefore, that the present investigation clarify whether or not Germany had violated Community law.

3.5 The Ombudsman clarifies in this respect that his *first* proposal for a friendly solution, as it was formulated, was based on the Communication and contained two suggestions:

(i) that the Commission could register the complainant's e-mail of 31 March 2006 as a complaint in accordance with the Communication, which the Commission did on 7 February 2008, and

(ii) that, in case the Commission did not consider it appropriate to launch an infringement procedure, it could inform the complainant of the reasons underlying such a decision. This the Commission could not yet do because, reasonably, it needed, and, according to the Communication, had at its disposal, a specific amount of time to investigate that complaint.

3.6 The Ombudsman understands that, when replying to his proposal for a friendly solution and when sending to the complainant the relevant letter on 26 February 2008, the Commission had not yet completed its investigation of the complaint with a view either to arriving at a decision to issue a formal notice to the German authorities or to closing the case. The Ombudsman recalls therefore that, according to the Communication, the Commission should decide to issue a formal notice within the pre-litigation procedure on the basis of Article 226 EC or close the case



within not more than one year from the date of the registration of the complaint. The Ombudsman's does not understand the Commission's statement, made in its 26 February 2008 letter to the complainant, to the effect that, on the basis of its analysis of the information provided by the Polish authorities, " *it does not emerge that all diplomas in medicine awarded in Poland between 1985 and 1993 comply with the minimum education requirements as foreseen by the relevant Directive* " to constitute such a decision.

It is the Ombudsman's understanding, therefore, that the Commission will, if applicable, inform the complainant in due time about its answer to the second suggestion contained in his proposal for a friendly solution.

3.7 In light of his findings in points 3.4 and 3.6 above, the Ombudsman considers that no further inquiries are justified as regards the present allegation.

3.8 The Ombudsman notes however that, in his observations regarding the Commission's letter to him dated 26 February 2008, the complainant expressed some concerns and, more particularly, argued that the Commission's said letter failed to reply to the complainant's questions put forward in his reply of the same day. The Ombudsman decides therefore that, to the extent that they concern such a failure to reply, the complainant's observations should be registered as a new complaint and should be dealt with accordingly.

4 Claim that the Commission should establish an assistance or advisory mechanism for Polish doctors to allow them to submit their claims for damages against Germany

4.1 On 21 January 2008, on the basis of his considerations contained in points 11-13 of the part "THE FRIENDLY SOLUTION" above, the Ombudsman also made a *second* proposal for a friendly solution. In that *second* proposal, he suggested that the Commission could consider completing its reply to the complainant by duly addressing his claim that the Commission should institute an assistance or advisory mechanism designed to assist EU citizens in submitting against Germany their claims for damages regarding the recognition of their doctor's training in Poland.

In doing so, the Ombudsman agreed with the Commission that the claim for damages could be made by Polish doctors before German courts but also took the view that the Commission could assist these doctors by providing the necessary information in light of the new Directive 2005/36 (18) , in particular, as regards the establishment of contact points in the Member States, which could provide them with information concerning the recognition of their professional qualifications.

4.2 In its reply to that proposal, the Commission referred in detail to the organisation of contact points under the above Directive. Further, it stated that the relevant information, including such a contact point in Germany, would be sent to the complainant, when the Directive is implemented, and would be made available at the Commission's professional qualifications website.

In addition, it stated that a reciprocal link with EURES would be established.



4.3 In his observations, the complainant considered, in summary, that such "informative" assistance is not sufficient, especially in case an infringement of Community law by Germany were to be found. He also, rightly, pointed out that if the Commission were to tolerate infringements of Community law by Member States and were to establish a mechanism to inform the citizens about Community law instead of taking appropriate action, citizens would no longer trust the Community and its organs.

4.4 In this respect, the Ombudsman recalls the well-established case-law that, while the Commission may choose not to pursue an infringement before the Court of Justice, it is not empowered, in the course of Article 226 EC proceedings, to exempt Member States from Community obligations and that further it can not prevent individuals from relying on their Treaty rights to challenge measures taken by a Member State which might be contrary to Community law (19) . However, as already pointed out by the Ombudsman in his proposal for a friendly solution, it is for national courts to uphold individual rights guaranteed by Community law and for these courts to decide on the nature and extent of damages resulting from breaches of Community law by such measures.

