

Proposal of the European Ombudsman for a friendly solution in the inquiry into complaint 1078/2013/EIS against the European Commission

Solution - 19/06/2013

Case 1078/2013/EIS - **Opened on** 19/06/2013 - **Decision on** 07/07/2015 - **Institution concerned** European Commission (No maladministration found) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman

The background to the complaint

1. This complaint concerns the Commission's handling of an infringement complaint regarding the Italian authorities' refusal to recognise foreign qualifications of engineers arising from a failure to recognise an intermediary qualification leading on to a final qualification.

2. The complainant is an Italian citizen who studied engineering in the UK where he obtained the following qualifications:

(i) Certificate of 'Electronic Engineering', issued by the British Institute of Engineering Technology (hereinafter referred to as 'BIET') in 1985;

(ii) Diploma of 'Associate member', issued by the Society of Engineers in 1986;

(iii) Diploma of 'Member', issued by the Society of Engineers in 1990;

(iv) Postgraduate Diploma in Manufacturing, awarded by the Open University in 1997;

(v) Master of Science in Manufacturing Management (hereinafter referred to as 'MSc'), awarded by the Open University in 1999;

(vi) Chartered Engineer qualification (hereinafter referred to as 'CEng'), awarded by the Engineering Council and by the Institution of Engineering & Technology in 2006; and

(vii) Doctor of Philosophy (PhD) in Manufacturing Engineering, awarded by the Brunel University, London, in May 2011.



3. Article 11 of Directive 2005/36/EC [1] (hereinafter 'the Directive') provides for the following five levels of recognition of professional qualifications:

- attestation of competence issued by a competent authority in the home Member State, attesting either that the holder has acquired general knowledge corresponding to primary or secondary education, or has undergone training not forming part of a certificate or diploma, or has taken a specific examination without previous training or has three years' professional experience;
- certificate corresponding to training at secondary level of a technical or professional nature or general in character, supplemented by a course of study or professional training;
- diploma certifying successful completion of training at post-secondary level of a duration of at least one year or professional training that is comparable in terms of responsibilities and functions;
- diploma certifying successful completion of training at higher education or university level of a duration of at least three years and not exceeding four years; and
- diploma certifying successful completion of training at higher education or university level of a duration of at least four years.

4. Since, in 2007, the complainant wished to exercise the profession of engineer in Italy, he requested the Italian Ministry of Justice to recognise his 'CEng' qualification as corresponding to a diploma certifying successful completion of training at higher education or university level of a duration of at least four years, which would allow him to be registered under section 'A – *Ingegnere industriale*' in the '*Albo degli ingegneri italiani*' [2] .

5. In 2009, the Italian Ministry of Justice informed the complainant that it considered that his qualifications, notably, the certificate of 'Electronic Engineering', the Diploma of 'Associate member' and Diploma of 'Member' issued by the Society of Engineers, were not valid for the purpose of recognition under the Italian decree transposing the Directive. Therefore, the complainant was registered under section 'B – *Ingegnere Junior*' (corresponding to the third bullet point in point 3 above) of the '*Albo degli Ingegneri*' instead of section 'A', as he had requested. The Italian authorities argued that the complainant did not have a first level diploma or an equivalent diploma.

6. The complainant subsequently requested the Italian authorities to review its decision. The Italian authorities rejected this request.

7. On 13 August 2011, the complainant lodged an infringement complaint with the European Commission (reference number CHAP(2011)02415) in which he complained about the alleged failure by the Italian authorities to comply with the Directive. The complainant argued that the Italian authorities failed to consider his qualifications in 'Electronic Engineering', and of



'Associate Member' and 'Member' issued by the Society of Engineers as equivalent to a "*diploma certifying successful completion of training at higher or university level of a duration of at least four years*", and enrolled him in section 'B' instead of section 'A' of the '*Albo degli Ingegneri*'.

8. In its reply of 19 December 2011, the Commission took the view that the Italian authorities could not lawfully refuse to recognise the complainant's qualifications as being equivalent to the Italian qualification giving access to section A of the '*Albo degli Ingegneri*'. The Commission argued that it was for the Open University to decide whether training undertaken at the BIET could be taken into account for the purposes of registration for postgraduate studies. Moreover, the complainant's CEng qualification was issued by the UK Engineering Council, which is the UK competent authority that delivers diplomas which qualify the holder to exercise the profession of engineer. The Commission concluded that the Italian authorities should conduct the recognition procedure in accordance with the rules laid down in the Directive. It suggested that the complainant request the Italian authorities to reconsider his case and keep the Commission informed of their decision. The complainant subsequently informed the Italian authorities of the Commission's letter. However, the Italian authorities confirmed their previous position.

