

Decision in case 154/2020/DL on how the Research Executive Agency dealt with a recruitment procedure carried out in the context of an EU-funded project under the Horizon 2020 programme

Decision

Case 154/2020/DL - Opened on 19/02/2020 - Decision on 09/11/2020 - Institution concerned European Research Executive Agency (No maladministration found) |

The case concerned a recruitment procedure organised by the University of Ljubljana as part of an EU-funded project, under the Horizon 2020 programme. The complainant claimed that irregularities occurred in the recruitment procedure, and reported this to the Research Executive Agency (REA), which is responsible for the implementation of the programme. Dissatisfied with how REA dealt with his complaint, he turned to the Ombudsman.

The Ombudsman found that REA investigated the issue and advised the university on steps to take to address certain shortcomings it had identified. The university followed REA's advice.

The Ombudsman therefore found that REA dealt appropriately with the matter and closed the case, finding no maladministration.

Background to the complaint

1. In 2018, the University of Ljubljana in Slovenia was awarded a grant in the context of the 'European Research Area (ERA) Chairs' [1] programme. ERA Chairs is funded under the EU's Horizon 2020 Programme [2], which is managed by the Research Executive Agency (REA). According to the grant, the university was to establish a 'European Research Area (ERA) Chair', to be managed and directed by an 'ERA Chair Holder'.

2. In 2019, the university published a vacancy notice [3] for recruiting an ERA Chair Holder. The timeline, terms and conditions for the selection procedure were defined in the grant agreement, which the university and REA had signed in June 2018.

3. The complainant applied for the vacancy.

4. Having completed various skype interviews and tests, the university informed the complainant



that he was the leading candidate for the position and invited him for an interview in person in June 2019. The university also sent him an 'Offer letter' [4] , which it referred to as "a draft". It said that it would explain this letter during the interview. The complainant was interviewed in Ljubljana later that month.

5. In July 2019, the university informed the complainant that it had not yet taken a final decision in the selection procedure.

6. This surprised the complainant, as he was convinced that the university had already offered him the position after his interview in June 2019. He argued that he had already signed an employment contract, and that he had been asked to provide official documents for his recruitment. Moreover, he argued that, at the interview in Ljubljana, the university presented him as "the new Chair Holder", showed him his new office and provided him with information about his future accommodation.

7. The university apologised for the misunderstanding and explained that the selection procedure was still ongoing. The 'Offer letter', referred to by the complainant as the 'employment contract', had also been given to other candidates, and was merely intended to clarify the employment terms. The letter was not legally binding under Slovenian law. The university said that it had also clarified during the interview that, after the complainant signed the letter, the selection committee would still have to agree on the final selection decision, and the university's rector would still need to sign the letter. The university had provided the complainant with information regarding accommodation in order to speed up the process, in case he was selected, and the official documents were provided upon the agreement of the complainant.

8. Dissatisfied with this reply, the complainant reported his concerns to REA in July 2019. The complainant argued that the university failed to respect what he considered to be a signed employment contract, and that it thereby violated the Code of Conduct for the Recruitment of Researchers and the European Charter of Researchers [5] .

9. On the same day, REA opened an investigation into the complaint and asked the university to clarify the issues raised by the complainant. In the course of the investigation, the university provided REA with supporting documents and explained why it considered that there were no irregularities in the selection procedure. The complainant also submitted additional observations to REA.

10. REA concluded that, in general, the procedure was organised in an open manner and in line with the grant agreement. However, it found that some elements of the procedure were not entirely in line with the Code of Conduct for the Recruitment of Researchers. Moreover, REA considered that the content of the 'Offer letter' was misleading and contradicted some principles of the Code of Conduct, namely to provide clear and unambiguous information to candidates, prior to the selection, about the recruitment process and the selection criteria.

11. REA informed the university about these shortcomings in August 2019. It asked the



university to provide an explanation to the candidates in writing and to inform REA about any further developments in the recruitment process, so as to avoid such complaints in the future. Upon closure of the selection procedure, the university was asked to provide REA with all related information. REA informed the complainant accordingly in August 2019.

12. In September 2019, the university appointed another candidate to the position of ERA Chair Holder.

13. Dissatisfied with REA's actions and the appointment of another ERA Chair Holder, the complainant turned to the Ombudsman in January 2020.

The inquiry

14. The Ombudsman opened an inquiry into how REA addressed the concerns raised about the recruitment procedure. The inquiry focussed on whether REA acted in accordance with the grant agreement in addressing the complainant's concerns.

15. In the course of the inquiry, the Ombudsman received additional clarifications and documents from REA, including the grant agreement, and the complainant's comments in response to REA's reply.

Arguments presented to the Ombudsman

16. REA argued that, by asking the university for clarifications and documents and by providing guidance to the university, it monitored the recruitment procedure to ensure that it was *"open, transparent and merit-based"* [6] . Moreover, it acted in line with the grant agreement [7] when it reviewed how the university carried out the selection procedure and if it complied with its obligations.

17. REA said that the selection of the ERA Chair Holder is one of the 'deliverables' under the grant agreement. [8] In line with this deliverable, the university was required to draw up a report on the selection procedure and to provide supporting documents, which it should submit to REA no later than nine months after the start of the project. The university submitted the report on 12 March 2020, and REA said that it would assess the report during the review meeting of the first reporting period of the grant agreement in May/June 2020.

