

Further proposal of the European Ombudsman for a solution in the inquiry into complaint 1756/2013/AN against the European Commission

Solution - 16/10/2013

Case 1756/2013/ZA - **Opened on** 16/10/2013 - **Decision on** 07/12/2015 - **Institution concerned** European Commission (Critical remark) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

The background to the complaint

1. The post-secondary education system of the Wallonia-Brussels Federation comprises 'full-time post-secondary educational institutions' (*établissements d'enseignement supérieur de plein exercice*) and 'educational institutions for social development' (*établissements d'enseignement de promotion sociale*). The former are the 'traditional' full-time post-secondary educational establishments, while the latter are meant to provide life-long education at secondary and post-secondary levels to individuals whose studies do not follow a traditional path because, for instance, they wish to combine work and studies. Studies undertaken at post-secondary level within an educational institution for social development may be attested to by diplomas which are **equivalent** to those granted by traditional post-secondary educational institutions ('equivalent diplomas'), or by diplomas which are **specific** to those studies ('specific diplomas'). Specific diplomas are issued when the studies they attest to either are not offered at traditional institutions or are different from those undertaken within traditional institutions.

2. The complainant holds a specific diploma awarded by an institute for continuous training and social development education. In 2012, he responded to a call for expressions of interest (the 'Call') which aimed at establishing a reserve list for contract agents in the EU Delegations and his name was included in the reserve list. The complainant subsequently applied for a position at the Commission corresponding to his profile and was selected. However, the Commission eventually refused to employ him, arguing that his diploma was ineligible, since it did not amount to a post-secondary diploma, as required by the Call and the legal provisions applicable to contract agents.

3. The complainant challenged this position and stated that, under Belgian law, his diploma was a post-secondary one.



4. The Commission maintained its view. It argued that national diplomas must be construed in light of national provisions. The Commission interpreted the legal framework applicable to equivalent diplomas in the Wallonia-Brussels Federation, only to conclude that the complainant's diploma was not sufficient. The Commission also referred to a certificate issued by the competent authorities of the Wallonia-Brussels Federation which stated that traditional educational institutions do not offer an equivalent programme to the one the complainant had followed. Thus, the Commission concluded, his diploma necessarily could not be equivalent to one granted by a traditional post-secondary educational institution.

5. In his complaint, the complainant stated that the post-secondary educational institution which issued his diploma was duly approved and recognised by the Belgian authorities. Moreover, his diploma was a post-secondary one. This was clear from the certificate issued by the authorities of the Wallonia-Brussels Federation. Finally, he argued, the legal provisions invoked by the Commission were not applicable to his case.

The inquiry

6. The Ombudsman opened an inquiry into the complainant's allegation that the European Commission wrongly considered that the complainant's diploma was ineligible, and his claim that the Commission should revoke its decision, declare the complainant eligible and either (i) offer him an equivalent post or (ii) adequately compensate him for the damage he has sustained in terms of loss of income, loss of professional experience and moral damage.

7. 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.

8. On 22 September 2014, the Ombudsman first proposed a solution to the Commission, which it rejected. The Ombudsman subsequently requested the cooperation of the Wallonia-Brussels Federation authorities in order to obtain further information which might help her solve the case.

9. This further proposed solution takes into account all of the facts, arguments and opinions put forward in the course of the overall inquiry [2] .

Alleged wrong decision declaring the diploma ineligible and related claim

The Ombudsman's first solution proposal and the Commission's reply

10. The Ombudsman proposed to the Commission that it " *revoke its decision and expressly declare the complainant eligible for positions which holders of post-secondary diplomas normally qualify for and either (i) offer him an equivalent position to the one of which he was*



wrongly deprived, if one becomes available or, if that is not possible (ii) adequately compensate him for the damage he has sustained in terms of loss of income, loss of professional experience and moral damage . "

11. The proposal was based on the finding that the Conditions of Employment of Other Servants of the EU ('CEOS'), as well as the Commission's General Implementing Provisions concerning the procedures of employment of contract agents and the relevant Call required, for the advertised post (contract staff in function group III) at least "*a level of post-secondary education attested by a diploma*". There was no requirement about a particular type of post-secondary studies (whether undertaken at a traditional institution or at an institution for social development) or a particular category of diploma attesting to them (equivalent or specific).

