

## **Decision on how the European Border and Coast Guard Agency (Frontex) handled a complaint about the English test in a staff selection procedure (case 1913/2020/MMO)**

Decision

**Case 1913/2020/MMO - Opened on 24/02/2021 - Decision on 28/10/2021 - Institution concerned** European Border and Coast Guard Agency ( No further inquiries justified ) |

The case concerned the assessment of the complainant's English language skills in a selection procedure organised by the European Border and Coast Guard Agency (Frontex). The complainant failed the oral part of the English test but was not convinced by the reasons given by the contracted test provider and Frontex.

The Ombudsman found that Frontex's procedure for dealing with review requests and administrative complaints in relation to the language knowledge assessment done by its contractor was largely fit for purpose. Specifically in this case, Frontex's actions were reasonable. However, in order for the review procedure to be fully effective, the contractor would have to provide Frontex with sufficiently detailed information about its assessment to allow Frontex to detect, on the basis of the concerns put forward by a candidate, indications of substantive errors. The Ombudsman is not convinced that this is the case at present.

In order to avoid similar problems arising in the future, the Ombudsman made a suggestion for improvement and closed the inquiry.

### **Background to the complaint**

1. The complainant was a candidate in a staff selection procedure organised by the European Border and Coast Guard Agency (Frontex) to recruit European Border and Coast Guard Officers [1]. Frontex used the services of an external contractor to test candidates' knowledge of English.
2. Frontex informed the complainant that he had failed the oral part of the English test. He was therefore excluded from the selection procedure.
3. Having first asked Frontex for more information about the outcome of the test, the



complainant made an administrative complaint under the 'EU Staff Regulations' [2] claiming that he had not made the mistakes that the contractor indicated in the evaluation report.

4. Not satisfied with Frontex's reply to the administrative complaint, the complainant turned to the Ombudsman on 28 October 2020.

## The inquiry

5. The Ombudsman opened an inquiry into the following issues:

1) How Frontex verified the complainant's claim that he had not made the mistakes that the contractor indicated in the evaluation report.

2) How Frontex deals in general with requests for review or administrative complaints alleging errors made by the contractor.

6. In the course of the inquiry, the Ombudsman received Frontex's reply on the complaint and the complainant's comments on Frontex's reply. The Ombudsman also received the recordings of the complainant's answers in the oral test and the evaluation grid.

## Arguments presented to the Ombudsman

*- by Frontex*

7. In its reply to the Ombudsman, Frontex said, in summary, that when it received the administrative complaint, it asked the contractor to carry out a verification of the complainant's results. At the same time, Frontex carefully reviewed the complainant's claims and compared them with the available evidence, in particular the recordings from the test. Although Frontex pointed out that it is not competent to assess the candidates' level of language knowledge, it nevertheless addressed the complainant's mistakes, as indicated by the contractor, stating that it performs quality checks within its remit.

8. Frontex further said that the contractor uses a "holistic approach" when it assesses candidates' performance. This methodology is commonly used and not for Frontex to question. The specific comments that the contractor made in the complainant's evaluation report were not meant to be a comprehensive set of reasons for the assessment of the complainant's performance, but rather illustrative examples of the complainant's performance in the test. The total result was not determined based on the number of mistakes indicated in the evaluation report. The complainant's recordings contained more mistakes than those mentioned in the evaluation report. In addition, in some instances, it was not possible to hear what the complainant said due to his accent.

9. Frontex described its review procedure as follows: When a candidate believes that their



assessment result is not fair, the Frontex Language Team acknowledges receipt of the candidate's concerns and initiates a fact-finding process.

**10.** The Frontex Language Team gathers all available information relevant to the concerns and presents it to the Frontex Standing Corps Recruitment Team for a decision. The Frontex Standing Corps Recruitment Team considers the established facts and decides whether to uphold the complaint and, if any action is to be taken, informs the candidate of its decision.

**11.** In case the candidate is not satisfied with the decision taken by the Frontex Standing Corps Recruitment Team, the candidate may lodge an administrative complaint.

*- by the complainant*

**12.** The complainant contends, in summary, that Frontex did not address his concerns that his performance in the test was not assessed correctly. The complainant lists 12 errors that he considers the assessor made.

**13.** The complainant argues that, while Frontex uses a contractor to assess the English language skills of candidates, Frontex remains responsible for ensuring the fair assessment of candidates.

**14.** The complainant is not convinced by the argument that the contractor does not assess candidates based on specific mistakes but that it uses a "holistic approach", as that would mean that the assessment would vary depending on the assessor.

## The Ombudsman's assessment

**15.** When an EU agency or body, such as Frontex, uses a contractor to carry out some of its tasks, it should be particularly vigilant in ensuring that these tasks are carried out properly. [3] In particular, when the contractor's assessment is used to exclude candidates from a staff selection procedure, Frontex must be able to ensure an effective review mechanism.

**16.** Frontex has described its procedure for dealing with review requests and administrative complaints in relation to the language knowledge assessment done by its contractor. These procedures seem largely to be fit for purpose. However, in order to be fully effective, the contractor would have to provide Frontex with sufficiently detailed information about its assessment to allow Frontex to detect, on the basis of the concerns put forward by a candidate, indications of substantive errors. The Ombudsman is not convinced that this is the case at present.

**17.** The contractor's comments in the evaluation report regarding the complainant's performance, based on the performance rating criteria, are very brief. In addition, the contractor provided only indicative examples of mistakes. With such limited information at its disposal, it is difficult for Frontex to carry out an effective review.



18. The Ombudsman notes, nonetheless, that, in this case, Frontex did carry out a review, to the extent possible given the limited information in the evaluation report. In this context, Frontex listened to the recordings and recognised that at least one of the mistakes indicated by the contractor was open to interpretation. Frontex also said, for instance, that the contractor's finding that the complainant "frequently" repeated and corrected himself was too strong. However, as the recordings showed a greater number of mistakes than those listed by the contractor as examples, Frontex accepted the reasoning given by the contractor, which was justified by the methodology used.

19. The Ombudsman finds Frontex's approach reasonable in the given context, although it could have been communicated to the complainant in a clearer manner. However, as set out in the previous paragraph, the conditions for the review were not ideal.

20. On the basis of the above, the Ombudsman closes the inquiry with the finding that no further inquiries are justified. The Ombudsman will make a suggestion for improvement to Frontex in relation to its review procedure.

## 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 European Border and Coast Guard Agency (Frontex) will be informed of this decision .

## Suggestion for improvement

**Frontex should instruct its contractor(s) responsible for assessing candidates' language skills to provide more detailed reasoning in relation to the performance rating criteria. This will better enable Frontex to review the test results in case of appeals or requests for review, such as by following up on inconsistencies in the contractor's reasoning.**

Emily O'Reilly European Ombudsman

Strasbourg, 28/10/2021

[1] European Border and Coast Guard Officer Standing Corps - Advanced Level



(RCT-2019-00070), available:

<https://microsite.frontex.europa.eu/en/recruitments/RCT-2019-00070> [Link]

[2] 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:

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

[3] See Decision in case 1646/2017/MMO on how the European Asylum Support Office carried out a selection procedure to recruit legal assistants

[<https://www.ombudsman.europa.eu/en/decision/en/110847>]