

Decision of the European Ombudsman in case 2119/2018/LM on concerns about possible blacklisting by Europol of an applicant in staff selection procedures

Decision

Case 2119/2018/LM - Opened on 13/03/2019 - Decision on 05/03/2020 - Institution concerned European Union Agency for Law Enforcement Cooperation (No maladministration found) |

The complainant turned to the Ombudsman because he was concerned that Europol had black-listed him from its staff recruitment procedures after he had raised concerns and complained to OLAF about a previous staff selection procedure.

The Ombudsman notes that the complainant is a highly qualified individual, who was shortlisted once by Europol. His concerns are thus understandable. In this case, however, the Ombudsman did not find evidence to suggest that the complainant had been unsuccessful in subsequent staff selection procedures for anything other than objective reasons. She thus closed the case with a finding of no maladministration.

Background to the complaint

1. The complainant is a police officer. He applied to a vacant post at the European Union Agency for Law Enforcement Cooperation (Europol) [1] and was shortlisted, that is, he was invited to take written tests and to an interview. In July 2017, after the tests and the interview, the complainant contacted Europol. He raised concerns about some of the test questions and flagged that one member of the selection committee was absent during the interview.

2. In September 2017, Europol informed the complainant that the selection procedure had been cancelled due to a 'procedural issue' and that it would soon re-advertise the post. Europol encouraged the complainant to apply again. The complainant asked for more information about the cancellation of the selection procedure. He asked whether the cancellation had been triggered by the e-mail he had sent in July 2017 and what the 'procedural issue' was. Europol replied that it had identified a possible conflict of interests which could potentially have impaired the independence of the selection committee and, consequently, the outcome of the selection procedure. Europol reassured the complainant that the issue would not have any impact on the forthcoming selection procedure for the same post.



3. In September 2017, Europol re-launched the selection procedure [2] . The complainant applied again but was not shortlisted.

4. In November 2017, the complainant asked Europol for more information about the possible conflict of interest in the first selection procedure. He said that he would complain to the European Anti-Fraud Office (OLAF) and to the Ombudsman “ *in relation to the suspicion of misconduct and possible trade of interest* ”. Europol replied that it could not disclose the requested information because of the confidentiality of the work of the selection board. Europol informed the complainant that he could make an administrative complaint about the decision to cancel the first selection procedure [3] .

5. The complainant turned to the Ombudsman about possible irregularities in Europol staff selection procedures. His complaint was declared inadmissible at that stage and Europol was thus not contacted by the Ombudsman at the time. He also complained to OLAF about the same matter. OLAF opened an investigation into a number of staff selection procedures organised by Europol.

6. In November 2018, the complainant applied for another post at Europol [4] , as a seconded national expert [5] . The complainant was not shortlisted.

7. In December 2018, the complainant turned to the European Ombudsman complaining that Europol had ‘black-listed’ him because of the concerns he had raised and the complaints that he had made about Europol’s staff selection procedures. As proof of the ‘black-listing’, the complainant argued that Europol had systematically rejected his applications for subsequent vacant posts.

The inquiry

8. The Ombudsman opened an inquiry regarding the complainant’s concerns that he was ‘black-listed’ by Europol.

9. The Ombudsman received the reply of Europol to the complaint and the comments of the complainant in response to Europol’s reply.

10. During the course of the inquiry, OLAF closed its investigation. It did not find any evidence of fraud or irregularities in the staff selection procedures that it had investigated.

11. Europol also provided the Ombudsman’s inquiry team with information about the outcome of the internal investigation regarding the possible conflict of interest which led to the cancellation of the first selection procedure. In addition, Europol explained how it had addressed the e-mail that the complainant sent in July 2017.



Arguments presented to the Ombudsman

The complainant's arguments

12. The complainant was of the view that Europol had cancelled the first selection procedure because of the concerns that he had put forward in July 2017. The complainant was concerned that Europol refused to disclose more information because it was trying to hide the fact that it had cancelled and re-launched the selection procedure for the purpose of selecting a specific candidate.

13. The complainant argued that, by systematically rejecting his job applications, Europol is retaliating against him for having complained to OLAF and to the Ombudsman. The complainant was not shortlisted in the re-advertised selection procedure, although he had been shortlisted in the first one. He argues that his experience and qualifications should be more than enough for him to be shortlisted. The complainant was also very surprised that he was not shortlisted for the post as seconded national expert, although he was more qualified than the shortlisted candidate from his country and he had provided a recommendation letter from his employer.

14. The complainant considers that the Ombudsman should investigate not only the black-listing, but also the irregularities that led Europol to cancel the first staff selection procedure.

Europol's arguments

15. Europol states that it has not black-listed the complainant and has taken no action aimed at systematically excluding him from its staff selection procedures.

16. According to Europol, the complainant did not raise any concerns about a possible conflict of interest in his e-mail of July 2017. It was thus not the complainant who helped uncover the possible conflict of interest. Europol has already clarified to the complainant that the person who was absent during the interview was an advisor to the selection committee without scoring rights. While the presence of such a person is helpful, it is not mandatory.