4.5 The Ombudsman thanks the Commission for its reply which appears to comply with his proposal. However, in light of the complainant's observations as referred in point 4.3 above, the friendly solution cannot be considered as successful.

4.6 In light of the above the Ombudsman considers that no further inquiries are justified as regards the present aspect of the complaint either.

Conclusion

In light of the complainant's comments on the Commission's reply to the Ombudsman's proposals for a friendly solution, no further inquiries are justified into the present complaint.

The Ombudsman understands however that, in due time and in case the Commission does not consider it appropriate to start an infringement procedure against Germany as a result of the complainant's complaint 2008/4115, it will inform the complainant of the reasons underlying such a decision. In acting in such a way, the Commission would, if applicable, comply with the second suggestion contained in the Ombudsman's *first* proposal for a friendly solution. The Ombudsman understands that the Commission could not do to date, because, according to the Communication, it needs time to investigate that complaint. In the Ombudsman's view, prolonging his inquiry until the Commission ends its investigation of the complaint would not be useful. He, therefore, decides to close the case.

FURTHER REMARK

The Ombudsman trusts that the conclusions the Commission has reached until now, on the basis of the information provided by the Polish authorities, will receive a due and timely follow-up in the context of its investigation of complaint 2008/4115, concerning the infringement by Germany of Community rules concerning the mutual recognition of the diplomas, certificates and other evidence of formal qualifications presented by Polish doctors.



Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 1993 L 165, p. 1, as amended.

(2) COM(2002)141 final.

(3) COM(2002)141 final.

(4) *"(...) ein Vertragsverletzungsverfahren gegen Deutschland einzuleiten sowie auch alle Maßnahmen zu ergreifen, damit die Diskriminierungspraktiken der Bundesrepublik Deutschland mit sofortiger Wirkung unterbunden werden "*.

(5) *" Die automatische Anerkennung von Diplomen, deren Ausbildung vorher [dem Beitritt] begonnen wurde, setzt zusätzlich voraus, dass entweder eine Bescheinigung der PL Behörden beigelegt wird aus der hervorgeht dass der/die Betreffende (a) eine Ausbildung absolviert hat, die mit Mindestkriterien konform ist oder (...) "*.

(6) *" Weiters ergibt sich eine automatische Annerkennungspflicht (wenn alle andere n Bedingungen erfüllt sind) ebenfalls aus der Richtlinie (...) "*.

(7) *" 'In jedem Fall, hat Deutschland entsprechend der Richtlinie Anerkennungen zu erteilen, wenn eine entsprechende - den Mindestanforderungen Rechnung tragende - Konformitätsbescheinigung beigebracht wird.(...) "*.

(8) Case C-110/01 *Tennah-Durez* [2003] ECR I-6239.

(9) Article 22: *" In the event of justified doubts, the host Member State may require of the competent authorities of another Member State confirmation of the authenticity of the diplomas, certificates and other evidence of formal qualifications issued in that other Member State and referred to in Chapters I to IV of Title II and also confirmation of the fact that the person concerned has fulfilled all the training requirements laid down in Title III. "*

(10) Article 23 specifies the minimum requirements for the persons wishing to take up and pursue a medical profession in another Member State.

(11) The Commission's letter was drafted in German. An informal translation into English of the relevant fragments of that letter was made by the Ombudsman's Office.

(12) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, which repeals (with effect from 20 October



2007) Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC, 89/48/EEC, 92/51/EEC, 93/16/EEC and 1999/42/EC, OJ 2005 L 255, p. 22 (emphasis added).

(13) OJ 2005 L 255, p. 22.

(14) A copy of that reply was sent to the Ombudsman on that same day.

(15) OJ 1993 L 165, p. 1.

(16) See footnote 9 above.

(17) COM(2002)141final.

(18) See footnote 1.

(19) See Joined Cases C-142 and 143/80 *Amministrazione delle Finanze dello Stato v Essevi* [1981] ECR 1413.