

Decision in cases 1401/2017/PB and 1558/2017/PB on issues related to how the European Centre for Disease Prevention and Control introduced a new promotion system

Decision

Case 1401/2017/PB - Opened on 07/09/2017 - Decision on 22/05/2019 - Institution concerned European Centre for Disease Prevention and Control (No maladministration found)

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Case 1558/2017/PB - Opened on 15/09/2017 - Decision on 22/05/2019 - Institution concerned European Centre for Disease Prevention and Control (No maladministration found)

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The cases concerned the introduction of a new promotion system for staff at the European Centre for Disease Prevention and Control (ECDC).

The complainants considered that the new system did not allow the ECDC adequately to take into account the 'promotion points' staff had accumulated under the old system, and that the ECDC did not make sufficient use of the transitional measures it had put in place to balance out the discrepancy.

The Ombudsman did not find maladministration in the ECDC's actions. However, she drew attention to the fact that staff promotions are meant to motivate high performing EU civil servants, which is in the public interest. She took the view that it would be within the ECDC's powers to identify what seems to be a small group of staff members concerned by the issues raised in this case, and to consider taking further measures to address the situation.

Background to the complaint

1. The European Centre for Disease Prevention and Control ('ECDC') is one of close to fifty EU agencies or other bodies that are for the most part located not in Brussels, Belgium, but in other EU Member States. Most of these, including the ECDC, are decentralised agencies. The agencies and other bodies employ well over ten thousand staff, which is close to twenty percent of the staff employed by the EU civil service. [1]



2. Decentralised agencies work independently to a large extent, but also benefit from co-operation and some supervision from the European Commission. This relationship is reflected in the EU Staff Regulations [2] , but also in the outcome of the 2012 review of decentralised agencies, the aim of which was to adopt a comprehensive set of guiding principles to make the agencies more effective and accountable [3] .
3. In that context, the Commission adopted new implementing provisions for the promotion of agency staff [4] . To implement these provisions, the ECDC further adopted its own internal implementing rules.
4. One important aspect of the new promotion rules was that the ECDC chose to introduce an *average* points system. The previous system was a *cumulative* points system. Under the *cumulative* points system, a staff member whose points reached a certain threshold would be promoted almost automatically without regard to his or her actual performance. The *average* points system aims at improving the comparison of merits. It is technically based on the average merit points of the staff members eligible for promotion. The average points of a staff member is matched against this overall average, which helps the ECDC to determine whether it can promote the persons concerned.
5. Some staff members took the view that the ECDC failed to manage properly the transition from the old to the new promotion system. They therefore complained.
6. For the purpose of presentation and consistency, the Ombudsman has handled the two complaints here concerned as joint cases.

The inquiry

7. The Ombudsman has looked at whether the ECDC's handling of a key aspect of the transition from the old to the new promotion system was maladministration. This key aspect was the merging of points from the old cumulative system with the points from the new average points system.
8. One of the two complaints also questioned the ECDC's actual assessment of the complainant's performance.
9. In the context of the inquiry, the Ombudsman received the ECDC's reply on the complaints, and the complainant's comments on that reply.

Points from the old and the new systems

10. When the ECDC determines the average points under the new promotion system, it also includes the staff members' points from the old system. The ECDC considered it appropriate to do so because the scale of points was the same under the old system as it is under the new



system (from 0 to 4).

11. However, according to the complainants, the points given under the old system were lower, on average, than the points given since the new system came into force. This has meant that *more recent staff have a higher average of points*, and thus stand a better chance of promotion. For a staff member who has several years of points from the old system, the average of those points "drag down" his or her average.

12. The ECDC does not contest the situation as described by the complainants. The fact that staff on average get higher points under the new system seems to be due to the way in which the individual assessments evolved after the ECDC introduced the new system.

13. However, the ECDC claims to have adequately addressed the issue by using a compensatory method which was introduced from the outset. This method would allow the ECDC, exercising its discretionary powers, to promote well-performing staff ('flagged' staff) who had worked under the old system, regardless of average points.

14. The issue therefore is whether the ECDC should have used this compensatory measure more than it did. The ECDC believes it has done what is appropriate, whereas the complainants disagree.

