

## Decision of the European Ombudsman on complaint 3612/2006/BB against the European Commission

Decision

**Case 3612/2006/BB - Opened on 23/02/2007 - Decision on 02/07/2008**

Strasbourg, 2 July 2008

Dear Ms V.,

On 24 November 2006, you submitted a complaint to the European Ombudsman on behalf of Ms G. against the European Commission concerning its handling of a request for information regarding the "European Year of Equal Opportunities for All". In your complaint, you submitted a number of allegations (1) . For reasons explained in my letter to you of 23 February 2007, I decided to open an inquiry into only some of them.

On 23 February 2007, I forwarded the complaint to the President of the Commission.

The Commission sent its opinion on 10 May 2007. I forwarded it to you with an invitation to make observations, which you sent on 29 June and 16 July 2007.

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

### THE COMPLAINT

#### *Background*

Based on a proposal of the European Commission, the European Parliament and the Council of the European Union adopted Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007) - towards a just society (2) ("Directive 771/2006"). The Commission's working document of 1 June 2005 (3) , which was annexed to the Commission's Proposal, proposed "*four key messages - Rights - Representation - Recognition - and Respect*" as specific objectives of the "European Year of Equal Opportunities for All".

These four key messages later became the objectives of the European Year and were listed in Article 2 of Decision 771/2006 as follows:

*" (a) Rights - Raising awareness of the right to equality and non-discrimination. The European Year will highlight the message that all people are entitled to equal treatment, irrespective of*



*their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Year will make groups that are at risk of discrimination more aware of their rights and of existing European legislation in the field of non-discrimination.*

*(b) Representation - Stimulating debate on ways to increase the participation in society of groups that are victims of discrimination and a balanced participation of men and women. The European Year will encourage reflection and discussion on the need to promote their greater participation in society, and their involvement in actions designed to combat discrimination, in all sectors and at all levels.*

*(c) Recognition - Facilitating and celebrating diversity and equality. The European Year will highlight the positive contribution that people, irrespective of their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, can make to society as a whole, in particular by accentuating the benefits of diversity.*

*(d) Respect - Promoting a more cohesive society. The European Year will raise awareness of the importance of eliminating stereotypes, prejudice and violence, promoting good relations between all in society, and, in particular, among young people, and promoting, and disseminating the values underlying the fight against discrimination. "*

#### *The complaint*

According to the complainant, who is a Ph.D. student, she had as early as 2001 developed already a "4R-scheme" which had become the analytical framework of her ongoing doctoral dissertation. She maintained that her "4R-scheme" had obviously been the basis for the development of the Commission's four key messages in its strategy for the "European Year of Equal Opportunities for All".

She found that there could be a case of copyright infringement, and, on 7 June 2005, sent an e-mail addressed to the general mailbox of the Commission's Directorate-General for Employment ("DG EMPL") requesting the contact details of the person in charge of the "European Year of Equal Opportunities for All".

On the next day, 8 June 2005, the complainant sent another e-mail addressed to DG EMPL, namely, to Commissioner Špidla, Director-General Quintin, and Ms Nolan, Head of Unit, alleging copyright infringement.

She attached to this e-mail a detailed letter dated the same day, in which she requested an urgent investigation regarding a suspected copyright infringement. The complainant informed the Commission that the setting of the four core themes in its strategy for the "European Year of Equal Opportunities for All" was a slightly modified version of the "4R-scheme" over which she held the copyright since 2001. The complainant stated that Professor X was willing to testify to the originality of her work. The complainant asked the Commission to provide her with the information relative to the preparatory documents to its strategy for the 2007 - "European Year of Equal Opportunities for All".

In the above-mentioned letter of 8 June 2005, the complainant also requested the materials to



be sent " to [ her ] following (2) addresses: 1. [ her German postal address ] [ and ] 2.[ her Finnish postal address ] ". Moreover, according to the complainant, her lawyer had provided her contact details in Finland.

