

## Decision of the European Ombudsman closing the inquiry into complaint 203/2012/MMN against the European Commission

Decision

**Case** 203/2012/MMN - **Opened on** 16/02/2012 - **Decision on** 25/02/2014 - **Institution concerned** European Commission ( No maladministration found ) |

### The background to the complaint

1. The present case concerns the composition of the European Group on Ethics in Science and New Technologies ('EGE').

2. On 10 January 2011, the President of the European Commission adopted a decision on the appointment of the members of the EGE for its mandate 2011-2016. According to the decision, this advisory body is composed of 15 members, who were selected among the applications received following a call for expression of interest. The decision further indicated that the Commission sought to ensure that an appropriate range of professional skills and experience was present in the EGE.

3. On 24 June 2011, the complainant, a civil society association, wrote to the Commission indicating that, in its view, there was an over-representation of members related to religious movements in the EGE. The complainant added that the EGE did not include any member belonging to the community of non-believers, which constituted discrimination. In this respect, the complainant noted that, according to two Eurobarometer surveys, only 52% of Europeans have religious beliefs.

4. On 11 July 2011, the Commission replied. It stated that the EGE is an independent, pluralist and pluridisciplinary body which advises the Commission in relation to ethical questions relating to sciences and new technologies. The Commission informed the complainant that it received 152 applications following a call for expression of interest which was posted on the EGE's website. The Commission indicated that the decision on the composition of the EGE was based on the following criteria:

(i) Ensuring a balanced representation of the three main relevant disciplines, namely (1) ethics, theology and human sciences, (2) law and (3) medicine and biology;



- (ii) Having an appropriate range of experiences in science and technologies and bringing in new competences;
- (iii) Ensuring an appropriate balance between the members of the EGE who were re-appointed and the newly appointed members;
- (iv) Ensuring a balanced geographical representation;
- (v) Having good relations with national ethical committees; and
- (vi) Ensuring an adequate balance between men and women.

5. The Commission added that each member must sign a declaration in which he/she commits to giving his/her advice independently and free from outside interference.

6. On 8 August 2011, the complainant wrote again to the Commission. It questioned the inclusion of 'theology' as a relevant discipline, while 'non-religious philosophy' was not mentioned as a relevant discipline. Moreover, the complainant noted that 6 out of 15 members were theology professors (including a priest and a nun) and 3 other members taught in catholic universities. [1] Thus, in the complainant's view, 9 members represented the European religious community. Therefore, the complainant requested the Commission to indicate which members had been appointed in order to represent the views of the European non-religious community.

7. According to the complainant, the Commission did not reply to this letter.

8. On 23 January 2012, the complainant lodged the present complaint with the Ombudsman.

## **The subject matter of the inquiry**

9. The complainant put forward the following allegations and claims, which were included in the Ombudsman's inquiry:

### **Allegations:**

*(1) The Commission failed to ensure that the European Group on Ethics in Science and New Technologies ('EGE'), in its current composition, is an independent and pluralist body.*

*(2) The Commission failed to provide a satisfactory explanation as to why theology is considered as one of the relevant disciplines for membership of the EGE whereas philosophy is not.*



## Claims:

*(1) The Commission should overhaul the composition of the EGE in order to ensure that it is a truly independent and pluralist body.*

*(2) The Commission should ensure that the criteria used to appoint the members of the EGE are not discriminatory and do not lead to the over-representation of specific religious groups, or religious groups in general.*

## The inquiry

**10.** On 16 February 2012, the Ombudsman invited the Commission to provide an opinion on the above allegations and claims.

**11.** On 19 June 2012, the Commission provided its opinion, which was forwarded to the complainant for observations.

**12.** On 13 September 2012, the complainant submitted its observations.

**13.** On 10 January 2013, the complainant submitted additional information to the Ombudsman.

**14.** On 26 August 2013, the Ombudsman made further inquiries.

**15.** On 30 October 2013, the Commission provided its reply, which was forwarded to the complainant for observations.

**16.** On 28 November 2013, the complainant submitted its observations on the Commission's reply.

## The Ombudsman's analysis and conclusions

### A. Allegation of lack of independence and pluralism in the composition of the EGE and related claim

#### Arguments presented to the Ombudsman

**17.** In its complaint, the complainant submitted that the Commission's discretionary powers regarding the appointment of the EGE's members are limited by the need to ensure that the EGE is an independent, pluralist and multidisciplinary body.

**18.** In this respect, the complainant contended, first, that Christian movements were



over-represented, while other religious or philosophical views (such as the group of non-believers) were under-represented or even not represented at all. The complainant noted that five [2] out of the fifteen members were professors of catholic or protestant theology and three others were professors in catholic universities. Moreover, another member belonged to a religious order. Thus, nine out of fifteen members came from the Christian world, which in the complainant's view constituted a clear over-representation.

**19.** Second, the complainant expressed doubts as to whether the close links existing between certain members of the EGE and the Catholic Church would not compromise their independence. In particular, the complainant noted that the members of the EGE included two priests and one member of a religious order, who had given an oath of obedience to the Church.

