

Decision in case 1159/2017/TM on a selection procedure organised by the European Investment Bank for recruiting a maritime engineer

Decision

Case 1159/2017/TM - Opened on 16/11/2017 - Decision on 11/10/2018 - Institution concerned European Investment Bank (No maladministration found) |

The case concerned a selection procedure organised by the European Investment Bank (EIB) for recruiting a maritime engineer. The complainant argued that the selection procedure was not fair, as the way it was organised meant the full range of skills and experience of the candidates could not be assessed.

The Ombudsman inquired into the issue and found no maladministration by the EIB.

Background to the complaint

1. The complainant participated in a selection procedure organised by the European Investment Bank (EIB) for recruiting a maritime engineer. Following a first screening of the applications received, a technical test and an online interview, the complainant was amongst four shortlisted candidates invited for an interview with the 'selection panel'. The complainant was subsequently not selected for the post.

2. On 14 March 2017, the complainant made an administrative complaint to the EIB Complaints Mechanism (EIB-CM), arguing that the selection procedure did not allow for a fair assessment of the candidates' full range of skills and experience, in particular their knowledge of the shipping sector. On 18 May 2017, the EIB-CM sent the complainant its decision, which concluded that there were *"no grounds to proceed with a re-evaluation of the recruitment process"*.

The inquiry

3. The Ombudsman inquired into whether the selection procedure in which the complainant took part was carried out in a fair manner.



4. In the course of the inquiry, the Ombudsman inspected the profiles of the shortlisted candidates and the 'selection note' [1] drafted by the selection panel following the final interviews. The Ombudsman also asked the EIB-CM for further information and received it before reaching a decision in this case.

Arguments presented to the Ombudsman

Arguments put forward by the complainant

5. The complainant stated that the 'vacancy notice' for the post put a strong emphasis on expertise in the shipping sector [2]. She claimed that, despite this, the successful candidate had a background in the ports sector. She also claimed that the successful candidate did not meet the criteria set out in the vacancy notice deemed 'advantageous' [3]. As such, the complainant argued that the successful candidate would not be able to fulfil the role of maritime engineer. She noted that, as a matter of fact, after having recruited the successful candidate with a background in the ports sector, the EIB had to, subsequently, to recruit a person with expertise in the shipping sector.

6. The interview consisted of a case study and follow-up questions. According to the complainant, the case study and the follow-up questions did not enable the selection panel to fairly evaluate candidates' knowledge of both the ports and shipping sectors, due to the lack of *"balanced technical questions on both sectors"*.

7. The complainant claimed that she had performed very well in the interview. In support of her argument, the complainant referred to her specific qualifications, her professional experience, published works, projects and her expertise in a multicultural and international environment, as set out in the application form.

8. The complainant also questioned the expertise of the members of the panel and their ability to assess her knowledge of the shipping sector, which, in her view, was also prejudicial to her overall assessment.

Arguments put forward by the EIB

9. The EIB-CM stated that *"the case study [...] included questions on the shipping sector and the follow-up questions during the interview were adapted to the candidates and therefore some also related to the shipping sector"*. Therefore, the complainant had the opportunity to demonstrate her knowledge of the shipping sector.

10. The EIB said that, in accordance with the applicable rules [4], the assessment of the shortlisted candidates consisted of: a supervised on-site ability test, a panel interview and a case study related to the field of work.

11. The final selection decision was based on cognitive tests (verbal and numerical), a case study and interviews. It was also based on an assessment of the suitability of candidates' profiles and how they "fit within the existing team". Diversity and gender balance were also taken into consideration.



12. The selection panel deliberated and prepared a 'selection note', which summarised the assessment of the candidates.

13. The EIB added that it does not assess *"the profile of the candidate against each criterion indicated in the [vacancy notice] individually"*.

The Ombudsman's assessment

14. Selection panels enjoy wide discretion in how they organise the procedures for selecting staff [5] . EU case-law [6] has, however, established that a selection panel's discretion is not unlimited but determined by the vacancy notice, which sets out the legal framework for its assessment and is binding upon the selection panel. The discretion enjoyed by Selection Boards extends to the assessment of whether the qualifications and professional experience of candidates correspond to the level required by the vacancy notice [7] . Decisions by a selection panel are open to review only if they have made a manifest error in law or in fact [8] .

15. Having examined all of the relevant EIB documentation on this selection procedure, there is nothing to suggest that the selection panel committed a manifest error in how it assessed the case study and the follow-up questions or in the conduct of the procedure more generally. The fact that the EIB does not assess *"the profile of the candidate against each criterion indicated in the [vacancy notice] individually"* is not in itself problematic . The Ombudsman is satisfied that all criteria have been assessed in this case.

16. A candidate's personal belief about the relevance of their profile and their personal conviction as to how their experience and/or qualification should have been assessed are subjective and do not constitute irrefutable evidence of an error [9] . The Ombudsman notes the complainant's statement that the vacancy notice put a strong emphasis on expertise in the shipping sector. However, the Ombudsman notes also that the vacancy notice says that *"the successful candidate is likely to come from a port operating background, maritime consultancy, or a similar role in other public lending institutions"*.

17. The complainant did not substantiate her allegations that the members of the selection panel lacked sufficient expertise. The fact that they do not have specific qualifications in maritime engineering does not call into question their ability to assess the candidates' performance.

18. Finally, the complainant's argument regarding the subsequent appointment of a person in the same team/division with shipping skills is not relevant for the present inquiry, which is limited to the selection procedure in question.

19. Based on the above, there is no evidence that there was maladministration in how the EIB conducted the selection procedure.



Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

There was no maladministration by the European Investment Bank in this case.

The complainant and the EIB will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 11/10/2018

[1] The selection note includes a recommendation to appoint or reject a candidate; an assessment of their strengths for the role; areas for development; a summary of the tests results and, for rejected candidates, reasons for not selecting them.

[2] The qualifications set out in the vacancy notice included the following:

“- Qualified professional engineer with relevant university degree with a good knowledge of applied quantitative methods, in particular cost-benefit analysis in relevant fields such as transport infrastructures.

- A minimum of 5 years relevant professional experience, gained from a position with responsibility in the maritime sector, including one or more of the following sub-sectors: shipping, seaports, inland waterways and inland ports, and coastal protection/flood defence.

- Working knowledge of seagoing and inland vessel design, construction and operation, marine engineering, classification societies, shipyard operations and international maritime regulatory environment”.

[3] The vacancy notice identified four of the listed qualifications as being advantageous or “ideally” possessed by applicants.

[4] The Procedure Manual of the Staffing Division.

[5] Cases T-19/03, *Konstantopoulou v Court of Justice* [2004] ECR-SC I-A-25 and II-107, paragraphs 48 and 60; T-267/03, *Roccato v Commission* [2005] ECR-SC I-A-1 and II-1,



paragraphs 48-49.

[6] Case T-139/00, *Laurent Bal v Commission* , ECLI:EU:T:2002:65, paragraph 35

[7] Cases T-158/89, *Guido van Hecken v Economic and Social Committee* , ECR 1991 II-01341, paragraph 22; Case T-332/01, *Pujals Gomis v Commission*, [2002] ECR-SC I-A 233, paragraphs 39-41.

[8] Case T-244/97 *Mertens v Commission* , ECR-SC I-A-00023; II-00091, paragraph 44.

[9] Case T-46/93, *Michaël-Chiou v Commission*, ECLI:EU:T:1994:285, paragraph 50.