

## Decision of the European Ombudsman closing his inquiry into complaint 439/2011/AN against the European Joint Undertaking for ITER and the Development of Fusion Energy

Decision

**Case 439/2011/AN - Opened on 24/02/2011 - Decision on 19/12/2011 - Institutions concerned** Fusion for Energy Joint Undertaking ( Critical remark ) | Fusion for Energy Joint Undertaking ( No further inquiries justified ) |

### The background to the complaint

1. The European Joint Undertaking for ITER and the Development of Fusion Energy ('Fusion for Energy') [1] was created in 2007 by a decision of the Council of the European Union [2] under the Euratom Treaty. It was established in Barcelona for a period of 35 years. Fusion for Energy is responsible for providing Europe's contribution to ITER [3] , the world's largest scientific partnership, which aims to demonstrate fusion as a viable and sustainable source of energy. Fusion for Energy also supports fusion research and development initiatives through the Broader Approach Agreement, a fusion energy partnership signed with Japan. Finally, it contributes to the construction of demonstration fusion reactors.
2. In 2009, Fusion for Energy published a vacancy notice 4E/CA/FGIV/2009/003 [4] , aimed at recruiting a contract agent to " *provide general legal support* " (the 'Selection Procedure'). The deadline to submit applications was 27 November 2009.
3. On 26 November 2009, the complainant, a British national, applied for the Selection Procedure and received an immediate acknowledgement of receipt of her application. The acknowledgement of receipt stated that "[f] *or any information on the progress of the selection process, please refer to the 'Fusion for Energy' website...* "
4. On 16 January 2010, the complainant sent an initial letter to Fusion for Energy in search of information concerning the Selection Procedure. She stated that she had not received any news concerning the status of her application, and that the website did not provide " *any detailed information* ". Fusion for Energy replied on 18 January 2010, informing her that a Selection Committee would be established " *soon* " in order to examine the applications and draw up a short list of candidates to be invited for interview. It also stated that all candidates would be



informed of the outcome of the process in due course.

5. On 4 March 2010, the complainant wrote to Fusion for Energy for the second time, expressing her surprise that she had still not received any information concerning the progress of her application. She was also astonished that the initial stage of the Selection Procedure took such a long time. Fusion for Energy replied on 5 March 2010, stating that there were some delays with the process and informing the complainant that a Selection Committee had been established. Fusion for Energy also reiterated the remaining information contained in its previous reply of 18 January 2010. Moreover, it pointed out that invitations for interviews were generally sent at least two weeks before the scheduled date.

6. On the same date, the complainant replied to Fusion for Energy and suggested that this information should be posted on the website, in order to keep all applicants updated as regards the process.

7. On 18 May 2010, Fusion for Energy contacted the complainant with a request concerning her nationality, to which the complainant replied the following day.

8. On 6 July 2010, the complainant e-mailed Fusion for Energy again, requesting information about the status of the Selection Procedure and its duration. Fusion for Energy's reply, received on 8 July 2010, provided the same information as the information contained in its e-mail of 5 March 2010 to the complainant.

9. On 20 October 2010, Fusion for Energy informed the complainant that she had not been successful in the Selection Procedure. On 21 October 2010, the complainant responded to Fusion for Energy's e-mail and asked why it had taken Fusion for Energy almost a year to take that decision, and why it seemed that she only received the response when she "*chased for information*".

10. Fusion for Energy did not reply to the complainant's e-mail.

## **The subject matter of the inquiry**

11. The Ombudsman opened an inquiry into the following allegations and claims [5] identified in the complaint:

### **Allegations:**

1. Fusion for Energy did not provide information concerning the results of selection procedure 4E/CA/FGIV/2009/003 in a proper and timely manner.

2. Fusion for Energy did not reply to the complainant's e-mail of 21 October 2010 concerning selection procedure 4E/CA/FGIV/2009/003.



## **Claims:**

1. Fusion for Energy should inform candidates of the progress of their applications, either individually or by updating the relevant information on its website in a timely manner.
2. Fusion for Energy should reply to the complainant's e-mail of 21 October 2010 and duly deal with her queries contained therein.

