THE BACKGROUND TO THE COMPLAINT

1. On 2 March 2007, the complainant applied for a vacancy as a secretary under a temporary agent contract scheme at the European Economic and Social Committee (EESC). She was pre-selected and then invited to a medical examination, an interview and a practical test. On 2 April 2007, she passed all of them.

2. On 15 April 2007, she asked a member of the Selection Panel, Ms X., to confirm whether she had been selected. On 16 April 2007, Ms X. informed her by e-mail that she had indeed been selected. Ms X also informed her that it was normal practice to sign the contract on the first working day. However, she stated that the EESC would send the complainant an offer letter once it received all the necessary documentation from her. On 17 April 2007, the EESC requested the complainant to submit that documentation. In response, the complainant asked whether she should send copies of the requested documents or whether she could bring them with her on her first day of work at the beginning of June 2007. On 24 April 2007, the EESC administration confirmed that this would be possible.

3. On 11 May 2007, the EESC informed the complainant that she could not be recruited. Following an examination of her file, it transpired that she had not completed three years of post-secondary studies, which was a minimum requirement for recruitment to that post. On 13 May 2007, the complainant informed the EESC that she had provided all the information concerning her education and professional experience in her application letter and curriculum vitae. She also presented this information to the Selection Panel during her interview. Following the positive answer from Ms X. concerning her recruitment, the complainant gave the legally required one month’s notice to her employer in Finland, rented an apartment in Brussels and rented out her apartment in Helsinki.

4. On 14 May 2007, an EESC official informed the complainant that her case would be examined. On 23 May 2007, the Head of Unit for Recruitment confirmed that she could not be recruited to the post. By letter of 31 May 2007, the complainant requested the Secretary-General of the EESC to intervene or ensure that she received compensation [1]. On 12 July 2007, the EESC sent a letter of apology to her. As compensation for the damage she suffered, it offered her an employment contract for a period of four months. The complainant did not receive this letter because she had already moved from her Brussels
address. On 19 July 2007, she sent the EESC her new contact details in Finland. By letter of 13 August 2007, the EESC renewed the above-mentioned offer. On 15 August 2007, the complainant replied that she was no longer in a position to accept its recruitment offer. On 19 November 2007, the complainant turned to the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

5. The Ombudsman opened an inquiry into the following allegation and claim.

*Allegation*: The EESC belatedly, that is, after the complainant's selection and at an advanced stage of the procedure for her recruitment, decided that she did not meet the relevant educational requirements.

*Claim*: The EESC should compensate the complainant for the damages caused to her by its belated decision.

THE INQUIRY

6. The letter opening the inquiry was forwarded to the President of the EESC. The EESC sent its opinion on 13 June 2008, which was then forwarded to the complainant with an invitation to make observations. On 22 July 2008, she submitted observations and then, on 10 June 2009, detailed information and supporting documentation on the damages she allegedly suffered. The Ombudsman made a friendly solution proposal on 11 September 2009.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation that the complainant did not meet the relevant educational requirements and corresponding claim, contained in the belated decision

*Arguments presented to the Ombudsman*

7. The complainant pointed out that, on 15 April 2007, she expressly requested the EESC to confirm that she had been selected for the job. She needed this information in order to give the standard legally-required one month's notice to her employer in Finland. Following the positive reply from the EESC's services to that question, she gave notice to her employer in Finland. She also rented out her apartment in Finland and also rented an apartment in Brussels.

8. The complainant pointed out that, in her job application and again during the interview, she provided information regarding her current studies and future graduation date and
requested to be informed of the certainty of her recruitment. She went on to point out that the EESC only cancelled her recruitment on 11 May 2007. She felt that the cancellation, sent to her on 11 May 2007, was belated because it was made only a few weeks before the date on which she was due to start her new job in Brussels, namely, 1 June 2007. The complainant argued that she suffered financial damage because the EESC belatedly informed her about its decision to cancel its employment offer.

9. In its opinion, the EESC rejected the complainant's allegation on the basis that: (i) it never made a formal offer to the complainant; and (ii) it had always stated that she should not expect a formal commitment before the procedure had been successfully completed. The EESC stated that the above information was given in writing to the complainant, first in the invitation for interview dated 19 March 2007 and second, in the e-mail of 17 April 2007 from its administrative services.

10. Moreover, the EESC argued that it had acted in good faith. The information provided by the complainant in her curriculum vitae led it to believe that she possessed the required qualifications. It argued that her curriculum vitae clearly lacked precision regarding: (i) the dates when she had obtained her diplomas (only the years were indicated); and (ii) the diplomas which she expected to obtain. In addition, the EESC stated that the minutes of the interview outlined that her studies would be finished in May 2007. In this regard, the EESC recognised that "[t] here could have been a misunderstanding on this date, although the members of the panel were unanimous in their recollection of the statements made during the interview."

