



Recommendation in case 454/2014/PMC concerning the European External Action Service's (EEAS) practice of offering unpaid traineeships in EU delegations

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

A young Austrian citizen worked as an unpaid trainee in an EU delegation in Asia. Subsequently, she contacted the EEAS to complain about its practice of not paying an allowance to trainees and about the lack of relevant information in this regard.

The Ombudsman inquired into the issue. She accepted the EEAS's point that trainees in a delegation value the traineeship as such opportunities, which last three to six months, can indeed constitute a significant stepping stone in their careers. It is for this reason that she is of the opinion that traineeship opportunities should be made available to as broad a range of persons as possible - and not only to those who can afford it. In the Ombudsman's view, unpaid traineeships may lead to a discriminatory situation since persons from less privileged backgrounds are likely to lack the financial means to undertake a traineeship. They will thus miss out on this valuable opportunity to enhance their qualifications and skills. Moreover, the practice of having unpaid trainees may be counterproductive in identifying the best suited candidates.

The Ombudsman finds that the EEAS's current practice of not paying trainees in its delegations amounts to maladministration and she recommends that the EEAS should pay all its trainees, including those in EU delegations, an appropriate allowance. She refers in this respect to the positive example of the European Parliament which has abolished unpaid traineeships in its Secretariat.

On the provision of information about short-term work experience opportunities in EU delegations, the Ombudsman notes that the EEAS satisfactorily resolved this part of the complaint in the course of her inquiry.

The background to the complaint

1. A young Austrian citizen worked as an unpaid trainee in an EU delegation in Asia. When she accepted the traineeship, she did not know that the European External Action Service (EEAS), which operates the EU delegations, pays some of its trainees. Subsequently, she contacted the EEAS to complain about the fact that trainees in the delegations are not paid. She noted that the normal practice is that trainees in the EU institutions are paid. She stated



that the EEAS's website did not mention that trainees in EU Delegations are not paid. In her view, not paying trainees constitutes unjustified discrimination against young professionals coming from less well-off backgrounds.

2. Given that the EEAS did not answer, the complainant turned to the Ombudsman in March 2014. After receiving a reminder from the Ombudsman that it should reply to the complainant, the EEAS replied that the complainant had been given an unpaid traineeship " *at her request* ". She had also signed a traineeship agreement in which she affirmed that " *I am a volunteer with the Delegation and will receive no salary, wage or benefit [...]* ".

3. The complainant informed the Ombudsman that she was still of the view that the EEAS should not offer unpaid traineeships.

The inquiry

4. In October 2014, the Ombudsman requested a reply from the EEAS on the complainant's concerns that it was failing to ensure a sufficient degree of transparency as regards its traineeships, and that it was not offering paid traineeships in the EU delegations. [2] The complainant wished the EEAS to offer paid traineeships only and to cease offering unpaid traineeships.

5. In December 2014, the Ombudsman received the EEAS's reply on the complaint. In November 2015, the Ombudsman received the comments of the complainant on the EEAS's reply. The Ombudsman's inquiry team also met on three occasions with the EEAS to discuss the case, in May, September and December 2016. In January 2017, the EEAS submitted additional information in writing. The Ombudsman's recommendation takes into account the arguments and views put forward by the parties.

The EEAS's alleged failure to ensure a sufficient degree of transparency as regards its traineeships and to pay trainees in EU delegations

Arguments presented to the Ombudsman

6. The complainant stated that the EEAS's website does not give any information about unpaid traineeships. Young people will therefore learn about these traineeships only through informal contacts, either with EEAS staff or with existing trainees.

7. In its reply, the EEAS stated that it was in the process of updating its website and that, by the end of 2014, it would publish general information about two separate traineeship opportunities in the delegations, that is, for 'junior professionals' in delegations (which are paid) and for unpaid traineeships.



8. The EEAS also said that, in July 2014, it had already provided the delegations with new guidelines on unpaid traineeships. The aim of these guidelines was to make more transparent the publication of unpaid traineeship opportunities and to ensure the quality of such traineeships offered by delegations. Delegations wishing to publish traineeship vacancies on their websites must now request prior approval from the EEAS's Headquarters, which will check that it has been made clear that the traineeship is unpaid. All such published traineeship vacancy notices must also clearly describe the selection procedure to be followed.

9. Following the adoption in March 2014 of the Council Recommendation on a Quality Framework for Traineeships, [3], the EEAS drew up a new template for traineeship agreements in EU delegations. The EEAS pointed out that this Recommendation does not exclude unpaid traineeships. With a view to increasing transparency, the template clearly sets out the educational objectives to be met by the EU delegations and the tasks to be carried out by the unpaid trainee. The EEAS described trainees as young university graduates making the transition from education to the labour market. The aim of a traineeship is to gain practical experience that corresponds to their skills.