9. On 29 June 2012, the Commission informed the complainant that it had asked the Italian authorities for additional information on 15 March and 28 June 2012. The Commission pointed out that the complainant's case constitutes an individual case of wrong application of the Directive, and that it had not been informed of any other similar cases. It therefore argued that it was unable to conclude that the Italian authorities have developed a consistent and general administrative practice contrary to EU law. In the circumstances, relying on case-law of the Union courts [3], the Commission decided not to open infringement proceedings against Italy.

10. The complainant subsequently submitted further arguments to the Commission in support of his complaint and requested the Commission to reconsider its position. In particular, he argued that his case does not concern a failure by the Italian government to transpose the Directive correctly, but rather a failure by the Italian authorities to apply it correctly. The complainant enclosed a list of persons who, according to him, had applied for, and obtained, recognition of their qualifications as equivalent to diplomas entitling them to be registered by the Italian Ministry of Justice under section 'A' of the '*Albo degli Ingegneri*'. According to the complainant, some of these persons had obtained enrolment in section 'A' although they held equivalent or even lower qualifications than he did. In his view, this showed a lack of uniformity (i) in the manner in which the Italian authorities applied the rules, amounting to serious and unfair discriminatory treatment of all applicants; (ii) in the application of Article 13 of the Directive concerning the conditions for recognition by a competent authority in a Member State; and (iii) in the application of Articles 3, 14 and 15 of the Directive. The complainant then pointed out that, on 15 September 2010, the UK Engineering Council had confirmed that his pre-master's degree studies were equivalent to a Bachelor's degree, and that his Postgraduate Diploma and his Master of Science degree rank at level 7 of the European Qualification Framework. In its letter, the said Council concluded that the complainant should be treated as an engineer holding a diploma certifying successful completion of training at higher education or



university level of at least four years.

11. On 16 September 2012, the Commission confirmed its previous position and its intention to close the complainant's case. In particular, the Commission stated that: (i) the decision concerning the recognition of qualifications is made on a case-by-case basis, because it is based upon, among other things, a comparison between the "national training" and the "migrant training" of the applicant. This means that different decisions could be reached in respect of two applicants having followed the same training courses; (ii) as regards the list of persons referred to by the complainant, there is no indication that one or several of these persons were refused recognition because their intermediary qualification giving access to the final one was not recognised by the Italian authorities; (iii) only one of the persons on the list had lodged a complaint. However, the issue raised in that complaint was different from the one raised by the complainant.

12. On 19 September 2012, the complainant informed the Commission about certain cases in which the Italian authorities had not recognised diplomas awarded by the UK authorities. In his view, the Italian authorities had established administrative practices whereby they systematically refuse to recognise UK qualifications granted by recognised UK institutions.

13. On 13 January 2013, the Commission reiterated its earlier views, basing itself on the arguments contained in its previous letter. It also upheld its decision not to open infringement proceedings.

The inquiry

14. The Ombudsman opened an inquiry into the complainant's allegation that the Commission failed properly to deal with the complainant's infringement complaint and claim that the Commission should reconsider its position in light of the arguments put forward by the complainant and open infringement proceedings against Italy.

15. In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that the Commission failed properly to deal with the complainant's infringement complaint and related claim

Arguments presented to the Ombudsman

16. In support of his allegation, the complainant submitted that (i) the Commission



acknowledged that the Italian authorities' decision not to recognise his qualifications as being equivalent to the Italian qualification which would allow a person to be registered under section A of the '*Albo degli Ingegneri*' was not in conformity with the Directive; (ii) the Commission failed properly to assess the cases referred to by him suggesting that the Italian authorities systematically refuse to recognise UK qualifications awarded by recognised UK institutions; and (iii) the Commission did not properly reply to the legal arguments put forward by him.

