

Decision of the European Ombudsman closing the inquiry into complaint 1078/2013/EIS against the European Commission

Decision

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

The case concerns the Commission's handling of an infringement complaint regarding the Italian authorities' approach towards recognising foreign qualifications of engineers. The complaint arose from the failure of the Italian authorities to recognise an intermediary qualification leading to a final qualification. *The Commission found that the Italian authorities failed to comply with the relevant law in the complainant's case. However, since there was no consistent and general administrative practice contrary to EU law, it decided not to open infringement proceedings against Italy. The Ombudsman inquired into the issue and found that the Italian authorities' refusal to take the Commission's position concerning the complainant's case into account indicated a systemic issue that would have merited the Commission's intervention, without waiting for future problems of that kind to arise. She thus made a friendly solution proposal suggesting that the Commission resume its investigation of the complainant's infringement complaint. Since, in its reply to the Ombudsman's friendly solution proposal, the Commission (i) explicitly stated that the decision of the national authorities in the complainant's case was wrong, and (ii) committed itself to pursuing the matter should any other similar cases be brought to its attention, the Ombudsman concluded that there was no maladministration and closed the case.*

The background

1. The complaint concerns the Commission's handling of an infringement complaint regarding the Italian authorities' approach towards recognising foreign qualifications of engineers. The infringement complaint arose from the failure of the Italian authorities to recognise an intermediary qualification leading to a final qualification.
2. The complainant is an Italian citizen who studied engineering in the UK where he obtained, on the basis of his earlier qualifications also obtained in the UK, (i) a Chartered Engineer qualification (hereinafter referred to as 'CEng'), awarded by the Engineering Council and by the Institution of Engineering & Technology in 2006; and (ii) a Doctor of Philosophy (PhD) in



Manufacturing Engineering, awarded by 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. The Italian authorities concluded that the complainant did not have a first level diploma or an equivalent diploma. He was therefore 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. According to the complainant, the registration as '*Ingegnere Junior*' was neither sufficient to have access to, or exercise the engineering profession in Italy nor equivalent to the qualification of Chartered Engineer in the UK.

6. As the Italian authorities refused to review their decision, the complainant submitted an infringement complaint to the Commission, alleging that the Italian authorities failed to comply with the Directive. He also submitted to the Commission a list of other persons whose qualifications the Italian authorities had allegedly not recognised to the full extent. The Commission inquired into the issue and concluded that, in the complainant's case, the Italian authorities had failed to conduct the recognition procedure in accordance with the rules laid down in the Directive. However, as the Commission concluded that the complainant's case was an isolated one, it considered that the Italian authorities had not developed a consistent and



general administrative practice contrary to EU law. In the circumstances, relying on case-law of the Court of Justice of the European Union ('CJEU') [3] , the Commission decided not to open infringement proceedings against Italy. Dissatisfied with this position, the complainant subsequently submitted a complaint to the European Ombudsman [4] .

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

The Ombudsman's friendly solution proposal

7. On 4 September 2014, and having thoroughly examined the arguments and opinions put forward by the parties, the Ombudsman made the preliminary finding that the Commission did not handle the complainant's infringement complaint properly in all respects.

8. In her analysis of the case, the Ombudsman noted that the Commission agreed that there had been an infringement in the complainant's case, but argued that the complainant's case constituted 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. The Ombudsman noted that, as the Commission correctly observed, the decision to award the qualification of 'Chartered Engineer' in the United Kingdom fell within the competence of the UK authorities, and the Italian authorities could not have challenged that decision. The Ombudsman also noted 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.

9. 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 suggested that similar cases would have been treated in the same way and that there was thus a systemic issue that merited the Commission's intervention, without waiting for future problems of that kind to arise. The Ombudsman acknowledged 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. Doing so would also have given the Commission the opportunity to ask the Italian authorities for details regarding the cases of other persons to whom the complainant referred in support of his view that there is a systemic and general infringement.

10. In light of the above, the Ombudsman made the following friendly solution proposal to the parties:



" 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. "

11. On 18 December 2014, the Commission replied to the Ombudsman's friendly solution proposal. It explained that, in two of the cases referred to by the complainant, which were similar to his own case, the Italian authorities had requested additional information from the applicants. Member States are entitled to make such requests, and doing so does not imply the existence of an infringement of EU law. However, neither the complainant nor the persons concerned had communicated the final decisions to the Commission. There was thus no indication that the Italian authorities had treated similar cases in the same way as that of the complainant.