12. According to the case-law of the Court of Justice of the EU, the requirement of possessing a degree is construed in light of how such a degree is defined in the legislation of the Member State in which the candidate completed the studies. The certificate issued by the competent authorities of the Wallonia-Brussels Federation stated that "[t] he [complainant's] *diploma ... is specific to social development education*. It corresponds to a post-secondary level of education . *The diploma is called 'specific' because the programme leading to it is organised only by educational institutions for social development...*" (emphasis added)

13. The Ombudsman thus considered that the national authorities had confirmed that the complainant's diploma is post-secondary. Whether it is specific or equivalent to traditional ones is irrelevant, since there was no requirement in this regard in the Call or the applicable EU texts.

14. In reply to the solution proposal, the Commission maintained its view. It claimed that Belgian law distinguishes between equivalent diplomas and specific ones. Since the complainant's diploma was not equivalent to a traditional post-secondary one, it did not fulfil the conditions laid down in the CEOS and the Call, and thus he could not be recruited. The Commission mentioned that it has maintained this view in other similar cases, and that in spite of other candidates challenging this interpretation through the Article 90(2) Staff Regulation complaint mechanism, until now there is no case-law of the Court of Justice which contradicts the Commission's understanding.

The Ombudsman's request for assistance to the national authorities and their reply

15. The Ombudsman noted that, whereas the Commission insisted that national diplomas need to be given the value which the applicable national law grants them, it nevertheless insisted on making its own assessment of the value of the complainant's diploma in light of that national law. The Commission thus ignored the existing certificate issued by the competent Belgian authorities, which stated the post-secondary nature of the complainant's diploma, in addition to its "specific" character.

16. The Ombudsman, therefore, contacted the Belgian Permanent Representative to the EU, in accordance with Article 3(3) of the Statute of the European Ombudsman [3] . The Ombudsman asked the following questions [4] :



"(i) [F]rom the point of view of Belgian law, does the complainant's diploma attest to post-secondary studies?

(ii) [I]f the answer is affirmative, does the fact that this is a specific diploma call into question its post-secondary nature? "

17. On 24 February 2015, the Ombudsman received the reply of the Belgian Permanent Representative, which stated clearly and unambiguously that "*from the point of view of the Belgian law (...) the complainant's diploma indeed attests to post-secondary studies... [T]he fact that it is a specific diploma does not call into question its post-secondary nature .*" [5] (emphasis added) The Belgian Permanent Representative added that the distinction between "equivalent" and "specific" diplomas "*has no implication on the level*" of the titles or diplomas obtained.

The Ombudsman's further solution proposal

18. The Ombudsman considers that all the legal and factual elements concerning this complaint have been set out in detail in her first solution proposal. Moreover, the information provided by the Belgian Permanent Representation is clear and unambiguous and leaves no doubt as to the true nature and value of the complainant's diploma, which the Commission has refused to accept until now.

19. The Ombudsman thus calls on the Commission to reconsider its position and to accept her proposal, which is set out again below.

20. The Ombudsman trusts that the Commission will take this opportunity to accept her proposal, thus remedying the instance of maladministration identified in paragraph 18 of the Ombudsman's first solution proposal.

The further proposal for a solution

Taking into account the above, the Commission should revoke its decision and expressly declare the complainant eligible for positions which holders of post-secondary diplomas normally qualify for and either (i) offer him an equivalent position to the one of which he was wrongly deprived, if one becomes available or, if that is not possible (ii) adequately compensate him for the damage he has sustained in terms of loss of income, loss of professional experience and moral damage .

Strasbourg, 06/05/2015

Emily O'Reilly

European Ombudsman



[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] The full text of the Ombudsman's first solution proposal, which remains confidential until the Ombudsman has assessed its outcome, is attached to this further proposal.

[3] *" The Member States' authorities shall be obliged to provide the Ombudsman, whenever he may so request, via the Permanent Representations of the Member States to the European Communities, with any information that may help to clarify instances of maladministration by Community institutions or bodies unless such information is covered by laws or regulations on secrecy or by provisions preventing its being communicated. Nonetheless, in the latter case, the Member State concerned may allow the Ombudsman to have this information provided that he undertakes not to divulge it ."*

[4] Translation from the original (in French).

[5] Translation from the original (in French).