17. In its opinion, the Commission argued that it had thoroughly investigated the case and concluded that the decision taken by the Italian authorities was not in conformity with the Directive. In fact, since the decision to award the title of Chartered Engineer falls within the competence of the UK authorities, the Italian authorities could not have challenged that decision. The Commission also sent a letter to the Italian authorities, suggesting that they reassess the case. However, in their reply, the Italian authorities considered that there had been no infringement of the Directive and thus upheld their earlier decision. The complainant subsequently also referred the case to SOLVIT [4] , but without success.

18. Notwithstanding the above, and as deplorable as the situation was, the Commission said that the complainant's case was an individual one, given that there was nothing to suggest that the Italian authorities had created an administrative practice whereby they systematically refuse to recognise foreign qualifications of engineers as a result of the fact that they do not recognise any intermediary qualification giving access to further qualifications. In this context, the Commission invoked the case-law of the Union courts according to which such an administrative practice must, to some degree, be of a consistent and general nature [5] .

19. As to the complainant's argument that he had transmitted to the Commission a list of engineers whose qualifications were issued in the UK or Canada and had explained to it that their qualifications were recognised in a different manner by the Italian authorities, the Commission referred to its earlier reply to the complainant (see point 11 above). The Commission reiterated that only one of the engineers on the complainant's list had submitted an infringement complaint to it. However, the issue raised in that complaint was different from the one in the present case, as in that case the question concerned certain compensation measures.

20. The Commission added that it was ready to reconsider its position if it received new complaints on the same issue. The complainant submitted to the Commission information about five more cases with a view to proving that, contrary to the Directive, the Italian authorities systematically refuse to recognise UK qualifications of engineers or recognise them at a lower level. In the first case, the Commission concluded that there was not enough information on whether or not there was an infringement. In the second and third cases, the Italian authorities had not issued any decisions yet. In the fourth case, the Commission concluded that the decision to refuse recognition was correct, because the UK title was awarded on the basis of a qualification and professional experience acquired in Italy only. In the fifth case, the Commission was not in a position to give its views on the recognition as it had no information on the scope of the respective professional training and studies.



21. In conclusion, the Commission argued that it was within its discretion, as established by Article 258 TFEU and settled case-law, not to initiate infringement proceedings in this case, given that it has no obligation to do so and individuals have no right to require it to adopt a particular position. It also considered that it properly replied to and took into account the arguments the complainant had put forward and suggested that the complainant bring his case before the national courts in order to obtain redress.

22. In his observations, the complainant maintained his earlier views. He also argued that the Commission did not properly review the analysis carried out by the Italian authorities in his case. In his view, that analysis was incorrect and led to discrepancies in treatment between him and other engineers having similar qualifications.

23. Concerning the case-law according to which the Commission has a right, but not a duty, to initiate infringement proceedings, the complainant argued that the judgment invoked by the Commission concerned the incompatibility of Belgian law with EU law, whereas his case concerned the incorrect application of EU law by the Italian authorities. Against this background, the case-law invoked by the Commission should not be applicable to this case. In support of his position, the complainant referred to a number of Council Resolutions according to which, the Commission has the role of a 'watchdog' of the Treaties and has a duty to bring to an end infringements of EU law. He also referred to Directive 2006/123/EC [6] and reiterated his view that the Commission did not take any of his arguments into account when closing his infringement complaint.

24. As regards the five engineers whose cases he had referred to in his correspondence with the Commission, the complainant rejected the Commission's views and argued that a clear violation of EU law occurred in the first case, because the Italian authorities had not considered the possibility of compensatory measures. Nor had it admitted the engineer to section B of the '*Albo degli ingegneri*'. In the other cases, where the engineers concerned asked for recognition of their qualifications, the Commission simply ignored the fact that the Italian authorities had failed to recognise them properly.

25. The complainant insisted that, in light of the foregoing, the Commission should open infringement proceedings against Italy.

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

26. Complaints by citizens constitute an essential means for informing the Commission of possible infringements of EU law. They enable the Commission effectively to fulfil its role of guardian of the Treaties.

27. It follows from settled case-law of the Court of Justice of the European Union that the Commission enjoys a wide margin of discretion when assessing complaints submitted by citizens and that it is not obliged to commence infringement proceedings in every instance



where a Member State has violated EU law. Citizens are therefore not entitled to require the Commission to adopt a particular position with regard to the substance of their infringement complaints [7] . It follows that the complainant's view that the Commission is obliged to take up any infringement is not convincing.

