

## **Decision in case 563/2020/MMO on the non-renewal of an employment contract with the European Union Agency for Law Enforcement Cooperation (Europol)**

Decision

**Case 563/2020/MMO - Opened on 15/04/2020 - Decision on 28/10/2020 - Institution concerned** European Union Agency for Law Enforcement Cooperation ( No maladministration found ) |

The case concerned the non-renewal of the complainant's employment contract after he had worked for 11 years at Europol.

The Ombudsman noted that there is no obligation on EU agencies to renew fixed-term employment contracts. EU agencies also enjoy wide discretion as regards their internal organisation, which includes defining the conditions for contract renewal. In this case, Europol followed the applicable rules and there is no indication that it committed a manifest error of assessment nor that it abused its power by not renewing the complainant's contract.

The Ombudsman closed the inquiry finding no maladministration.

### **Background to the complaint**

1. The complainant had been working at the European Union Agency for Law Enforcement Cooperation (Europol) for 11 years under several consecutive fixed-term contracts. Under the rules in place, another renewal would have turned his employment contract into an indefinite one. In March 2019, Europol decided not to renew his contract.
2. The non-renewal of his contract was based on a decision taken in 2011 by Europol's Management Board ('2011 MB Decision'), according to which only highly exceptional members of staff whose skills and experience are of a sufficiently indispensable character will get a contract renewal for an indefinite period.
3. A few days later, on 28 March 2019, Europol adopted new rules concerning the renewal of contracts [1] , which allowed for contracts of indefinite period under arguably less stringent conditions [2] .



4. The complainant made an administrative complaint [3] against the decision not to renew his contract, which Europol rejected in October 2019. Europol's Complaints Committee referred to the '*broad margin of discretion allotted to the administration*' as regards that type of decisions.

5. Not satisfied with Europol's reply, the complainant turned to the Ombudsman in March 2020. [4]

## The inquiry

6. The Ombudsman opened an inquiry primarily into the procedural aspects of Europol's decision not to renew the complainant's contract.

7. In the course of the inquiry, the Ombudsman received Europol's reply to the complaint and, subsequently, the complainant's comments on that reply.

## Arguments presented to the Ombudsman

- *By the complainant*

8. The complainant considers that the conditions for obtaining a contract for an indefinite period ('highly exceptional performance' and 'experience of a sufficiently indispensable character'), set out in the 2011 MB Decision, were impossible to fulfil and that they constituted an illegal or improper restriction of Europol's discretion regarding the renewal of contracts.

9. According to the complainant, Europol should exercise its discretion in accordance with the principle of proportionality, taking into account the case law of the EU Courts, which says that the purpose of the relevant rules defining the right to an indefinite contract is to protect staff and to guarantee a certain degree of stability in employment in EU agencies. [5] The complainant also argued that EU agencies have a duty of care towards their staff, which extends to examining whether a staff member can be employed elsewhere within the organisation.

10. The complainant further contended that his contract had, in fact, already been renewed a second time, which meant that it had become indefinite. [6]

- *By Europol*

11. Europol set out in detail the change in the legal framework establishing the agency and the effect that change had on employment contracts. The European Police Office was established under the Europol Convention taking effect on 1 October 1998. In May 2009, the Council Decision establishing Europol entered into force. The Council Decision set out that staff members recruited under the previous legal framework would be offered a contract following successful participation in an internal selection process. [7] Part of the implementation of the



new rules was done through the 2011 MB Decision.

**12.** Europol said that the complainant was employed by Europol on 1 July 2008. Being successful in the internal selection process under the new framework, he signed a “brand new” contract for five years on 29 June 2010 (that is, until 30 June 2015). His contract was renewed once in 2015, until 30 June 2019.

**13.** Due to the application of two distinct legal frameworks, the complainant’s contract did not become indefinite in 2015. Given that the transition between the two legal frameworks was described in a Council Decision, the case law referred to by the complainant does not apply by analogy. [8]

**14.** In March 2019, Europol adopted new rules on renewal of contracts, which entered into force in April 2019. The new rules [9] included transitional provisions, which said that contracts that expired before 1 October 2019, would still be governed by the 2011 MB Decision. The complainant’s contract fell within this category.

**15.** The use of transitional provisions is lawful. [10] Europol chose to put transitional provisions into the new rules to inform staff on the new rules and to finalise processes that had already started.

**16.** Europol acknowledges the duty to have regard to the welfare of staff. The complainant was aware of the process for the renewal and of the restrictive conditions under which Europol was entitled to give indefinite contracts.