18. In reply to the complainant's request for financial compensation, REA said that it did not have a remit to impose sanctions on the university for its recruitment practices. REA had informed the complainant in September 2019 that he could consider taking legal action under Slovenian national law.

19. The complainant argued that REA correctly identified the violations in the recruitment procedure, but failed to take adequate corrective measures. He considered that, due to REA's



inaction, the university failed to respect the 'Offer letter', which was signed by both parties, and hired another candidate instead. The complainant therefore considered that REA should declare the recruitment procedure null and void, and that it should either withdraw the grant or require the university to redo the selection procedure in a fair manner with a new selection panel.

The Ombudsman's assessment

20. The grant agreement states that the university should take all measures to implement the principles set out in the European Charter for Researchers [9] and the Code of Conduct for the Recruitment of Researchers, in particular to ensure a transparent recruitment procedure based on merit. [10] According to the grant agreement [11] and the Horizon 2020 Work Programme [12], REA may verify - through checks, reviews and audits - that the recruitment procedure was conducted properly. The Ombudsman finds that, in line with these provisions, REA promptly started an investigation into the concerns raised by the complainant. REA asked the university for explanations and documents. It subsequently advised the university on how to improve its recruitment procedure, notably by clarifying details to the candidates, as well as informing REA about any further developments in the recruitment process to avoid such complaints in the future. Moreover, REA kept the complainant informed about the progress of the investigation.

21. According to the grant agreement, REA may take measures against the university if it does not comply with its obligation to ensure a transparent recruitment procedure based on merit. [13] These measures include the reduction of the grant, administrative sanctions or suspension of the payment. [14]

22. In this case, however, REA concluded that the procedure was organised openly and in line with the grant agreement. REA asked the university to address the identified shortcomings by modifying certain aspects of the recruitment procedure. Following this request, and in line with relevant deliverable of the grant agreement [15], REA received the university's report on the selection procedure, which shows that the university modified the 'Offer letter' for the future by adding a disclaimer stating that the document is non-binding and that only the official contract letter will be considered as an employment contract.

23. In light of the above, the Ombudsman considers that REA appropriately addressed the complainant's concerns by ensuring that the university rectify the shortcomings. REA was therefore not required to take additional measures against the university. Moreover, it is not within REA's remit to resolve a contractual dispute between a candidate and the university. As pointed out by REA, this is a matter to be dealt with under Slovenian law.

24. The Ombudsman concludes that REA acted adequately and in line with the applicable rules in dealing with the complainant's concerns about the recruitment procedure.

Conclusion



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

There was no maladministration by the Research Executive Agency in how it dealt with the shortcomings in the recruitment procedure.

The complainant and REA will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit Strasbourg, 09/11/2020

[1] ERA Chairs is a Horizon 2020 programme that brings outstanding academics, with proven research excellence and management skills, to universities and research institutions, with a view to improving their research and innovation environment. ERA Chairs are directed by an outstanding researcher and manager (the ERA Chair Holder), and aim to attract quality academics, whilst in parallel implementing structural changes. More information can be found here: https://cordis.europa.eu/programme/id/H2020_WIDESPREAD-03-2017 [Link].

[2] The Horizon 2020 Programme is the EU's research and innovation programme, which runs from 2014 to 2020.

[3] https://www.uni-lj.si/news/job_vacancies/2019012412194182/ [Link].

[4] The letter contained information on the salary and the dates of employment. It also stated, “*after signing this Offer we will prepare the Employment Contract for the full time position, and for the time period till the end of December 2023. We will share a draft with you*”.

[5] In 2005, the Commission adopted the Code of Conduct for Recruitment of Researchers and the European Charter of Researchers, which serve as guidelines for researchers and research employers: <https://euraxess.ec.europa.eu/jobs/charter> [Link].

[6] In accordance with the Horizon 2020 Work Programme 2016-2017, 15. Spreading excellence and Widening Participation, available at: https://ec.europa.eu/research/participants/data/ref/h2020/wp/2016_2017/main/h2020-wp1617-sewp_en.pdf [Link].

[7] In particular, the REA referred to Article 22.1.2 of the grant agreement, which sets out its rights to carry out reviews.

[8] Deliverable 2.4, “Selection of the ERA Chair holder WP2 1”, page 6 ANNEX 1 (part A).

[9] The European Charter for Researchers:
<https://euraxess.ec.europa.eu/jobs/charter/european-charter>.



[10] Article 32 of the grant agreement.

[11] In accordance with Article 22.1.2 of the grant agreement.

[12] European Commission Decision C(2017)2468 of 24 April 2017 on the Horizon 2020 Work Programme 2016 - 2017 Spreading Excellence and Widening Participation (H2020-WIDESPREAD-03-2017-ERA Chairs).

[13] Article 32(2) of the grant agreement.

[14] The measures are set out in Chapter 6 of the grant agreement.

[15] In particular Deliverable 2.4, "Selection of the ERA Chair holder WP2 1", page 6 ANNEX 1 (part A).