11. The EESC rejected the complainant's claim for compensation for damages by stating that its position on the granting of financial compensation for her alleged damages remained unchanged. In this regard, the EESC also recalled a statement made by the complainant during her interview that her husband and sister lived in Brussels. The EESC argued that the above statement was partly in contradiction with her claim that she had to buy flight tickets from Finland to Brussels for her husband and herself. The complainant did not clarify the above inconsistency, nor did she provide any proof of her other expenses in order to substantiate her demand.

12. Notwithstanding the above, the EESC pointed out that it had, "[w] ith the sole aim to attenuate somewhat the damage she appeared to have experienced ", and " as a token of good will and understanding of the complainant's situation ", agreed to re-offer her employment under the contract agent scheme. On 12 July 2007, a letter containing this offer was sent to her last known address in Brussels. The EESC later learned that, by that time, the complainant had already returned to Finland and failed to inform it of her new address. Once it came to know the new address, the EESC once again sent her the same offer on 13 August 2007. The EESC regretted that she neither informed it of her new address nor kept in contact with its administration. The EESC concluded that, by failing to do so, the complainant put herself in a situation in which she became unable to accept the new employment offer.

13. In her observations, the complainant contested the EESC's argument that it had informed her several times of the fact that her recruitment was not certain. She also stated that she
had received several letters from the EESC asking her to bring the requested documents on her first day of work. In this regard, she recalled that she had asked the EESC to confirm her recruitment precisely because she was legally required to give one month's notice to her employer before starting her new job in June 2007. She also rejected the EESC's argument that the information concerning the dates of her graduation in her application lacked clarity and that the information she gave in her interview was not accurate. She recalled that: (i) she clearly mentioned both in her application letter and curriculum vitae that she was still studying and would graduate in 2008; and (ii) in the interview, she presented the Selection Panel with documents containing information on her previous, current and remaining studies, including a document stating her anticipated graduation date. In addition, she stated that, on 23 May 2007, Ms X. informed her by telephone that the initial acceptance of her candidature was a significant mistake by the EESC and that her graduation date, which was clearly mentioned in several documents, was simply not noticed in the earlier stage of the procedure.

The Ombudsman's preliminary assessment leading to a friendly solution proposal

14. The complainant stated the following in her job application letter of 2 March 2007:

"Currently I am studying The Degree Programme in Modern Languages and Business studies for Management Assistants at the Helsinki Business Polytechnic, graduating in 2008 " (emphasis added).

Her curriculum vitae, which was enclosed with the application, contained the following information:

"EDUCATION

Erasmus Hogeschool Brussel

Exchange studies, Office management spring 2006

studies in English and French

Helsinki Business Polytechnic

The Degree Programme in Modern 2004 -

Languages and Business studies for

Management Assistants, 140 cu " (emphasis added)

15. According to the EESC's minutes of the job interview of 2 April 2007, the complainant "would be available as of 1/6/2007 " (emphasis added). The minutes did not mention her graduation date or the time when her studies would be completed.
16. Apart from the above-mentioned information, the complainant did not submit any further details to the EESC concerning her education before it informed her, on 11 May 2007, that she could not be recruited.

17. The complainant applied for a temporary agent position at grade AST 1 and the contract was due to commence on 1 June 2007. The Ombudsman noted that Article 5 of the Staff Regulations require that, in order to be appointed to a post in function group AST, a candidate must have at least a level of post-secondary education attested by a diploma. The complaint only graduated in 2008. Since the complainant would not have been awarded a post-secondary diploma by 1 June 2007, the date on which she was due to start working at the EESC, she did not fulfil this minimum eligibility condition.

18. The Ombudsman considered that it serves no purpose to interview candidates that do not meet the minimum eligibility criteria, since such candidates cannot be recruited in the future. Calling such candidates for interview incurs unnecessary expenses for an institution (which has to pay the expenses of candidates called for interview). It is also unfair on the persons concerned. Institutions should thus only invite to an interview those candidates who meet the minimum eligibility criteria.

19. The Ombudsman considered that the information provided to the EESC by the complainant in her application letter of 2 March 2007 expressly indicated that she would not graduate until 2008. Once it received her application letter, the EESC should thus have realised that she did not meet the minimum eligibility criteria. Indeed, the very fact that, on 11 May 2007, the EESC contacted the complainant to request clarification regarding her qualifications, despite the fact that there was no additional information in the file concerning her qualifications at that time, proved that it was also in a position to seek such clarification prior to calling her for interview. However, the EESC wrongly assumed that the complainant met the eligibility criteria and proceeded to invite her for interview.

20. In light of this evidence, the Ombudsman concluded that the EESC failed adequately to review the complainant's application letter and accompanying curriculum vitae before inviting her for interview. This was a potential instance of maladministration.

