



## Decision in case 1015/2020/MMO against the European Commission for not inviting a person with disabilities for an interview

Decision

**Case** 1015/2020/MMO - **Opened on** 06/07/2020 - **Decision on** 21/04/2021 - **Institution concerned** European Commission ( No further inquiries justified ) |

The case concerned the fact that the European Commission never invited the complainant, a person with a disability, for an interview although he had passed an EU staff selection procedure in the field of food safety and had been included on a shortlist from which successful candidates may be recruited. The complainant argued that he had been discriminated against because of his disability.

The Ombudsman found no indication that the Commission had discriminated against the complainant. In view of this, and given that the shortlist of successful candidates in which the complainant was included is no longer valid, the Ombudsman concluded that no further inquiries into the complaint were justified.

Background to the complaint

- 1.** The complainant, who is a person with a disability, was successful in an EU staff selection procedure organised by the European Personnel Selection Office (EPSO) in 2004 in the field of food safety policy and legislation. [1]
- 2.** In October 2005, the complainant's name was included in a shortlist from which successful candidates may be recruited [2] . He was in the "first merit group" [3] (out of four) of that shortlist.
- 3.** Between 2005 and 2020, the complainant contacted EPSO and the European Commission several times, expressing his interest in, and availability for, recruitment. However, over the years, the Commission never invited him to an interview.
- 4.** In December 2019, the validity of the relevant shortlist of successful candidates expired.
- 5.** The complainant turned to the Ombudsman in June 2020, arguing that he had not been recruited due to his disability.  
The inquiry
- 6.** The Ombudsman opened an inquiry and requested a reply from the Commission about the complainant's specific situation and about how it encourages recruitment of persons with disabilities in general.



7. In the course of the inquiry, the Ombudsman received the Commission's reply on the complaint as well as the complainant's comments on the Commission's reply.

## Arguments presented to the Ombudsman

8. The complainant presumed that he had not been invited for an interview due to his disability, given that the majority of the candidates in that shortlist, including persons in lower merit groups, had been recruited. He mentioned his disability in his CV, which he had sent to the Commission.

9. The Commission said that the fact that the complainant was not recruited cannot be attributed to his disability as, in principle, EPSO does not inform the Commission whether successful candidates have a disability. EU institutions may become aware of the disability of candidates only when, in the context of an interview, they request that the special needs relating to their disability are accommodated [4] .

10. The recruitment process for vacant posts is decentralised, which means that it is the unit or directorate concerned that decides which candidates on the shortlist it wants to invite for an interview. Only candidates whose profiles match the unit's or directorate's recruitment needs are invited for an interview.

11. In line with the EU Staff Regulations [5] , shortlists have at least twice as many candidates as the number of posts to be filled. Therefore, being in a shortlist does not guarantee recruitment. Out of 100 successful candidates of the selection procedure concerned, 23 had not been recruited, three of whom belonged to the first merit group (including the complainant).

12. The Commission also informed the Ombudsman's Office of the measures it has in place to foster diversity and inclusion and to encourage recruitment of persons with disabilities. These include mandatory training on unconscious bias for the human resources professionals in its directorates.

## The Ombudsman's assessment

13. The Ombudsman takes the complainant's concerns about possible discrimination very seriously, as she attributes paramount importance to issues related to discrimination, including on grounds of disability. The Ombudsman also appreciates that the complainant is disappointed with not having been offered a job with the Commission.

14. That having been said, being included in a shortlist from which the Commission may recruit staff, does not guarantee recruitment. The EU Staff Regulations state that " *the list shall wherever possible contain at least twice as many names as the number of posts to be filled* " [6] and the 'notice of competition' [7] for the staff selection procedure in question said that



recruitment would depend on vacant posts and budgetary funds becoming available [8] . In addition, the EU Courts have established that candidates on shortlists do not have a *right* to be appointed [9] . In other words, it is entirely normal that some candidates on a shortlist are not recruited. According to the Commission, 23 candidates on the shortlist in question were not recruited.

**15.** The question is whether the complainant was not recruited due to his disability. Information about his disability was included in his CV, which he submitted to the Commission, he said. It could also appear odd that no post matching his profile became vacant during the 14 years that the shortlist was valid so that the complainant would at least have been called for an interview.

**16.** Unfortunately, given the fact that the events in question span 14 years and that it is for each recruiting unit and directorate, with their varying needs (in terms of education, profile, languages, etc) to decide whom to interview for vacant posts, it has proved impossible to determine with any certainty what considerations may have led to the complainant not being interviewed. The Ombudsman's inquiry has not been able to establish any correlation between the complainant's disability and the fact that the Commission did not invite him to an interview.

**17.** As the shortlist in question is no longer valid, further inquiries into this complaint are thus not justified.

**18.** The Ombudsman will continue to follow the measures taken by the Commission to promote the recruitment of persons with disabilities. As recruitments is a decentralised process, it is encouraging that the Commission is taking steps such as organising mandatory training on unconscious bias for the human resources professionals in its directorates.

**19.** In light of the European Disability Strategy 2021-2030, the Ombudsman trusts that the Commission will continue in its efforts to make the EU administration a role model [10] when it comes to the inclusiveness of its selection, employment and retention processes. [11]

Conclusion

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

**No further inquiries into this complaint are justified.**

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

Emily O'Reilly European Ombudsman

Strasbourg, 21/04/2021



[1] EPSO/A/18/04 - Administrators (A7/A6):  
<https://op.europa.eu/en/publication-detail/-/publication/8191ff75-d810-4434-9b3a-40d29020c235/language>

[2] The term commonly used is 'reserve list'.

[3] At the end of the selection procedure, the selection board drew up lists of successful candidates, divided into merit groups (maximum four groups).

[4] In order to prevent discrimination on the grounds of disability, EU institutions are obliged to accommodate the special needs of staff members with disabilities ('reasonable accommodation'). That is according to Article 1d(4) 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 ('the EU Staff Regulations'), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> .

[5] Article 5 of Annex III to the EU Staff Regulations.

[6] See footnote 2 above.

[7] The notice of competition sets out the criteria and rules applying to the selection procedure.

[8] See point V "Recruitment" of the notice of competition.

[9] See, for example, judgment of the Court of Justice of the European Union of 22 December 2008, *Centeno Mediavilla and Others* , C-443/07 P, paragraph 64  
([https://curia.europa.eu/juris/document/document\\_print.jsf?docid=73225&text=&dir=&doclang=EN&par](https://curia.europa.eu/juris/document/document_print.jsf?docid=73225&text=&dir=&doclang=EN&par)

[10] Contribution of the EU Monitoring Framework to the post-2020 European Disability Strategy, available here:  
<https://fra.europa.eu/en/cooperation/eu-partners/eu-crpd-framework/resources>

[11] Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030, available here: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_813](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_813)