On 16 June 2005, the complainant sent another e-mail addressed to Ms Nolan, Head of Unit, requesting information regarding an infringement of her copyright and reiterating her request of 8 June 2005 for information on the preparation of the "European Year of Equal Opportunities for All".

On 22 June 2005, Director-General Quintin, replied to the complainant. In her reply, the Director-General informed the complainant that the Commission considered that her allegations of copyright infringement were unsubstantiated and unfounded. She explained that the Commission has never made use of nor accessed any work that she had developed on the issue of non-discrimination for the purposes of drafting the Commission's proposal on the European Year. Moreover, the Director-General noted that the selection of the four keywords linked to the objectives of the European Year, namely, Rights, Representation, Recognition and Respect, came about exclusively as a result of an internal brainstorming exercise carried out by Commission officials. The Director-General seriously contested the possibility that an unpublished doctoral thesis which was still in preparation might have given rise to copyright on a title that was composed of just four words. She also informed the complainant that there was no external input to the drafting of the European Year proposal, as the complainant had implied in her messages by referring in particular to the possibility that a " 4R scheme " might have been presented during training activities organised by the Commission services during which Professor X delivered a one-day training course approximately a year earlier. The Director-General underlined that none of the training materials distributed by Professor X on that occasion contained any references to a " 4R scheme ".

On the same day, the complainant acknowledged by e-mail receipt of the Director-General's letter dated 22 June 2005. The complainant quoted a sentence in that letter in which she referred, in her letter of 8 June 2005, to Professor X. In this regard, the complainant requested that Professor X's name not be confused with her infringement claims, as she had only referred to him as a potential witness with respect to the originality of her work.

On 23 June 2005, the complainant reiterated her request, made in her letter of 8 June 2005, by stating that " [ t ]he posting addresses are mentioned in my [l]etter [ of ] 8 June 2005. "

On 24 June 2005, the Commission sent its reply solely to the complainant's German address.

On 27 June 2005, the complainant acknowledged the Commission's reply of 24 June 2005.

On 30 June 2005, the complainant reiterated her request for the preparatory documents indicating how the Commission came up with the four core themes and further requested access to the register of all the papers connected to the preparatory work of the "European Year of Equal Opportunities for All".



On 1 July 2005, the complainant sent a letter to the Commission requesting information about which documents connected to the preparation of the "European Year of Equal Opportunities for All" appear in the Commission's register of documents. As she had not received a reply, she contacted the Ombudsman (complaint 1711/2006/BB). The Ombudsman service contacted the responsible service of the Commission. Further to this intervention, the Commission sent to the Ombudsman its reply of 14 July 2006 to the complainant. After examining that reply of 14 July 2006, on 12 September 2006, the Ombudsman closed complaint 1711/2006/BB as settled by the institution.

Furthermore, on 12 October 2006, the complainant's lawyer requested the "(...) *complete list of 'travaux préparatoires' - documents made before June 2005* " from the Commission. Moreover, the lawyer drew the Commission's attention to its delay in answering the complainant's letter of 1 July 2005 and to its use of the wrong address by stating: " *[w]e requested [y]ou to provide the documents in July 2005 and [y]ou sent the list in July 2006 to Germany, which wasn't any longer [the complainant's] residence.* "

On 19 October 2006, the Commission replied regretting the confusion in its use of the complainant's addresses and explaining that the only address the Commission had at the time was the one in Germany. As regards the substance, the Commission explained that no further preparatory documents exist.

The complainant was not satisfied and turned to the Ombudsman again. The Ombudsman decided to open his inquiry into the following allegations made by the complainant:

(1) The Commission provided the complainant with insufficient information regarding the person(s) responsible for the preparation of the "European Year of Equal Opportunities for All".

The complainant therefore referred to her request of 7 June 2005 and argued that "in a previous e-mail" reply to one of her original requests, the Commission had only informed her that " *it is not yet decided who will in the end be responsible for the year of Equal Opportunities as it will take place only in 2007. Currently we are preparing the year of Mobility in 2006* " [sic].

and,

(2) The Commission failed properly to handle the complainant's request for information to the extent that it sent its replies to her only to her address in Germany, although she had requested (in her letter of 8 June 2005) that these replies be sent also to her address in Finland.