## **The inquiry**

12. On 24 February 2011, the Ombudsman forwarded the complaint to the Director of Fusion for Energy, requesting that body to submit an opinion on the above allegations and claims.
13. Fusion for Energy submitted its opinion on the complaint on 1 June 2011. On 9 June 2011, the EO forwarded the opinion to the complainant with an invitation to submit observations by 31 July 2011. The complainant did not submit any observations by that date.
14. On 15 August, 2011 the complainant sent an e-mail to the Ombudsman, in which she expressed her disappointment with the Ombudsman's decision not to inquire into the remainder of her complaint. However, the e-mail did not contain any observations concerning Fusion for Energy's opinion.
15. On 30 September 2011, the Ombudsman replied to the points raised by the complainant in her e-mail of 15 August 2011. The Ombudsman informed the complainant that, if he did not receive any observations from her by 31 October 2011, he could take a decision on this case based on the information she had already provided and on Fusion for Energy's opinion.
16. The complainant did not submit any observations by 31 October 2011, either.

## **The Ombudsman's analysis and conclusions**

**A. Allegation of failure to provide information concerning the results of the Selection Procedure in a proper and timely manner and related claim**

### **Arguments presented to the Ombudsman**

17. In her complaint, the complainant argued that she only received information concerning her application almost a year after having submitted it. During this period, she did not "hear



*anything from the human resources department for months on end", and Fusion for Energy's webpage simply stated that the process was ongoing. The complainant had to "chase for information relating to the status of [the vacancy]", but only received a "generic/copy and pasted response".*

**18.** In its opinion, Fusion for Energy stated that its selection procedures generally take about six months on average to be completed. Nevertheless, some selections may take longer for various reasons. Fusion for Energy needed more time to complete this particular Selection Procedure due to the large number of applications received and the fact that the members of the Selection Committee *"had to combine that task with a particularly intense workload resulting from their day-to-day duties."*

**19.** Fusion for Energy highlighted its commitment to the timely completion of all selection procedures. However, *"due account has to be taken of the fact that it is still a relatively new entity, which has to make best use of its limited resources while realising an intensive recruitment programme"*. According to Fusion for Energy, in 2010 it completed forty-four selection procedures.

**20.** In Fusion for Energy's view, the prolonged duration of the Selection Procedure did not render it non-transparent. In accordance with its established practice, Fusion for Energy informed all the candidates *"on every completed step of the selection procedure by means of a signed individual letter sent by email."* In addition, Fusion for Energy stated that more general information about the progress of the Selection Procedure (*"selection published, on-going and completed"*) was provided on its external website, which is accessible to everyone.

**21.** The complainant's case did not constitute an exception to the above: she received confirmation of the receipt of her application and, subsequently, the results of the first stage of the Selection Procedure, namely, Fusion for Energy's decision not to invite her for interview. In the meantime, Fusion for Energy *"duly and timely"* replied to the complainant's queries regarding the status of the Selection Procedure, informing her that the latter was ongoing and that delays occurred. Fusion for Energy stated that *"no other information could have been provided"* to the complainant and concluded that the complainant's allegation of lack of transparency in the Selection Procedure was unfounded.

## **The Ombudsman's assessment**

**22.** At the outset, the Ombudsman has examined the vacancy notice and notes that it did not contain any information concerning the total duration of the Procedure, nor the approximate timing of the essential stages.

**23.** Although Fusion for Energy has no legal obligation to include this type of information in its vacancy notice, the Ombudsman considers that the provision of such information would constitute good administrative behaviour, reducing, for the benefit of the applicants, the degree of uncertainty inherent in any competition, and avoiding any doubts about the transparency of



the Selection Procedure. Moreover, this would enable applicants to envisage more clearly the timeframe of the Procedure.