12. The Commission went on to reiterate, with reference to the relevant case-law of the CJEU, that an administrative practice can be challenged by way of an action for failure to fulfil obligations only when it is, to some degree, of a consistent and general nature [5] , and a Member State's failure to fulfil obligations can be established only by means of " *sufficiently documented and detailed proof of the alleged practice of the national administration and/or courts* " [6] . For example, the CJEU has considered that a reference to five previous cases as evidence of a failure to fulfil obligations is not sufficient to satisfy the burden of proof that initially falls on the Commission's shoulders [7] .

13. As regards the list submitted by the complainant concerning 16 persons holding the qualification of engineer from the UK and from Canada, the Commission argued that this evidence pointed rather to the fact that the Italian authorities correctly recognised the qualifications of engineers awarded in the UK, as the other persons (except one) were treated more favourably than the complainant. Since the Commission thus had no concrete evidence to suggest that there was an administrative practice contrary to EU law, it had decided not to pursue further its investigation of the complainant's case. It added, however, that it would be ready to do so should it be made aware of similar decisions taken by the Italian authorities suggesting the existence of a systematic practice. The Commission finally suggested that the complainant consider seeking redress through the competent national courts.

14. In his observations on the Commission's reply, the complainant took the view that the Commission ignored the law and thus failed to comply with its statutory role as guardian of the Treaties. He considered it contradictory that, on the one hand, the Commission stated that there were two cases that were similar to his whilst, on the other hand, it took the view that it did not have all the necessary information to take a position on them. Against this background, the Commission should not have been in a position to declare that, in his case, there was an infringement of Directive 2005/36/EC. He reiterated his view that the Commission's analysis of his case was superficial and incorrect and led to discrepancies in the manner in which he and other engineers who obtained similar qualifications from UK universities were treated, thus suggesting the existence of a systematic practice. Finally, he did not consider the Commission's advice to seek redress through the Italian courts useful, given the reluctance of the Italian



authorities to handle his case properly.

The Ombudsman's assessment after the proposal for a friendly solution

15. The Ombudsman based her friendly solution proposal on the fact that despite the Commission's letter to the Italian authorities, in which it stated that in the complainant's case they had failed to comply with the Directive, the Italian authorities maintained their position that no infringement had occurred in this case. In the Ombudsman's view, such an attitude clearly indicated a risk that, in similar cases, the Italian authorities would adopt the same position.

16. In its reply to the friendly solution proposal, the Commission explicitly stated that the decision of the Italian authorities in the complainant's case was wrong. However, to date, no further similar cases have been brought to its attention, and two of the cases referred to by the complainant are still pending. Thus, among the closed cases, the complainant's case was still an isolated one. Apart from taking the view that the Commission's position was superficial and incorrect, the complainant did not put forward any arguments that would call into doubt the Commission's conclusion. In the circumstances, and taking into account the strict burden of proof requirements emanating from the relevant case-law [8] , the Ombudsman considers that the Commission has put forward convincing arguments to explain why it considers that, at least at present, there is no general practice against which it should intervene.

17. Furthermore, the Ombudsman notes that the Commission has committed itself to pursuing the matter should other similar cases be brought to its attention. For example, the decisions in the two pending cases referred to by the complainant can either confirm the existence of systemic infringements or, on the contrary, show that the Italian authorities have changed their initial position and are now compliant with the relevant provisions of EU law. In light of this and also because the Commission expressed its readiness to look into the matter again if need be, the Ombudsman considers that the Commission has provided adequate reasons for its position and has taken sufficient steps to effectively fulfil its role of guardian of the Treaties. No maladministration can thus be found in this case.

18. As far as the complainant's specific situation is concerned, the Commission suggested that he turn to the competent national courts in Italy. The Ombudsman considers that this is indeed what the complainant could do, especially since a clear statement of the Commission supports his position.

Conclusion

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

No maladministration can be found in this case.



Emily O'Reilly Strasbourg, 07/07/2015

Final English version of the decision on complaint **1078/2013/EIS**

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

[4] 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 friendly solution proposal available at:

<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/60237/html.bookmark> [Link].

[5] Case C-494/01 *Commission v Ireland* [2005] ECR I-3331, paragraph 28.

[6] Case C-441/02 *Commission v Germany* [2006] ECR I-3449, paragraph 49.

[7] Case C-150/07 *Commission v Portugal* [2009] ECR I-7, paragraphs 67 to 69.

[8] See footnotes 5 and 6 above.