17. Europol said that, in August 2017, its internal investigation service made a preliminary assessment of the *risk* of there being a conflict of interest situation in the selection procedure. In September 2017, after the preliminary assessment was concluded, Europol decided to cancel the first selection procedure and to re-launch it. This was a precautionary measure, as the internal investigation service had found *no proof* of a conflict of interest. However, in order to prevent the risk of conflicts of interest in the future, Europol issued a recommendation to staff regarding the declaration of personal interests. Europol is also raising awareness among members of selection committees about these situations.

18. Regarding the selection procedures to which the complainant had applied, Europol stated that each staff selection procedure has its own selection committee, with different members. The selection committee assesses the applications on the basis of the eligibility criteria. It invites



to the written tests and interviews those eligible applicants who have obtained the highest mark. The fact that a candidate is eligible and has already been shortlisted in one procedure does not guarantee shortlisting in a subsequent procedure, even if the procedure is for the same post. Candidates are shortlisted following a comparative assessment of all the candidates. The selection committee bases its decision exclusively on the applications received for the procedure in question.

19. Europol took particular care in appointing the members of the selection committee for the re-advertised selection procedure. All the members of the new selection committee were different from the selection committee for the previous procedure, except for the line manager for the post and the Staff Committee representative.

20. Regarding the secondment procedure, Europol stated that a recommendation letter from the employer is an eligibility condition. All eligible applicants thus had such a recommendation letter. Europol considered that the complainant's application did not include enough information regarding his education, professional experience, skills and competencies.

21. Europol pointed out that the complainant did not challenge the outcome of either of the selection procedures (the re-advertised procedure or the secondment procedure), nor did he ask for further information on the evaluation of his applications. The complainant thus never put forward any concrete arguments or evidence to suggest a breach of any procedural rules or a manifest error of assessment of his applications.

The Ombudsman's assessment

22. EU institutions and agencies should welcome public scrutiny of their work. An allegation of black-listing by an individual who previously raised concerns with an agency needs to be taken particularly seriously. If individuals fear there is a risk of retribution from having raised legitimate concerns, they may be deterred from doing so, thus depriving the EU administration of an important source of information about possible problems. Such individuals are also likely to be left with a very poor impression of the EU administration they have been in contact with.

23. In this case, it is clear that the complainant is a highly qualified candidate who was shortlisted once. His concerns about possible black-listing are thus understandable. During her inquiry, however, the Ombudsman has not found any evidence that would suggest that Europol has black-listed the complainant because of the concerns that he raised or because he complained to the Ombudsman and to OLAF.

24. Europol has provided a correct account of how selection procedures are carried out from a procedural perspective (see paragraph 18 above). In addition, during the course of the inquiry, Europol has provided the Ombudsman with the evaluation table for all applicants in the re-launched selection procedure and the secondment procedure. Given the wide margin of discretion of selection committees, it is not for the Ombudsman to reassess the applications. However, the evaluation sheets show that the selection committees carried out a thorough



assessment of the applications. As Europol points out, such assessments are comparative in nature with the result that just because an applicant is shortlisted in one such procedure does not guarantee the same outcome if the procedure has to be re-run. In this case, the assessments are carefully documented and consistent with the vacancy notices. There is thus no evidence that the complainant was unsuccessful in these procedures for anything other than objective reasons.

25. Accordingly, although the complainant was unsuccessful in two subsequent Europol staff selection procedures, the Ombudsman has not found anything to suggest that Europol distorted the assessment of his application because he had complained to OLAF. The complainant's argument that his superior believed that his profile was relevant (see recommendation letter under paragraph 13) is not sufficient to indicate a manifest error of assessment of the complainant's application.

26. The Ombudsman is confident and expects that, should the complainant apply for future positions at Europol, his candidature will be treated on the same basis as any other candidate.

27. To further reassure the complainant regarding this matter, the Ombudsman notes that it is not unusual for recruiting EU bodies to receive e-mails with the type of questions and concerns raised by the complainant in July 2017. It would of course be unreasonable for an EU body to take offence from such an e-mail and there is no evidence to that effect in this case. Furthermore, based on the content of that e-mail, it is reasonable to believe that this e-mail did not trigger the cancellation of the first selection procedure. It can be noted in this regard that the e-mail did not explicitly refer to a possible conflict of interest.

28. On this latter issue, during the course of the inquiry, both Europol and OLAF have provided the Ombudsman with information about how the issue of the potential conflict of interest in the selection procedure was addressed. First, Europol decided to cancel the first selection procedure as a precautionary measure. Second, OLAF also investigated the matter but found no evidence of a conflict of interest. As this matter has thus already been investigated, the Ombudsman sees no reason to pursue this aspect further. The Ombudsman trusts that the explanations provided by Europol and OLAF on the measures taken will serve to reassure the complainant.

29. In light of the above, the Ombudsman finds no evidence of maladministration by Europol in this case.

Conclusion

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

The Ombudsman finds no evidence of maladministration by the European Union Agency for Law Enforcement Cooperation.



The complainant and Europol will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 05/03/2020

[1] Post of Specialist in the Liaison and Stakeholder management team within the Horizontal Operational Services (EUROPOL/2017/TA/AD6/296).

[2] Procedure Europol/2017/TA/AD6/320 for the post of Specialist in the Liaison and Stakeholder management team within the Horizontal Operational Service (HOS) at Europol.

[3] Under Article 90(2) of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20140501&from=EN>.

[4] Europol/2018/SNE/2019.

[5] Seconded national experts are national or international civil servants who work for an EU institution on a temporary basis.