10. The EEAS said that EU delegations must comply with applicable local legislation. If the local legislation does not allow unpaid traineeships, the delegation cannot have unpaid trainees. [4]

11. The EEAS noted that "a large number of organisations, private and public, are legally and publicly offering unpaid traineeships (for instance, European Commission, United Nations ...)". The EEAS also argued that an objective difference exists between its own paid (Brussels) and unpaid (delegations) traineeships. These differences relate to the duration and location of the traineeships as well as to the age, level of qualification and experience of the trainees. It said that in any event many unpaid trainees in the EU delegations are entitled to some sort of financial support, such as scholarships. The EEAS suggested that, for the future, delegations should ensure that candidates for unpaid traineeships "have an entitlement to some type of [external] financial compensation before taking up a traineeship". It also mentioned the possibility of limiting traineeships in delegations to students who carry out the traineeship as part of their studies.

12. In her comments, the complainant argued that the objectives of the paid traineeships in Brussels and the unpaid traineeships in delegations are essentially identical.

The Ombudsman's assessment leading to a recommendation

13. The complainant is concerned that the EEAS gives insufficient information about traineeship opportunities. She is also concerned about the EEAS offering unpaid traineeships which, in her view, is discriminatory.



On the information about traineeship opportunities

14. The EEAS has taken steps to address this issue. The EEAS has updated its website which now provides information about short-term work experience opportunities in EU delegations. [5] It is now clear that there are two ways to gain short-term work experience in the EU delegations.

15. One way is to participate in the Junior Professionals in Delegation Programme, which is paid and lasts nine months (with a possible extension). [6] According to the EEAS, this programme "enables successful candidates to be employed as full members of the 'administrative and technical staff' of a Delegation". [7] Junior Professionals in Delegations receive a grant of 1,300 Euro each month, an accommodation contribution set at 1,000 Euro, as well as a hardship contribution. They also receive a one-off installation contribution of 2,000 Euro "at the beginning of their traineeship", a contribution towards the cost of the journey "for each period of a traineeship", and 500 Euro to cover the insurance cost for each period of nine months "of traineeship". [8] Suitable candidates are nominated by the Member States and the successful candidates are selected subsequently by the EEAS and the Commission. According to the EEAS's website, there are currently 75 Junior Professionals posted in EU delegations. [9]

16. The other option is the non-remunerated traineeship programme for *young university graduates* who seek to gain professional experience. Such unpaid traineeships last between three to six months. [10] EU delegations select the candidates directly, following a general approval of the scheme from the EEAS's Headquarters in Brussels. [11]

17. The EEAS has also provided EU delegations with guidelines on unpaid traineeships. Under these guidelines, delegations are required to publish traineeship vacancy notices and to set out the selection procedure to be followed. Furthermore, the website makes it clear that these traineeships in the EU delegations are unpaid.

18. For completeness, it is relevant to note that the EEAS also offers another traineeship programme, that is, the so-called "blue book" traineeship programme. [12] This type of traineeship is remunerated [13] and offered (mostly) in Brussels. [14]

19. On the basis of the above, the Ombudsman concludes that the EEAS has resolved this part of the complaint satisfactorily.

On the practice of having unpaid traineeships in the EU delegations

20. The European Union is founded on the value of equality [15]. Any discrimination, such as discrimination on the grounds of social origin, is strictly prohibited according to the Charter of Fundamental Rights of the European Union [16]. In addition, the Union must protect young people against economic exploitation [17]. The EU administration is bound by these fundamental rules and principles in its activities. The Ombudsman, as always, calls on the EU administration to lead by example.



21. According to the International Labour Organization (ILO) " *discrimination in employment and occupation* ' refers to practices that have the effect of placing certain individuals in a position of subordination or disadvantage in the labour market or the workplace because of their race, colour, religion, sex, political opinion, national extraction, social origin or any other attribute which bears no relation to the job to be performed. ... Indirect discrimination refers to situations, measures or practices that are apparently neutral but which in fact have a negative impact on persons from a certain group. ... Equality of opportunity and treatment allows all individuals to fully develop their talents and skills according to their aspirations and preferences, and to enjoy equal access to employment as well as equal working conditions. " [18]

22. Although a traineeship is not an employment relationship, in the strict sense, between an employer and a trainee, the Ombudsman considers that the principles set out by the ILO provide useful guidance.