28. The fact that the Commission enjoys wide discretion clearly does not mean that in the handling of infringement complaints it is free from constraints flowing from fundamental rights and from principles of good administration. In this respect, Article 41 of the Charter of Fundamental Rights of the European Union, which provides for a right to good administration, is of particular relevance. It follows from the wording of Article 41(2)(c) of the Charter that this right includes " *the obligation of the administration to give reasons for its decisions* ". This duty is also enshrined in Article 18 of the European Code of Good Administrative Behaviour [8] . The Ombudsman will thus assess whether the Commission properly dealt with the complainant's infringement complaint and whether it gave adequate reasons for its decision not to initiate infringement proceedings against Italy.

29. The Commission accepted that there was an infringement in the complainant's case, but argued that the complainant's case is an individual case of misapplication of EU law by the Italian authorities. Therefore, in the absence of a consistent and general practice by the Italian authorities, the Commission decided to close the complainant's case.

30. The complainant argues that the case-law invoked by the Commission, regarding the need for a consistent and general practice, is not relevant to his case. He contends that the particular judgment invoked concerned the incompatibility of Belgian law with EU law and does not have wider application. In fact, the judgment refers to infringements in general, regardless of whether the infringement concerns the incompatibility of a domestic law with EU law or the incorrect application of EU law by the authorities of a Member State. Accordingly, this argument of the complainant does not stand up.

31. Nevertheless, the substantive issue raised in this case is whether the qualifications that the complainant obtained in the United Kingdom were equivalent to the Italian qualification giving access to section A of the ' *Albo degli Ingegneri* '. This is a straightforward matter. The complainant had been recognised as a 'Chartered Engineer' in the United Kingdom. As the Commission correctly observed, the decision to award this title falls within the competence of the UK authorities, and the Italian authorities could not have challenged that decision. The Ombudsman also notes that the Commission explicitly informed the Italian authorities that their interpretation of EU law was incorrect and that the manner in which they handled the complainant's case had therefore given rise to an infringement of EU law. It is true that the Commission is entitled not to pursue individual infringements of EU law by Member States if there is nothing to suggest that such an infringement is more than an isolated incident and forms part of a consistent and general practice. It should be borne in mind, however, that the Italian authorities disregarded the Commission's opinion and maintained that no infringement had occurred in this case. In the Ombudsman's view, this attitude suggests that similar cases would have been treated in the same way and that there is thus a systemic issue that merits the Commission's intervention, without waiting for future problems of that kind to arise. The



Ombudsman acknowledges that the Commission intervened rapidly and with commendable clarity after the complainant alerted it to his problem. In the light of what may well have been an opposition in principle by the Italian authorities, it would, in the Ombudsman's view, have been appropriate to follow up on the initial steps in order to clarify the issue once and for all instead of closing the complainant's case.

32. Doing so would also have given the Commission an opportunity to ask the Italian authorities for details on the cases of other persons to whom the complainant referred in support of his view that there is a systemic and general infringement. In this regard, the Ombudsman notes that the Commission conceded that it did not have sufficient information at its disposal to assess some of these cases, while in two cases, the Italian authorities had not even decided on the requests submitted to them.

33. In light of all the foregoing, the Ombudsman makes the preliminary finding that the Commission did not handle the complainant's infringement complaint properly in all respects. She therefore makes a proposal for a friendly solution below, in accordance with Article 3(5) of the Statute of the European Ombudsman.

The proposal for a friendly solution

Taking into account the above findings, the Ombudsman proposes that the Commission resume its investigation of the complainant's infringement complaint. Given that more than three years have now elapsed since the complainant first made his infringement complaint, it would be appropriate for the Commission to pursue its investigation vigorously at this stage.

Emily O'Reilly

European Ombudsman

Strasbourg, 04/09/2014

[1] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ 2005 L 255, p. 22.

[2] The term refers to the Register of Engineers held by the Engineering Council of Italy.

[3] For example, Case C-287/03 *Commission v Belgium* [2005] ECR I-3761, paragraph 29.

[4] SOLVIT is an informal problem-solving network created to solve problems that EU citizens or businesses are experiencing with the public administrations of EU Member States.

[5] See footnote 4 and the case-law referred to in that judgment.



[6] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ 2006 L 376, p. 36.

[7] Case T-571/93 *Lefebvre frères et soeurs and Others v Commission* [1995] ECR II-2379, paragraph 60.

[8] " 1. *Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision .*"