21. Subsequent to the interview, on 15 April 2007, the complainant asked a member of the Selection Panel, Ms X., to confirm whether she had been selected. On 16 April 2007, Ms X. informed her by e-mail that this was indeed the case. She stated that the EESC would send her an offer letter once it received all the necessary documentation from her.

22. The Ombudsman carefully reviewed the internal e-mail exchanges within the EESC relating to Ms X.'s e-mail. He found that Ms X. received no authorisation from the Appointing Authority to make such a statement to the complainant. Indeed, the internal e-mail exchanges indicated that, at that time, the EESC was still examining the complainant’s file. Therefore, Ms X. should not have informed the complainant that she would be recruited.

23. The failings of individual members of staff must be imputed to the institution employing them. As a result, the Ombudsman took the view that, on 15 April 2007, the EESC wrongly
informed the complainant that she had been selected. This was a potential instance of maladministration.

24. The Ombudsman noted that the EESC apologised to the complainant for the inconvenience she suffered and offered to compensate her by offering her a four-month contract. He welcomed the fact that the EESC had already apologised to the complainant for the "misunderstanding" on its part.

25. The Ombudsman also welcomed the EESC’s constructive attempts to seek a friendly solution to the problems by offering to compensate the complainant with a four-month contract. However, he noted that the complainant could not accept that offer, given that she had already moved back to Finland from Brussels. The Ombudsman considered the complainant’s explanation to be reasonable.

26. The EESC held that it was impossible to respond positively to the complainant’s claim for financial compensation concerning the material damage she had suffered. This was due to the fact that: (i) she did not submit any evidence of the costs she incurred; and (ii) the EESC did not agree with her preliminary calculation of the alleged damage.

27. The Ombudsman agreed that it was incumbent on the complainant to provide sufficient evidence of the financial expenses she incurred as a result of the reassurances from Ms X. that she had been selected. He also considered that the relevant material expenses are those which the complainant may have incurred herself. Expenses that may have been incurred by her husband were not relevant expenses.

28. On the Ombudsman's request, the complainant submitted supporting documentation for the material expenses referred to in paragraph 27 above. Among the expenses indicated by the complainant, the Ombudsman considered the following expenses to be relevant: the complainant's flight ticket from Helsinki to Brussels on 30 May 2007 (EUR 148.38); her rent in Brussels for June 2007 (EUR 540); the lost income from her permanent job in Helsinki between 15 May and 31 August (based on an average of 100 working hours per month and an average salary of EUR 9 per hour: EUR 3 150). The complainant also submitted supporting documentation for her and her husband’s flight from Brussels to Helsinki on 29 June 2007 (EUR 254). In light of paragraph 27 above, the Ombudsman considered that it would be reasonable to take half of the return flight expenses into account as relevant expenses. It followed from the above that the total amount of relevant expenses was EUR 3 965 (EUR 148.38 + EUR 540 + EUR 3 150 + EUR 127).

29. In light of the above, the Ombudsman made the following proposal for a friendly solution:

The Ombudsman considers that the amount relating directly to the complainant's own costs - but excluding her husband's flight ticket - would seem a reasonable basis for achieving a fair solution to the complainant's compensation claim. With regard to the complainant's claim for compensation for the financial damage she allegedly suffered as a result of the EESC's action, the complainant provided sufficient evidence relating to her own costs which amount to EUR 3 965.
The EESC could consider paying this amount to the complainant as compensation for the damage she suffered.

*The arguments presented to the Ombudsman after his friendly solution proposal*

30. The EESC agreed that, once it receives the necessary supporting evidence, it would pay the complainant EUR 3 965 as a financial settlement for the material expenses the Ombudsman considered relevant under paragraph 28 above. It also informed the Ombudsman that it had reminded members of its staff at all levels that they should refrain from interfering in recruitment processes initiated by its services. This includes contacting candidates prior to the final and successful conclusion of the procedure.

31. The complainant welcomed the EESC’s agreement to reach a financial settlement.

*The Ombudsman’s assessment after his friendly solution proposal*

32. The Ombudsman welcomes the EESC’s positive response to his friendly solution proposal. From the complainant’s observations, the Ombudsman understands that the complainant is satisfied with the EESC’s reply to the friendly solution proposal. He therefore concludes that a friendly solution to the complaint has been achieved.

**B. Conclusions**

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

A friendly solution has been achieved to the complainant's satisfaction.

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

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 15 March 2010

[1] Annexed to the letter was a provisional calculation of the damage. This calculation resulted in a total amount of EUR 7 414.57, which consisted of the following items: rental costs in Brussels 4 x EUR 540 = EUR 2 160; flight tickets for the complainant and her husband: EUR 296 + EUR 238.57 = EUR 534.57; the complainant’s salaries from her permanent job: 4 x EUR 1 180 = EUR 4 720. Given the absence of a reply from the EESC, on 25 June 2007, the complainant once again sent the letter containing the above calculation from her Brussels address.