

## Decision of the European Ombudsman closing the inquiry into complaint 1848/2013/PL against the European Commission

Decision

**Case** 1848/2013/PL - **Opened on** 16/10/2013 - **Recommendation on** 04/06/2014 - **Decision on** 03/03/2015 - **Institution concerned** European Commission ( Draft recommendation accepted by the institution ) |

This case concerned the recruitment procedure for a project co-financed by the European Commission which, according to the complainant, breached the principle of non-discrimination on the grounds of nationality. The Ombudsman inquired into the issue and made a draft recommendation asking the Commission to ensure that selection procedures concerning projects that it co-finances respect the principle of non-discrimination on the grounds of nationality. The Commission accepted the draft recommendation and undertook various actions to ensure its implementation. Therefore, the Ombudsman closed the case.

### The background

1. This case concerns a recruitment procedure for a project co-financed by the European Commission.
2. In 2013, the complainant, a national from Luxembourg, applied for a post as a trainer in a project carried out by the Organisation for Security and Cooperation in Europe ('OSCE') in the Balkans.
3. Subsequently, she was informed that her application had been unsuccessful. In this respect, the OSCE said that it preferred to select local trainers, " *with more face-to-face interaction* " than the complainant could offer.
4. The complainant wrote to the Commission, arguing that her exclusion from the selection process amounted to discrimination on the grounds of nationality.
5. In its reply, the Commission explained that her application was rejected because other candidates had more relevant experience. The fact that they also had native language skills was an additional positive element.



6. Following further exchanges with the complainant, both the OSCE and the Commission acknowledged that the fact that the call for expression of interest did not indicate that the post was intended for local candidates was an unfortunate oversight.
7. A subsequent call for expression of interest for trainers for a similar project published by the OSCE required explicitly that candidates (i) be nationals of one of the countries where the project would take place and (ii) have native language skills.
8. The complainant wrote to the Commission reiterating her arguments that accepting applications from " *local candidates only* " and imposing native language requirements was contrary to the principle of non-discrimination on the grounds of nationality.
9. After further exchanges, the Commission finally rejected the argument that the complainant had been discriminated against on grounds of nationality. [1]
10. In view of this, the complainant lodged the present complaint with the Ombudsman who opened an inquiry into the **allegation** that the Commission had failed to ensure respect for the principle of non-discrimination on the grounds of nationality in a recruitment procedure for a project co-financed by it and the corresponding **claim** that the Commission should ensure that the principle of non-discrimination on the grounds of nationality is respected in recruitment procedures for projects co-financed by it.

## **Allegation of breach of the principle of non-discrimination on the grounds of nationality and related claim**

### **The Ombudsman's draft recommendation**

11. Since the project for which the complainant applied was finalised on 30 March 2014, the Ombudsman considered that no useful action could be taken as regards this specific project. However, in view of the positions adopted by the OSCE and the Commission, it seemed highly likely that the issue raised by the complainant would also affect future projects. Therefore, the Ombudsman made a draft recommendation concerning the systemic aspect of this case in accordance with Article 3(6) of the Statute of the European Ombudsman.
12. In her draft recommendation she noted that the prohibition of discrimination on grounds of nationality does not prevent the adoption of requirements which may place non-nationals at a disadvantage, provided that the objective pursued is legitimate and the requirements are proportionate. [2] Thus, in certain circumstances, conditions about language, residence or other requirements may indeed be justified and will not lead to direct or indirect discrimination on the grounds of nationality. [3]
13. However, in the present case, the Commission did not put forward a legitimate objective which would justify that the adoption of the relevant requirements was proportionate and necessary. The Ombudsman concluded that the Commission failed to address properly the



complainant's allegation that there had been discrimination on the grounds of nationality. She therefore made the following draft recommendation to the Commission:

*"The Commission should ensure respect for the principle of non-discrimination on the grounds of nationality in selection procedures concerning projects that it co-finances. In particular, the Commission should ensure that, in future calls for expression of interest, requirements concerning language skills, residence or other similar requirements are made explicit, that these requirements are necessary to achieve a legitimate objective and proportionate to that objective, and that the justification is set out in the call for expression of interest."*

**14.** The Commission accepted the draft recommendation and expressed its full commitment to the principle of non-discrimination on the grounds of nationality in selection procedures it undertakes itself. It agreed that the same principles as those applied by itself should also apply to the selection procedures organised by the international organisations that carry out activities on behalf of the EU under a contract or a delegation agreement.

**15.** Consequently, the Commission informed the Ombudsman that it had undertaken various actions to ensure the implementation of the draft recommendation as regards its possible future contractual relationship with the OSCE and its institutions as well as with international organisations in general.

**16.** Among these actions, the Commission had asked the OSCE to introduce additional measures in all its future calls in order to avoid similar problems in future projects.

**17.** In addition, the European Commission affirmed that it would pay particular attention to the application of the principle of non-discrimination in recruitment procedures when conducting the so-called pillar assessments [4] for all international organisations in the future..

## The Ombudsman's assessment after the draft recommendation

**18.** The Ombudsman acknowledges the Commission's commitment to the principle of non-discrimination and the various measures the Commission has undertaken to implement the draft recommendation.

**19.** In her observations, the complainant welcomed the fact that the Commission has accepted the draft recommendation and requested the OSCE to apply more transparent recruitment procedures. She insisted, nonetheless, that her application had been unfairly excluded and raised additional arguments, which, however, were not within the scope of the original inquiry.

**20.** In this context, the Ombudsman can only reiterate what was said in her draft recommendation, namely that given the circumstances, no useful action could be taken as regards the project for which the complainant had applied. In light of this the Ombudsman has focused on the systemic aspect of this case and welcomes the Commission's constructive



approach to the matter. She trusts that the Commission will adhere to the commitments made.

## Conclusion

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

**The European Commission has accepted the draft recommendation and taken steps to implement it.**

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

Emily O'Reilly

Strasbourg, 03/03/2015

[1] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's draft recommendation available at:

<http://www.ombudsman.europa.eu/cases/draftrecommendation.faces/en/54555/html.bookmark>

[2] As an example, see, for instance, Case C-379/87 *Groener v Minister for Education and the City of Dublin Vocational Educational Committee* [1989] ECR I-3967.

[3] For the Ombudsman's detailed assessment, see the draft recommendation of the European Ombudsman in the inquiry into complaint 1848/2013/MMN against the European Commission , available at:

<http://www.ombudsman.europa.eu/cases/draftrecommendation.faces/en/54555/html.bookmark>

[4] The pillar assessment is a process which international organisations managing EU funds have to undergo before being entrusted with the budget implementation tasks, based on the Articles 60 and Article 61 of Regulation No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union. Only once an international organisation has passed the assessment, can it be entrusted with budget implementation tasks.