## The Ombudsman's assessment

**17.** There are inherent limits to the Ombudsman’s review in cases that concern EU agencies’ internal organisation and their decisions whether or not to renew employment contracts. It is not the role of the Ombudsman to assess the merits of an administrative decision in that regard.

**18.** Under EU law, there is no obligation on an EU institution, body or agency, to renew an employment contract that has been entered into for a fixed period. The EU administration has wide powers of internal organisation, [11] which includes the adoption of internal rules setting out the conditions for contract renewals. Europol exercised this discretion through the 2011 MB Decision and the new rules adopted on 28 March 2019.

**19.** In the course of the Ombudsman’s inquiry, Europol has given a clear account of the evolution of the legal framework and of the change of its internal rules on contract renewals. Europol has in particular described how the change in the legal framework had an impact on employment contracts and it has described the reasons for introducing transitional provisions in the new internal rules on contract renewals.

**20.** On the basis of Europol’s explanations, the Ombudsman finds that Europol dealt with the



complainant's contractual situation under the applicable rules. There is nothing to suggest that Europol committed a manifest error of assessment or that it abused its power by not renewing the complainant's contract.

**21.** The Ombudsman appreciates the complainant's frustration, as he believes that a contract renewal would have been more likely under the new internal rules. However, the fact that an organisational change is not favourable to all staff members does not constitute maladministration.

**22.** Based on the above, the Ombudsman finds no maladministration in the manner in which Europol handled the complainant's case.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [12] :

**There was no maladministration by the European Union Agency for Law Enforcement Cooperation.**

The complainant and Europol will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 28/10/2020

[1] Europol Decision on the Duration of Contracts of Employment for Temporary Agents under Article 2(f) of the CEOS [

<https://www.europol.europa.eu/publications-documents/decision-of-executive-director-of-28-march-2019-duration-of-employment-for-temporary-agents> [Link]]. The new rules replaced the 2011 MB Decision.

[2] According to Article 4 of that Decision, "[t] he renewal of the contract for an indefinite duration shall be subject to the following cumulative criteria:

*a. The continued need of the post/function, including in light of future*

*foreseeable developments;*

*b. The staff member's skills and competencies and their relevance for the*

*occupied post/function;*



c. *The staff member's consistently high performance.* ”

[3] According to 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:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link]

[4] The complainant also complained about Europol's 2016 reclassification decision, as he had not been included in the list of staff eligible for reclassification. The Ombudsman declared this aspect of the complaint inadmissible.

[5] The complainant refers to the judgement of the Civil Service Tribunal of 5 February 2014 in case *Drakeford* , F-29/13, [

[http://curia.europa.eu/juris/document/document\\_print.jsf?docid=147341&text=&dir=&doclang=FR&part=1&occ=first](http://curia.europa.eu/juris/document/document_print.jsf?docid=147341&text=&dir=&doclang=FR&part=1&occ=first) [Link], partially confirmed on appeal T-231/14 P on 16 September 2015 [

[http://curia.europa.eu/juris/document/document\\_print.jsf?docid=167801&text=&dir=&doclang=FR&part=1&occ=first](http://curia.europa.eu/juris/document/document_print.jsf?docid=167801&text=&dir=&doclang=FR&part=1&occ=first) [Link]]

[6] The complainant started his employment at Europol on 1 July 2008 with a fixed term contract of five years. On 29 June 2010, he signed another contract for five years (that is, until 30 June 2015). That contract was renewed in 2015 until 30 June 2019.

[7] In its Article 57 concerning staff matters.

[8] See footnote 10.

[9] In particular, Article 6 thereof.

[10] See Judgment of the General Court of 27 June 2017 in case *NC v European Commission* , T-151/16, paragraphs 35-36 [

[http://curia.europa.eu/juris/document/document\\_print.jsf?docid=192147&text=&dir=&doclang=EN&part=1&occ=first](http://curia.europa.eu/juris/document/document_print.jsf?docid=192147&text=&dir=&doclang=EN&part=1&occ=first) [Link]].

[11] Judgment of the Court of First Instance of 22 October 2002 in case

*Jan Pflugrad v. ECB* , T-178/00 and T-341/00, paragraph 54 [

[http://curia.europa.eu/juris/document/document\\_print.jsf;jsessionid=47C7BB08B2A2BD8FD9A88C9F85032FCF?do](http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=47C7BB08B2A2BD8FD9A88C9F85032FCF?do) [Link] and Order of the General Court of 11 October 2012 in case *Cervelli v Commission*, T-622/11 P, paragraph 25 [<http://curia.europa.eu/juris/liste.jsf?num=T-622/11&language=EN>].

[12] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]