**20.** In its opinion, the Commission emphasised that the selection of the members of the EGE had been carried out with full transparency after making a public call for expressions of interest. This call was published on the EGE's website, and the national ethics councils, as well as the equivalent body of the Council of Europe, had been requested to disseminate the information.

**21.** As regards the issue of independence, the Commission indicated that the EGE's members are appointed *ad personam* and do not represent Member States, political parties, lobby groups or religions. Moreover, they have signed a declaration stating that they will serve in their personal capacity and will not be influenced by any third party.

**22.** In its reply to the Ombudsman's further inquiries, the Commission rejected the complainant's argument that the commitments made by potential members to a certain religious group would affect their independence or prevent them from being appointed as members. In the Commission's view, this would be contrary to Article 10 (freedom of thought, conscience and religion) and 21 (prohibition of discrimination on grounds of religion or belief) of the EU Charter of Fundamental Rights.

**23.** As regards the issue of pluralism, the Commission stressed in its opinion that considerations relating to the religious beliefs of the applicants did not play a role in the selection of experts. In its view, the composition of the EGE reflects the geographical, gender and age diversity of its members, as well as their varied knowledge and expertise.

**24.** In its reply to the further inquiries, the Commission added that it did not ask for any information on the religious or personal beliefs of the candidates. The Commission considered that the religious or personal beliefs should not be used as a criterion to select candidates, as this would be contrary to the Charter of Fundamental Rights.

**25.** Finally, as regards the complainant's claim that the Commission should overhaul the composition of the EGE, the Commission argued that, in view of the foregoing considerations, such overhauling was unnecessary before the new EGE mandate, starting in 2016.

**26.** In its observations, the complainant considered that the Commission's position was



'formalistic' insofar as it contended that the independence of the members was guaranteed by their appointment *ad personam* and by their signing of a declaration of independence. In the complainant's view, the Commission's arguments based on the Charter should be rejected.

27. As regards the issue of pluralism, the complainant submitted that the fact that the EGE's members have different fields of expertise and that there is geographical, gender and age diversity is irrelevant for the purposes of the present complaint. In its view, the fact of being catholic, protestant or muslim, on the one hand, and secular (e.g., laic, agnostic or atheist), on the other hand, has a crucial impact for the assessment of ethical issues. The complainant emphasised that the secular movement was not represented at all.

28. The complainant further pointed out that the Commission had not commented on the over-representation of members having links with religious groups and the absence of representatives of the secular movement. Thus, the complainant considered that the Commission had conceded this point, and therefore accepted that it had discriminated (at least *de facto* ) against the secular movement.

## The Ombudsman's assessment

29. The Ombudsman notes that the first indent of Article 3(2) of the Commission's decision on the renewal of the mandate of the EGE [3] provides the following:

*" Members are nominated 'ad personam'. Members serve in a personal capacity and are asked to advise the Commission independently from any outside influence. The EGE shall be independent, pluralist and multidisciplinary. "*

30. Moreover, in relation to the eligibility criteria, the call for expressions of interest stated the following:

*" Applicants must have:*

*- A university degree in one of the following three broad areas:*

*- Ethics / Philosophy / Theology,*

*- Law, and*

*- Science "*

31. The call for expressions of interest further provided that applicants were required to include a declaration of commitment to act independently of any external influence.

32. As regards the arguments raised in the present case concerning the issue of **independence** , the Ombudsman understands the complainant's reservations relating to those persons who have close links with a specific religion, in particular those who have given an 'oath



of obedience' or 'allegiance'. However, the Ombudsman notes that, as the Commission stressed, the members are appointed on a personal basis and are required to sign a declaration of independence. In the Ombudsman's view, the 'independence' required for the present purposes implies that the EGE members should act in accordance with their conscience and should not accept external instructions or orders (including from any religious group) in relation to the specific issues that they are required to consider. In the present case, this would imply that a member of a religious group should neither seek nor accept instructions from his/her 'hierarchy' or group concerning the specific matters that he/she is required to consider within the EGE. There are no indications that any of the members of the EGE would have sought or accepted specific instructions from any third party in contravention of the declaration of independence.

**33.** Moreover, the Commission argued that excluding certain persons as potential members of the EGE simply because of they have certain links with religious groups would likely be contrary to Article 10 (freedom of thought, conscience and religion) and 21 (prohibition of discrimination on grounds of religion or belief) of the Charter of Fundamental Rights. In this respect, the Ombudsman takes the view that it would indeed be highly questionable to exclude from the EGE certain persons simply because of their allegiance to a certain religious group.

**34.** Therefore, the Ombudsman considers that the complainant's arguments concerning the lack of independence of certain members of the EGE cannot be upheld.

**35.** In relation to the issue of **pluralism**, the Ombudsman considers that the Commission was right to seek pluralism in the composition of the EGE as regards the members' geographical origin, gender, age, as well as knowledge and expertise. Moreover, the complainant has not disputed that the composition of the EGE was 'pluralist' in so far as these criteria are concerned.

**36.** However, the complainant argued that the composition of the EGE was not pluralistic since (i) it did not include representatives of the 'secular movement' and (ii) members having links to religious movements were over-represented.