**24.** In this respect, it should be noted that it is common practice for regular competition organisers, such as the European Personnel Selection Office (EPSO), to inform candidates, in the competition notice, of the timetable for the competition and its essential steps. The Ombudsman considers that, whatever the recruiting body, candidates in EU selection procedures can reasonably expect to be provided with at least an indicative timetable.

**25.** In the present case, the vacancy notice provided no information to candidates about the estimated timetable for completing the competition and about the timing of each relevant step. In these circumstances, Fusion for Energy should at least have endeavoured to publish the relevant information on its website. It appears that this was indeed Fusion for Energy's intention, because the acknowledgement of receipt sent to the complainant on 26 November 2009 stated that "*the information on the progress*" of the Selection Procedure could be found on its website.

**26.** According to the complainant, however, during the first stage of the Selection Procedure (that is, during a period of almost one year, from November 2009 to October 2010), Fusion for Energy's website only mentioned that the Selection Procedure was "*ongoing*". Fusion for Energy appears to acknowledge in its opinion that this was true, by stating that only the "*more general information*", namely, that the Selection Procedure was published, ongoing or closed, was available on its website.

**27.** The Ombudsman considers that, while this information could have been sufficient for the general public potentially interested in Fusion for Energy's recruitment procedures, it was insufficient to inform those directly concerned, namely, the **candidates**. During a period of almost one year, candidates could reasonably have expected to receive more details about the "*ongoing*" Selection, such as information about the setting up of the Selection Committee and its composition, whether the review of applications was in progress or completed and whether there were any estimated deadlines for further steps. According to Fusion for Energy, it only informed concerned candidates, by letter, of the **completed** steps of the Procedure, namely, in the present case, the Selection Committee's substantive decision to invite candidates for interview or not. That information was provided (at least to the complainant) as late as 20 October 2010.

**28.** In sum, taking into account the lengthy duration of the first stage of the Selection Procedure, (i) the lack of information on Fusion for Energy's website on each actual step of the procedure with a certain significance, in addition to (ii) the lack of an estimated deadline for the overall Selection Procedure on the website and in the vacancy notice, placed the complainant (and all the other candidates) in a situation of uncertainty. In the Ombudsman's view, this was inappropriate for a selection procedure organised by an EU body, which should be service-minded in its approach.

**29.** This conclusion is not altered by the fact that Fusion for Energy promptly replied to all the



complainant's queries about the Selection Procedure, an approach that the Ombudsman nevertheless applauds. In its replies to the complainant, although timely, Fusion for Energy limited itself to informing the complainant that it experienced some delays with the Selection Procedure, but did not explain the reasons why such delays occurred, nor did it provide the complainant with an estimated timeframe within which a substantive decision concerning the first stage of the procedure would be made. Even in January 2010, when Fusion for Energy informed the complainant of the above and of the fact that a Selection Committee still had to be appointed, it only stated that applicants would be informed of the outcome of the procedure in "*due time*". The complainant could hardly have attached any significance to the concept of "*due time*" in such a context.

**30.** In addition to that, Fusion for Energy stated in its opinion that its selection procedures generally take up to six months. Therefore, in March 2010, when the complainant submitted her second query, Fusion for Energy was undoubtedly aware of the fact that the Selection Procedure in this case would take much longer than usual. At least at that point, Fusion for Energy should have considered informing not only the complainant, but also all the other applicants, via its webpage, about the delays and the expected timeframe required to finalise the first stage of the Selection Procedure. Such an approach on Fusion for Energy's part would have demonstrated commitment to an administrative culture of service. Besides, it would have most certainly prevented the complainant from forming the view that the procedure was not transparent and that Fusion for Energy kept relevant information from her.

**31.** Finally, in the complainant's own words, Fusion for Energy's third reply dated 8 July 2010 was a "*generic/copy and pasted*", that is, it did not contain any new information as compared with the e-mails she had received previously.

**32.** In light of the above, the Ombudsman considers that the information concerning the Selection Procedure provided by Fusion for Energy to the complainant, both through its website and through its replies to the complainant's queries, was insufficient to demonstrate commitment to an administrative culture of service. This constituted an instance of maladministration.