## THE INQUIRY

### The Commission's opinion

The Commission made, in essence, the following remarks.

Since June 2005, an intense exchange of correspondence has taken place between the complainant and the Commission regarding her "copyright" complaint on the " 4Rs " (Rights,



Representation, Recognition, Respect) of the "European Year of Equal Opportunities for All".

On 22 June 2005, the Commission replied to the complainant's e-mail messages of 7 and 16 June 2005 addressed to Commissioner Špidla, Director-General Quintin and Ms Nolan, Head of Unit, in which she claimed that her copyright on a "4R scheme" had been infringed by the Commission in connection with its proposal to declare 2007 "European Year of Equal Opportunities for All".

On 24 June 2005, the Director of DG EMPL acknowledged receipt of the complainant's e-mails of 22 and 23 June 2005 and referred to the Commission's website that contained the documents related to the proposal to designate 2007 the "European Year of Equal Opportunities for All".

On 4 July 2005, the Director of DG EMPL replied to the complainant's e-mails of 27 June and 30 June 2005 explaining that the idea of launching a European Year was first put forward by the Commission in its Communication on the Social Agenda which was adopted in February 2005. The Commission provided the complainant with the website addresses of the above-mentioned Communication, as well as with a website link in which the complainant could find all documents relating to the European Year proposal. It noted that the "*travaux préparatoires*", to which the complainant referred, was in fact the ex ante impact assessment document which had been sent to her as an attachment by e-mail of 24 June 2005.

In its opinion, the Commission also noted that the complainant maintained that the original idea behind the "4Rs" came from her doctoral thesis. According to the Commission, the complainant has not been able to prove her ownership of copyright. The Commission has underlined and informed the complainant that the idea behind the "4Rs" came from an extensive internal exchange of views and that neither external information nor experts were used or consulted in this regard.

The Commission concluded that, on two occasions, namely, on 24 June 2005 and 14 July 2006, it sent to the complainant all the available information regarding the "European Year of Equal Opportunities for All". In its opinion, the Commission confirmed that no other documents exist regarding the choice of "4Rs", as it was simply the result of internal "brainstorming".

As regards the first allegation, the Commission replied that until September 2005 Ms Nolan was the Head of Unit responsible for the preparation of the "European Year of Equal Opportunities for All". Mr Lockett replaced her immediately thereafter and until December 2006. Since January 2007, Mr Olsson has been the responsible Head of Unit.

As to the second allegation, the Commission observed that the complainant was complaining that it had not sent the requested information to the two addresses she had provided in her letter of 8 June 2005 addressed to Commissioner Špidla, Director-General Quintin, and Ms Nolan, Head of Unit. According to the Commission, a careful investigation into the archives of the three recipients has led to the conclusion that this letter has never been found in the correspondence files of any of the three recipients. As the Commission never received this



letter, it could not have sent the information to an address it was not aware of. This is the reason why the Commission only replied to the complainant's address in Germany.

The Commission concluded that it has always responded to the complainant's requests in good faith and without withholding information on the internal preparations of the Year on Equal Opportunities for All.

#### **The complainant's observations**

In summary, the complainant did not make any additional comments regarding her first allegation concerning the failure to provide information on who was responsible for the preparation of the "European Year of Equal Opportunities for All".

The complainant maintained her second allegation by providing a copy of sent-mail receipt to Commissioner Špidla, Director-General Quintin, and Ms Nolan, Head of Unit as proof of that her letter of 8 June 2005 had been sent by e-mail of 8 June 2005 at 22:24:03 +0200 (CEST) and signed with her German contact details.

The complainant also stated that the Commission's argument that her letter of 8 June 2005 had never reached the Commission's main archive was not believable.

## **THE DECISION**

### **1 Preliminary remark**

1.1 The present complaint followed a previous complaint (3559/2005/BB) submitted by the complainant on 14 November 2005 which concerned, in essence (i) access to the preparatory documents for the "European Year of Equal Opportunities for All" and (ii) alleged copyright infringement by the Commission.