**37.** As regards (i), the Commission emphasised that considerations relating to the religious beliefs (or the absence thereof) of the applicants should not and did not play a role in the selection of experts. The Ombudsman considers that, in principle, this is the correct approach.

**38.** It should nevertheless be noted that the issue of religious beliefs was at least implicit in one of the eligibility criteria insofar as theology was identified as one of the relevant disciplines. The Ombudsman considers it more than likely that persons who have a diploma in theology will have religious beliefs. Seen from that perspective, the complainant's position does not appear to be wholly unreasonable. It should however also be noted that candidates could also have a background in ethics, philosophy, sciences and law. Persons without religious beliefs were thus perfectly capable of applying to become members of the EGE, provided that they had experience in one these disciplines. The Ombudsman is therefore not convinced by the complainant's first argument. She nevertheless considers it useful to make a further remark in this respect.



**39.** As regards (ii), the Ombudsman recalls that she agrees with the Commission's view that considerations relating to the religious beliefs (or the absence thereof) of candidates should not play a role when it comes to selecting the members of the EGE. In theory, it can obviously not be excluded that the composition of the EGE resulting from this selection could nevertheless be such as to give rise to legitimate concerns as to the pluralistic nature of this body. The Ombudsman considers, however, that it would only be in extreme cases that the Commission would be obliged to reconsider the result of its initial selection process.

**40.** As regards the present case, the complainant basically relies on the argument that, according to the complainant, 6 of the members of the EGE were professors of theology or had studied theology and that 3 further members were professors at Catholic universities. In the complainant's view, persons with religious beliefs were thus over-represented, given that, according to surveys, little more than 50% of the EU's population held religious beliefs. The Ombudsman is not convinced by this argument. Indeed, even if the arguments put forward by the complainant concerning the 9 members in question were to be accepted, there is no indication that the composition of the EGE could not be regarded as pluralistic, given that the EGE comprised a further 6 members.

**41.** Thus, the Ombudsman takes the view that there is no indication that the Commission failed to comply with its duty to ensure pluralism in the current composition of the EGE.

**42.** In view of the foregoing, the complainant's first allegation and related claim cannot be upheld.

## **B. Allegation of failure to include philosophy among the relevant disciplines and related claim**

### **Arguments presented to the Ombudsman**

**43.** In its complaint, the complainant criticised the non-inclusion of philosophy as a relevant discipline, while theology was considered as a relevant discipline. Thus, it claimed that the Commission should ensure that the criteria used to appoint the members of the EGE are not discriminatory and do not lead to the over-representation of specific religious groups, or religious groups in general.

**44.** In its opinion, the Commission clarified that, in fact, philosophy was among the relevant disciplines for the selection of the members of the EGE. Moreover, it provided a copy of the call of expression of interest to confirm this statement.

**45.** Furthermore, in its reply to the further inquiries, it added that it was appropriate to include theology, philosophy and ethics in the call for expression of interest since they all concern the moral character of human acts.



46. Finally, the Commission repeated that it would be inappropriate to carry out a selection among potential candidates on the basis of their religion or beliefs.

47. In its further observations, the complainant argued that the inclusion of theology as a relevant discipline led *de facto* to the over-representation of the Christian movement because in practice the only recognised diplomas on theology are those on Christian theology.

## The Ombudsman's assessment

48. The Ombudsman considers that, in view of the wording of the call for expressions of interest and the clarifications provided by the Commission the complainant's allegation is unfounded. In fact, philosophy was among the relevant disciplines for the selection of the members of the EGE. The Ombudsman notes that the complainant did not dispute this in its observations.

49. Moreover, the Ombudsman shares the Commission's view that the inclusion of theology together with philosophy and ethics was not inappropriate insofar as all three disciplines concern, *inter alia*, the moral character of human acts. It is true that, in its further observations, the complainant argued that the only recognised diplomas on theology are those on Christian theology. However, it seems clear that the complainant has not submitted this argument to the Commission so far. Nor did the complainant provide any evidence to support its argument. Besides, in the Ombudsman's understanding many universities and academic institutions in the various Member States appear to offer studies on religions other than Christianity.

50. The issue of the alleged over-representation of religious groups has already been addressed in the context of the examination of the first allegation (see points 35 to 41 above).

51. Thus, the complainant's second allegation and related claim cannot be upheld.

## C. Conclusions

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

**No maladministration has been found in the present case.**

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

## Further remark

**At the time of the renewal of the composition of the EGE, the Commission could consider**





**clarifying in the call for expression of interest that religious or personal beliefs are not taken into account for the selection and that 'secular' candidates are invited to apply.**

Emily O'Reilly

Done in Strasbourg on 25 February 2014

[1] As indicated in point 18, the complainant subsequently slightly nuanced its position in this respect.

[2] Although in its previous correspondence to the Commission the complainant contended that there were six *professors* of theology (see point 6 above), in the complaint to the Ombudsman this figure was reduced to five. Moreover, in its observations on the Commission's opinion, the complainant noted that six members had *studied* theology.

[3] Decision of 13 December 2009, C(2009)10353final.