23. The complainant's argument, that unpaid traineeships are discriminatory towards those coming from a less privileged social background, has some substance. Undeniably, a young graduate wishing to do an unpaid traineeship may encounter practical difficulties without financial backing, such as from his or her family. A traineeship in an EU delegation involves not only travel costs, but also costs for accommodation, living and insurance. Therefore, unpaid traineeships in EU delegations risk becoming a privilege for the few - namely, those with financial means.

24. During the various meetings with the Ombudsman's inquiry team in 2016, the EEAS claimed that offering unpaid traineeships does not constitute discrimination based on social origin. The EEAS argued that unpaid trainees in EU delegations all consider that the traineeship is useful for their future. Through such traineeships, they gain valuable experience which helps build up their professional profile, making them more attractive on the labour market.

25. The Ombudsman does not doubt that trainees in a delegation value the traineeship. Indeed, such opportunities can constitute a significant stepping stone in their careers. In fact, this is why traineeship opportunities should be made available to as broad a range of persons as possible - and not only to those who can afford it. Unpaid traineeships may perpetuate social exclusion, since persons from less privileged backgrounds are likely to lack the financial means to undertake a traineeship. They will thus miss out on this valuable opportunity to enhance their qualifications and skills. This may, eventually, lead to fewer future job opportunities for the less privileged, initiating a vicious circle where "privilege follows privilege". Not paying trainees may very well be a practice that appears to be neutral but which, in the words of the ILO, in fact has a negative impact on less privileged persons. Ensuring, as proposed by the EEAS, that candidates for unpaid traineeship, graduates or students, receive financial backing from sources other than the EEAS does not solve this problem. In fact, it perpetuates the problem.

26. The Council of the European Union, in its recommendation on a Quality Framework for Traineeships (referred to by the EEAS itself) while not excluding unpaid traineeships outright, acknowledges nevertheless the social costs that can arise from such traineeships. These



social costs include the limiting of career opportunities for those from disadvantaged backgrounds. [19] The Council recommendation also recognises the problems that arise when little or no funding is offered to trainees. In fact, it expresses concerns about trainees being used as cheap or even unpaid labour. [20] The EEAS has not addressed these aspects of the Council recommendation.

27. However, this inquiry is not focusing on the issue of whether trainees are being exploited and used as cheap or unpaid labour. The fact that they get to do “real” work as an inherent part of the training is to the benefit of the trainees and mitigates against any risk of exploitation. The fact that trainees bring added value to the delegations is reflected in the EEAS's note on unpaid traineeships, sent to the EU delegations, which states that "*non-remunerated traineeships are established for the benefit of trainees* as well as in the interest of the delegation " (emphasis added). The EU delegations gain from the input of trainees and may even depend on their contribution. With this in mind, the Ombudsman observes that the system of unpaid traineeships may possibly lead to the undesired consequence that the EU delegations fail to attract all of the best candidates for traineeships; it will attract only those with sufficient financial resources to pay for themselves. This is clearly not in the interest of EU delegations.

28. It is noteworthy that the EEAS does pay an allowance to its trainees in Brussels. [21] According to the EEAS, there are certain differences between traineeships in delegations and those in Brussels, namely in terms of the location, the duration and the selection procedure applied. While certain objective differences might exist between the paid and unpaid traineeships, this does not change the fact that the key aim of the traineeships is essentially the same. On the one hand, the traineeships provide (mainly) young graduates with first-hand professional experience in what is, in effect, the EU's foreign service; and on the other hand, the trainees contribute to the work of the delegations which may even, as noted above, depend on the trainees.

29. The EEAS has not provided any objective justification for distinguishing between its Brussels-based trainees, who are paid, and its trainees in the delegations, who are not paid. [22]

30. The European Parliament has addressed the issue of unpaid traineeships. In a Resolution from 2010, Parliament called on the EU institutions to set a good example by paying a minimum allowance, based on standard-of-living costs of the place where the traineeship is undertaken, to all their trainees. [23] The Ombudsman notes that Parliament no longer offers unpaid traineeships, even in the case of student placements. It now pays an allowance to all its trainees, despite the budgetary constraints on the EU institutions.

31. The Ombudsman finds it relevant also to note the extent to which the EEAS makes use of traineeships in the EU delegations. The EEAS has a network of 139 EU delegations which, between EEAS and Commission staff, employ 5,800 people (end-2015 figures). [24] In 2016, the EEAS offered approximately 800 unpaid traineeships. It seems likely that the EEAS is to some extent reliant on the availability of trainees to supplement the work of the full-time staff in its delegations. The Ombudsman understands that the payment of such a number of



trainees will create budgetary issues for the EEAS. However, this is a matter which the EEAS could decide to raise with the Budgetary Authority.