The European Ombudsman found no sufficient grounds for opening an inquiry into that complaint because the complainant had not supplied enough supporting evidence regarding (i) the existence of complementary preparatory documents in addition to those that had already been provided to her by the Commission or (ii) her copyright and its potential infringement by the Commission. Thus, on 11 January 2006, the Ombudsman closed the case.

1.2 Moreover, in her subsequent correspondence of 19 April 2006, the complainant clarified that she did not want to complain to the Ombudsman about copyright as such.

1.3 The present inquiry does not therefore involve an evaluation of copyright issues, even though the exchange of the relevant correspondence between the complainant and the Commission to which the present decision refers concerns in substance copyright issues.

### **2 Alleged insufficient information regarding who was responsible for the preparation of the "European Year of Equal Opportunities for All"**

2.1 The complainant alleged that the Commission had provided insufficient information regarding the person(s) responsible for the preparation of the "European Year of Equal Opportunities for All".



2.2 In its opinion, the Commission provided the names of the Heads of Unit responsible for the preparation of the "European Year of Equal Opportunities for All" during different phases of its preparation.

2.3 The Ombudsman first notes that, on 7 June 2005, the complainant asked the Commission explicitly to provide her with the name(s) in question by stating: "*With regard to the alleged copyright infringement, please send to me without delay the contact details to [ sic ] the person that is in charge of the 'European Year of Equal Opportunities for All' "*. According to the complainant her question was justified by the fact that in one of its previous e-mails, the Commission had only informed her that: "*it is not yet decided who will in the end be responsible for the year of Equal Opportunities as it will take place only in 2007. Currently we are preparing the year of Mobility in 2006 "* [sic].

Even though it appears that, on the next day, she addressed a further e-mail to the Commission directly to a named Head of Unit, namely, Ms Nolan, the Ombudsman understands that the complainant was not still sure whether the contact person whom she was addressing was the appropriate person.

2.4 On the basis of the documentary evidence available, it appears that the Commission did not, in any of its subsequent letters addressed to the complainant, reply to the complainant's specific query of 7 June 2005, and did not explain why it could not do so.

2.5 However, the Ombudsman observes that, in its opinion issued in the context of the present inquiry, the Commission has provided the detailed information regarding the persons responsible for the preparation of the "European Year of Equal Opportunities for All".

In her subsequent observations, the complainant did not appear to sustain her allegation.

In these circumstances, the Ombudsman considers that the Commission appears to have taken the steps to respond to the complainant's first allegation and therefore concludes that no further inquiries are necessary into this aspect of the complaint.

### **3 Alleged improper use of the complainant's addresses**

3.1 The complainant alleged that the Commission failed properly to handle her request for information to the extent that it sent its replies to her to her address in Germany alone, although she had requested (in her letter of 8 June 2005) that the replies should be sent to both her German and Finnish addresses.

3.2 The Commission observed that it carried out a careful investigation into the e-archives of the three recipients of the above complainant's letter sent by e-mail, namely, Commissioner Špidla, Director-General Quintin, and Ms Nolan, Head of Unit. However, this letter sent by e-mail was never found in the e-archives of any of the three recipients. As the Commission never received this letter, it could not have sent the information to an address it did not have. This is the reason why it only replied to the complainant's address in Germany, which it knew because her previous letters were sent from her German postal and e-mail addresses.





3.3 The Ombudsman examined the complainant's e-mail of 8 June 2005 and the letter attached to it, a copy of which she had provided with her complaint. He, first, observes that in that letter, the complainant clearly provided both her German postal address and Finnish postal address. The complainant also stated that " *[ a ]ll materials requested in this letter shall be sent to the following two (2) addresses: 1. [ German postal address ] [ and ] 2. [ Finnish postal address ]* ".