The Ombudsman's assessment

15. There are inherent limits to the extent of the Ombudsman's review in cases that concern the EU institutions' internal organisation.

16. The EU Court has consistently recognised that the institutions have wide powers of internal organisation, including a wide discretion to decide on the assessment and promotion of their staff [5] .

17. It is in general not the role of the Ombudsman to review an institution's internal day-to-day measures of organisation, or decisions on promotion.

18. In this case, the Ombudsman understands the sense of unfairness that the complainants feel in that they experience, in essence, some devaluation of the points that they obtained under the previous assessment and promotion system. However, the fact that organisational changes may cause certain administrative difficulties in a transitional period is not in itself maladministration [6] . The Ombudsman may nevertheless look into whether an institution has put in place mechanisms and instruments aimed at alleviating potential negative effects of organisational changes. In this case, the ECDC has put in place a 'flagging' system, which would allow it to promote well-performing staff ('flagged' staff) who had worked under the old promotion system. Given that the *application* of the 'flagging' system is part of the ECDC's wide discretionary powers related to promotions, it is not the role of the Ombudsman to audit the efficiency of that system in the absence of evidence of manifest errors or misuse of powers. The



Ombudsman has found no such evidence.

19. Taking into account the foregoing, the Ombudsman concludes that she has not identified shortcomings in the ECDC's merging of the promotion systems that could have warranted a recommendation to the ECDC that it reverse previous decisions or measures.

20. Similarly, still having regard to the above-mentioned context and scope of review, the Ombudsman has not identified any manifest errors or misuse of powers that would constitute maladministration in relation to the specific staff assessments here concerned.

21. Notwithstanding the above, the Ombudsman's role is also to identify opportunities for possible improvements in the EU administration, in respect of individual cases as well as systemically. The complainants in this case have with some credibility claimed that, because of the presumably unforeseen development referred to in paragraph 12 above, they would probably have to obtain quite unrealistically high assessment points for a number of years in order to reach the relevant average merit point for promotion. It seems that this reality initially existed in relation to more staff than foreseen, which in turn made the 'flagging' system a less effective tool to address the situation.

22. The information provided in the course of this inquiry suggests that the number of staff whose situation is still significantly influenced by the transitional issue referred to in this case is now relatively small. The Ombudsman believes that it would be within the ECDC's legal powers, and possibly useful from the point of view of good management, if it were to identify that group of staff members and to consider taking further measures of adjustment. The Ombudsman recalls that an EU institution's possibility to promote its staff concerns not merely individual privileges of staff members, but constitutes one of several management tools to attract and motivate high performing staff whose work will benefit the EU civil service and ultimately and most importantly the public. At the same time, the Ombudsman notes, once again, the wide discretion the ECDC enjoys in this area.

Conclusion

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

The Ombudsman has not identified shortcomings in the ECDC's merging of the promotion systems that could have warranted a recommendation to the ECDC that it reverse previous decisions or measures.

The Ombudsman, however, draws attention to the fact that the promotion of staff members constitutes one of several management tools to attract and motivate high performing staff whose work will benefit the EU civil service and, ultimately and most importantly, the public. As such and to the extent possible, the ECDC could take further measures of adjustment for what seems to be a small group of staff still influenced by issues caused by the transition to the new promotion system. At the same time, the



Ombudsman notes, once again, the wide discretion the ECDC enjoys in this area.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 22/05/2019

[1] More information here : https://europa.eu/european-union/about-eu/agencies_en [Link] and <https://euagencies.eu/> [Link]

[2] Chapter 2, Article 110
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link]

[3] https://europa.eu/european-union/about-eu/agencies/overhaul_en [Link]

[4] 'Promotion' will be used throughout instead of the technical term 'reclassification'.

[5] For instance judgement of the Court of First Instance of 22 October 2002, Plugrad v European Central Bank, Joined Cases T-178/00 and T-341/00,
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=47813&pageIndex=0&doclang=EN&mode=lst&dir=>
[Link]

[6] Similarly in decision 698/2017/PB,
<https://www.ombudsman.europa.eu/en/decision/en/109998> [Link]