**33.** Pursuant to Article 3(5) of the Statute of the European Ombudsman [6], "*As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint*". However, in the present case it is no longer possible for Fusion for Energy to eliminate the instance of maladministration, since the Selection Procedure is already closed. Therefore, the Ombudsman will make a critical remark below.

## **B. Allegation of failure to reply to the complainant's correspondence dated 21 October 2010 and related claim**

### **Arguments presented to the Ombudsman**



**34.** In its opinion, Fusion for Energy stated that itself and its staff attach great importance to relations with citizens. In Fusion for Energy's view, this is evidenced by the fact that " *the first decisions adopted by the Governing Board of Fusion for Energy concerned a code of good administrative behaviour... where the question of replies to citizen's requests are dealt by with in a prominent manner.* " Requests concerning human resources subjects are, moreover, " *handled with utmost readiness and care* ".

**35.** However, as regards the complainant's correspondence dated 21 October 2010, Fusion for Energy acknowledged that it "[u]nfortunately " remained unanswered. Fusion for Energy regretted this omission and apologised to the complainant for it. Moreover, it assured the Ombudsman that " *appropriate measures have been taken to avoid similar situations in the future* ".

**36.** Fusion for Energy also emphasised that, despite this incident, it did reply in a timely manner to the complainant's " *numerous* " e-mails concerning the Selection Procedure. As regards the complainant's statement that she only received information after " *chasing* " it, Fusion for Energy stated that " *all the candidates received the information on the outcome of the first stage of the selection procedure at the very same time as soon as the selection procedure has been finalized.* "

## **The Ombudsman's assessment**

**37.** According to Article 14(1) of the European Code of Good Administrative Behaviour, "[e]very letter or complaint to the Institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period." The only exception to this rule is set in paragraph 3 of the same Article, which provides that "[n]o acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character."

**38.** Article 15 of Fusion for Energy's Code of good administrative behaviour [7] is drafted in very similar terms, providing a deadline of 14 calendar days for acknowledgements of receipt to be sent.

**39.** It is regrettable that Fusion for Energy failed to comply with the above provisions in relation to the complainant's e-mail of 21 October 2010. The Ombudsman welcomes the fact that Fusion for Energy admitted its fault and apologised to the complainant, while giving assurances that measures have been taken to avoid similar situations in the future. The Ombudsman trusts that this will be so and therefore considers that no further inquiries are justified into this aspect of the complaint.

## **C. Conclusions**





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

**The information concerning the Selection Procedure provided by Fusion for Energy to the complainant, both through its website and through its replies to the complainant's queries, was insufficient to demonstrate commitment to an administrative culture of service.**

**There are no grounds to conduct further inquiries into the second allegation and related claim.**

The complainant and Fusion for Energy will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 19 December 2011

[1] <http://fusionforenergy.europa.eu> [Link]

[2] Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, OJ L 90 of 2007, page 58.

[3] ITER brings together seven parties: the EU, Russia, Japan, China, India, South Korea and the United States.

[4] <http://fusionforenergy.europa.eu/careers/vacancies/Default.aspx?closed=2> [Link]# Contract agents

[5] The complainant also alleged, in her complaint, that another selection procedure organised by Fusion for Energy in which she was unsuccessful, namely, F4E/TA/AST3/2010/0132, was not transparent. She claimed that Fusion for Energy should prove that the successful candidates in selection procedure F4E/TA/AST3/2010/013 were better qualified than she was. However, the Ombudsman did not find grounds to open an inquiry into this allegation and claim because Fusion for Energy had duly justified its decision to declare the complainant unsuccessful, and there were no indications of lack of transparency in the selection procedure. He informed the complainant accordingly on 24 February 2011.

[6] 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.





[7] [http://fusionforenergy.europa.eu/downloads/aboutf4e/decisions/F4E\(07\)-GB03-09.pdf](http://fusionforenergy.europa.eu/downloads/aboutf4e/decisions/F4E(07)-GB03-09.pdf) [Link]