3.4 At the outset, the Ombudsman points out that, in his understanding, on 8 June 2005, the complainant asked the Commission and three named individuals to send all correspondence to her Finnish and German addresses because, given her intention to change her place of residence, there was a risk that she could fail to receive the correspondence if it were sent to only one of the above addresses. The Ombudsman notes in this respect that, in its communication to the Commission dated 12 October 2006, the complainant's lawyer stated: " *[w]e requested [y]ou to provide the documents in July 2005 and [y]ou sent the list in July 2006 to Germany, which wasn't any longer [ the complainant's ] residence.* "

3.5 In this context, the Ombudsman observes that the Commission sent replies on 22 June 2005, 4 July 2005 and 14 July 2006 only to the complainant's German address. In its opinion, the Commission explained that, in summary, it did so because the complainant's letter of 8 June 2005, requesting that the answer be sent to the two addresses, appeared not have been received by its services.

3.6 The Ombudsman appreciates that the Commission conducted an investigation into its archives in order to trace the complainant's letter in question, which was sent by e-mail.

3.7 The Ombudsman is however concerned that no trace of that letter was found while the complainant provided in her observations a copy of the sent-mail receipt as proof that her letter of 8 June 2005 had been sent by e-mail of 8 June 2005 at 22:24:03 +0200 (CEST), and contained her Finnish and German contact details.

3.8 On the basis of the evidence available, it does not appear therefore certain that the Commission did not receive the complainant's e-mail in question, even though, on the other hand, it is not excluded that, in the framework of the Commission's internal distribution, the letter attached to it did not reach its direct addressees at DG EMPL, namely, Commissioner Špidla, Director-General Quintin and Ms Nolan, Head of Unit.

3.9 Nevertheless, the Ombudsman notes that (i) on 23 June 2005, the complainant referred to the request made in her letter of 8 June 2005:

" *With reference to my l[e]tter dated 8 June 2005, and to my mails from yesterday: Please see to it that all the travaux préparatoires of the "European Year for Equal Opportunities for All", along with the documents sent to the European Parliament, will be posted to me today. The posting addresses are mentioned in my [ l ]etter [ of ] 8 June 2005.* " (emphasis added).

He also notes that (ii) in its reply of 24 June 2005, the Commission acknowledged receipt of the complainant's e-mail of 23 June 2005.





3.10 In light of the above, the Ombudsman is not convinced that the Commission could be unaware of the need to use more than one of the complainant's addresses in order to contact her.

3.11 Taking into account his finding in point 3.4 above, the Ombudsman notes however that, in fact, all of the Commission's replies reached the complainant, at her German address.

Moreover, already in the course of the exchange of the correspondence with the complainant before the complaint was submitted to the Ombudsman, the Commission clarified the issue of the addresses. Furthermore, in its letter of 19 October 2006 to the complainant, it expressed its regret for the confusion in the addresses and sent its reply to the complainant's address in Finland, which appeared to be her current address.

The Ombudsman understands that the Commission failed to send its answer to both addresses because of the confusion which it admits existed in the current dossier and for which it has apologised. The Ombudsman therefore trusts that, in normal circumstances and in the interests of good relations with citizens, the Commission will send its replies to the various addresses provided by the citizens, if they so request.

3.12 The Ombudsman considers therefore that no further inquiries into this matter appear necessary.

#### **4 Conclusion**

For the reasons mentioned in point 2.5 it appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the first allegation and has thereby satisfied the complainant in this regard and that therefore no further inquiries are necessary into this aspect of the complaint. As regards the second allegation, and for the reasons mentioned in point 3.11 the Ombudsman also finds that no further inquiries appear necessary.

In these circumstances, the Ombudsman closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) The Ombudsman concluded that there were no sufficient grounds to open an inquiry into the complainant's allegations concerning (i) a misleading statement in the Commission's letter of 19 October 2006 and (ii) the inadequate and inappropriate reasoning of the Commission's replies. As regards the allegation concerning the communication of a letter to a third party, the Ombudsman found that the complainant had not made appropriate prior administrative



approaches.

(2) OJ 2006 L 146, p. 1.

(3) Document SEC(2005) 690.