32. For the sake of completeness, it is the Ombudsman's understanding that the norm across EU institutions, other than the EEAS, is to offer paid traineeships. While some institutions may also offer short-term, unpaid traineeships, this is far from being the norm. The Ombudsman will look into the extent to which any other EU institutions may have such a practice.

33. Against this background, the Ombudsman finds that the EEAS's practice of providing unpaid traineeships in its delegations constitutes maladministration. Arising from this maladministration, the Ombudsman recommends to the EEAS that it should pay all its trainees, including those in EU delegations, an appropriate allowance. The amount of allowance to be paid could be based on the cost of living in the country to which the trainees are assigned.

Recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation to the EEAS:

The EEAS should pay all its trainees, including those in EU delegations, an appropriate allowance. While the nature of this allowance will be a matter for the EEAS, the Ombudsman believes that the allowance should be such as to respect the principle of non-discrimination and should ensure that young people will be encouraged to apply for a traineeship irrespective of their (or their family's) financial status.

The EEAS and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the EEAS shall send a detailed opinion by **15 May 2017** .

Strasbourg, 15/02/2017

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 complainant complained also that it took the EEAS an unreasonable amount of time to provide an answer. However, since the EEAS has apologised for the delay in replying to the



complainant, the Ombudsman considers that this matter does not need to be further addressed. Similarly, there are no grounds for further inquiries into the allegation that the EEAS had initially failed to reply in German, as ultimately it has provided an answer in that language. Consequently, these issues fall outside the scope of the present inquiry.

[3] https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/141424.pdf.

[4] The Ombudsman understands that, in practice, the EEAS does not offer traineeships for its delegations in those countries which do not allow unpaid traineeships.

[5] http://eeas.europa.eu/jobs/delegations/index_en.htm.

[6] http://eeas.europa.eu/jobs/delegations/junior-professional-delegations/index_en.htm.

[7] http://eeas.europa.eu/headquarters/headquarters-homepage/2466/working-in-an-eu-delegation_en.

[8] <http://eeas.europa.eu/headquarters/headquarters-homepage/2463/junior-professional-in-delegation-jp>

[9] Idem.

[10] http://eeas.europa.eu/jobs/delegations/index_en.htm#traineeships.

[11] According to data provided by the EEAS to the Ombudsman, it offered 603 traineeships in 2014, 726 in 2015, and 477 for the first half of 2016. It expected to offer a total of approximately 800 unpaid traineeships in EU delegations in 2016.

[12] The "blue book" traineeship programme is administered by the European Commission. More information is available online: http://ec.europa.eu/stages/home_en.

[13] Paid trainees in the EEAS receive an allowance of around 1150 Euro per month.

[14] According to information provided by the EEAS' representatives during a meeting held with the Ombudsman's inquiry team, 'blue book' trainees have occasionally been sent to EU delegations in the past.

[15] Article 2 of the Treaty on the European Union (TEU).

[16] Article 21 of the Charter of Fundamental Rights of the European Union.

[17] Article 32 of the Charter of Fundamental Rights of the European Union.

[18] http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/



[19] See, in this respect, Recital 4 of the Council recommendation on a Quality Framework for Traineeships.

[20] Recitals 9 and 10 of the said Council recommendation.

[21] Moreover, where the trainee is not covered by any other sickness insurance scheme, he/she will be insured against sickness under the conditions laid down in the sickness insurance policy that the institutions holds with an insurance company. The EEAS also covers part of the trainee's accident insurance. Recruited trainees may receive also a travel allowance, subject to budget availability.

[22] For clarity, a comparison cannot be made between the paid Junior Professionals in Delegation (JPD) Programme and the unpaid traineeships in EU delegations. First, the JPD Programme is for *junior professionals* and not for *young graduates* (like the unpaid traineeship scheme). Second, the EEAS is not consistent in its definition of the JPD Programme. While it sometimes refers to this experience as a 'traineeship', it equally refers to junior professionals as '*full members of the EU delegations' staff*' and thus as employees of the delegations. Third, the JPD Programme is not a programme organised solely by the EEAS (the Member States and also the Commission are involved).

[23] European Parliament's resolution of 6 July 2010 (2009/2221(INI)), point 72, available online:
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010IP0262&from=EN> .

[24] https://eeas.europa.eu/sites/eeas/files/annual_activity_report_2015_en.pdf .