

Reply to a multiple complaint on an alleged breach by Italy of EU rules on non-discrimination and protection of fixed-term teachers – closure letter

Reference number: CHAP (2021)03439

The European Commission has received a large number of complaints about the failure to recognise the employment record of teachers in ‘scuole paritarie’ (accredited private schools) for the purpose of determining their pay grade when they enter the public service as permanent teachers. In other words, they do not have their seniority acquired when working at the accredited private school taken into account.

The complainants indicate that the Italian national education system consists of state schools and accredited private schools. One category of these accredited private schools are the ‘scuole paritarie’ that is to say fee-paying schools that follow the state school syllabus. Accreditation is granted to non-state schools that apply for it, provided that they meet certain conditions, stipulated by the State, regarding teacher qualifications for example. The employer of the teachers in these cases is not the State, but the private school.

While experience acquired in certain categories of accredited private schools such as ‘scuole pareggiate’ and ‘scuole parificate’ is recognised for the purpose of awarding fixed-term teaching contracts and determining the pay grade when the teacher subsequently is employed in a State school, the complainants point out that, under Article 485 of Legislative Decree No 297 of 16 April 1994, the Italian Ministry of Education does not recognise such experience for determination of the pay grades of newly recruited teaching staff coming from ‘scuole paritarie’.

The Commission has entered these complaints in the central registry of complaints under reference number CHAP(2021)03439.

Given the significant number of complaints it received on this subject, the Commission, with a view to responding swiftly and informing those concerned as well as taking into account potentially wider public interest in the issue raised by the complainants, has publishing an acknowledgement of receipt and a pre-closure letter on the [dedicated page of the Europa website](#).

In a reaction to the pre-closure letter, some complainants submitted a video recording on 16 November 2021.

Furthermore, some complainants also submitted on 17 November 2021 a letter restating the reasons for which they consider that Italy has violated teachers’ rights.

The arguments brought forward in this video of 16 November 2021 and letter of 17 November 2021 are similar to those in the original complaints, notably:

1. That the failure to recognise the employment record of teachers in ‘scuole paritarie’ (accredited private schools) for the purpose of determining their pay grade when they enter the public service on a permanent contract in a State school violates Clause 4 of the Framework Agreement annexed to the Fixed Term Work Directive (Directive 1999/70/EC).
2. That the failure to recognise the employment record of teachers in ‘scuole paritarie’ (accredited private schools) for the purpose of determining their pay grade when they enter the public service on a permanent contract in a State school violates the provisions of Directive 2000/78/EC.

3. That the failure to recognise the employment record of teachers in ‘scuole paritarie’ (accredited private schools) for the purpose of determining their pay grade when they enter the public service on a permanent contract in a State school violates the provisions of 2006/54/EC.

4. That the failure to recognise the employment record of teachers in ‘scuole paritarie’ (accredited private schools) for the purpose of determining their pay grade when they enter the public service on a permanent contract in a State school is not in line with the CJEU’s jurisprudence in the case C-677/16 Montero Mateos.

### **Legal analysis of the four arguments brought forward by the complainants**

#### **1. Regarding the respect of Clause 4 of the Framework Agreement on fixed-term work (Directive 1999/70/EC)**

The two main aims of the Framework Agreement on fixed-term work<sup>1</sup> are that workers who are employed on fixed-term contracts do not suffer unjustified discrimination and that successive fixed-term contracts between the same employer and employee for the same work has to be prevented, and, in case of abuse, sanctioned.

Clause 4 of the Framework Agreement forbids employers from treating fixed-term workers less favourably than permanent workers regarding their employment conditions, unless differential treatment can be justified on objective grounds. However, this clause does not apply to discrimination regarding the employment conditions of different categories of fixed-term workers.

In their video message, the complainants state that the principle of non-discrimination has been infringed, in that service years on fixed-term contracts are recognised, for the purposes of determination of salary grade and for the purposes of mobility, for teachers in State schools, but not for teaching staff in State-accredited private schools who then enter the public service on a permanent contract.

In essence, the complainants state that the failure to recognise the employment record of teachers in ‘scuole paritarie’ (accredited private schools) for the purpose of determining their pay grade when they enter the public service on a permanent contract in a State school violates Clause 4 of the Framework Agreement.

They refer, in particular, to the guidelines of the relevant collective agreement which exclude the taking into account of previous services performed in ‘scuole paritarie’ on the basis of Article 485 of Legislative Decree 297/94, which refers to equivalence between State schools, ‘scuole pareggiate’ and ‘scuole parificate’ (however, not scuole paritarie). The scuole paritarie did not exist in 1994. Decree-law n. 250/2005 established the ‘scuole paritarie’ as one single type of (accredited) non-State schools that would include former categories of (accredited) non-state schools (scuole autorizzate, pareggiate, parificate and scuole legalmente riconosciute).

The comparison in this case is between teachers who are fixed-term workers in a State school versus teachers who are fixed-term workers in a State-accredited private schools,

---

<sup>1</sup> Framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175, 10.7.1999, p. 43–48.

or also between teachers who are fixed-term workers in a scuola paritaria versus teachers who are fixed-term workers in a scuola pareggiata and a scuola parificata.

Differential treatment between a fixed-term teacher and another fixed-term teacher on account of whether the employer is a State school or a State-accredited private school, does not come under the scope of the Framework Agreement on fixed-term work.

Moreover, for the purposes of the application of Clause 4 of the Framework Agreement, the differential treatment has to be solely due to the fixed-term status of the worker. That is not the case in the situation described by the complainants, since both fixed-term teachers and permanent teachers in 'scuole paritarie' do not have the seniority acquired in those schools taken into account when becoming permanent teachers in a State school.

The Commission therefore concludes that the situation of the complainants does not fall within the scope of application of the Framework Agreement on fixed-term work annexed to Directive 1999/70/EC.

## **2. Regarding the respect of the provisions of Directive 2000/78/EC**

The complainants claim that there is different treatment between precarious teachers in 'scuole paritarie' and precarious teachers in State schools, while they both belong to the national teaching system and have the same legal and contractual obligations. They claim that this violates the provisions of Directive 2000/78/EC.

However, Directive 2000/78/EC prohibits discrimination based on a number of exhaustively enumerated grounds, namely religion, age, disability and sexual orientation. On the basis of the information provided by the complainants, it does not seem that there is discrimination based on such grounds in the present case.

## **3. Regarding the respect of the provisions of Directive 2006/54/EC**

The complainants claim that there is a breach to the principle of equal pay for equal work laid down in Article 141 of the Amsterdam Treaty and Directive 2006/54/EC. The permanent teacher in a State school who has obtained recognition of the service performed after recruitment as a permanent teacher and of services performed as a fixed-term teacher in State schools, will be placed in a salary grade corresponding to the years of service, while a permanent teacher in a State school who has performed services as a fixed-term teacher in a 'scuola paritaria' will be placed in a lower scale since his previous experience will not be taken into account, even if he has worked longer.

The complaints claim that this violates the principle of equal pay for equal work as enshrined in Directive 2006/54/EC.

However, directive 2006/54 and Article 157 of the Treaty on the Functioning of the European Union<sup>2</sup> only prohibit discrimination between men and women. They do not prohibit discrimination on the basis of the motive raised by the complaints. In addition, the complainants do not argue the existence of indirect discrimination between men and women in the situation that they complain about (for example, due to much higher number of teachers coming from 'scuola paritaria' being teachers of a given sex).

---

<sup>2</sup> Which replaced the previous Article 141 of the Treaty establishing the European Community.

#### **4. Regarding the CJEU's position in C-677/16 Montero Mateos**

The CJEU held in C-677/16 Montero Mateos that:

“Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation which does not provide for any compensation to be paid to workers employed under a fixed-term contract entered into in order to cover a post temporarily while the selection or promotion procedure to fill the post permanently takes place, such as the temporary replacement contract at issue in the main proceedings, on expiry of the term for which that contract was concluded, whereas compensation is payable to permanent workers where their employment contract is terminated on objective grounds.”

The facts of the case relate to national legislation in Spain which does not provide for any compensation to be paid to workers employed under a fixed-term contract entered into in order to cover a post temporarily while the selection or promotion procedure to fill the post permanently takes place, on expiry of the term for which that contract was concluded, whereas compensation is payable to permanent workers where their employment contract is terminated on objective grounds.

This case on the payment of compensation is not related to the grievance as brought forward by the complainants, which is a grievance on seniority which is not taken into account.

#### **Conclusion**

The grievance falls outside the scope of application of EU law.

If the complainants are of the opinion that this practice is in violation of Italian law, they can seek redress before the national court.

The complainants have mentioned that the case has already been brought before the Constitutional Court, which, according to the complainants, held in its judgment of 30 July 2021, that ‘it is not unlawful for pre-permanent work in state-accredited private schools not to be taken into account for the purposes of career reconstruction in state schools’. In this context, national authorities, including national judges, remain exclusively competent to assess whether the current situation is discriminatory and award appropriate remedies.

Against this background, the Commission has closed this complaint.