

Decision on how the European Border and Coast Guard Agency (Frontex) carried out a selection procedure for officers in its Standing Corps (case 56/2021/NH)

Decision

Case 56/2021/NH - Opened on 02/02/2021 - Decision on 04/03/2022 - Institutions concerned European Border and Coast Guard Agency (No maladministration found) | European Border and Coast Guard Agency (No further inquiries justified) |

The case concerned the decision by the European Border and Coast Guard Agency (Frontex) not to select the complainant as an officer in its Standing Corps following an interview as part of a selection procedure. The complainant argued that his application had received unjustifiably low scores. In addition, the complainant was concerned that Frontex did not allow him to request a review of the decision.

The Ombudsman found that the selection board set up by Frontex had followed the vacancy notice when scoring the complainant's application. Frontex confirmed that it had processed the complainant's request for review, but acknowledged that the information provided to the complainant may not have been clear. In the course of the inquiry, Frontex implemented changes in its practices, which the Ombudsman welcomed.

The Ombudsman closed the inquiry with the conclusion that there was no maladministration by Frontex .

Background to the complaint

1. The complainant applied to a selection procedure organised by the European Border and Coast Guard Agency (Frontex) for a post in its *Standing Corps* [1] .
2. He successfully passed the first stages of the selection procedure, which included an evaluation of his application, an online English test, and a physical aptitude test. As a result, Frontex invited him for an interview.
3. Frontex informed the complainant in November 2020 that, following his interview, he had not been selected as a successful candidate. Following a request for feedback from the complainant, Frontex informed him that the selection board [2] had given him a score of 48%



during the interview, while the minimum score to be a successful candidate was 50%.

4. The complainant asked Frontex how he could request a review of the decision by the selection board not to select him. Frontex initially replied that the selection board “ *is not authorised to take into consideration [his] personal conviction as how to assess [his] candidature, and therefore, a request for review solely on this basis will not allow the board to re-examine its initial decision* ”. Following an additional e-mail from the complainant, Frontex concluded that there was “ *no mistake in the assessment of your candidature* ”.

5. Dissatisfied with how Frontex handled his application and subsequent request for review, the complainant turned to the European Ombudsman in January 2021.

The inquiry

6. The Ombudsman opened an inquiry and looked into:

- 1) the procedure in place at Frontex for dealing with requests for review in the context of selection procedures;
- 2) how Frontex assessed the complainant’s application throughout the selection procedure.

7. In the course of the inquiry, the Ombudsman’s inquiry team met Frontex representatives and received a written reply to specific questions raised during the meeting. The Ombudsman also inspected Frontex’s file related to the complainant’s application, and prepared an inspection report summarising the information received. The Ombudsman subsequently received the complainant’s comments on the inspection report. This decision takes into account the arguments and views put forward by the parties.

The procedure in place at Frontex for dealing with requests for review

Arguments presented to the Ombudsman

8. The complainant contended that Frontex failed to reply to his request for review. He had initially asked Frontex how he could request a review of the decision. From Frontex’s initial reply, it was unclear whether Frontex was dealing with the request.

9. Frontex confirmed that, after being contacted by the complainant, it had replied to his request and had carried out a review of his application. Frontex concluded that “ *there [was] no mistake in the assessment of your candidature* ”.

10. Frontex explained that it offers three different options for unsuccessful applicants. (i) When



contacted, Frontex first provides feedback on the reasons why the application was unsuccessful. This takes place via an informal exchange of e-mails explaining the scores and methodology. (ii) Frontex also allows applicants to request a formal review or reassessment of the application by the selection board. (iii) Applicants who consider that they have been adversely affected may lodge a formal administrative complaint under the EU Staff Regulations. [3]

11. Frontex stated that, in the course of the Ombudsman's inquiry, it asked the selection board to check again its assessment of the complainant's answers during the interview. This additional review confirmed its initial assessment.

12. Frontex acknowledged that the communication with the complainant of November 2020 might not have been optimal. In addition, the vacancy notice advertising the position only referred to the possibility for applicants to lodge a formal administrative complaint under Article 90(2) of the EU Staff Regulations. Consequently, from March 2021 onwards, Frontex updated all new vacancy notices published on its website with a revised text explaining the three options (feedback, review and administrative complaint) referred to in paragraph 10 above.

The Ombudsman's assessment

13. The Ombudsman understands the complainant's confusion when he received feedback from Frontex concerning his application in November 2020. From the content of the e-mails, it was not possible for the complainant to understand if Frontex had taken his request for review into account. In addition, the vacancy notice advertising the position to which he had applied listed the formal complaint mechanism under the EU Staff Regulations only.

14. During the inquiry, Frontex clarified that it had in fact processed the complainant's request and had concluded that there had been no mistake in the assessment of his application. Additionally, Frontex contacted the selection board once more during the inquiry about the assessment of the complainant's interview. The Ombudsman considers that how Frontex acted on the complainant's request to have his application re-examined was reasonable.

15. The Ombudsman welcomes the fact that, in the course of the inquiry, Frontex updated its vacancy notices and improved the way it communicates to the applicants the possibility of reviewing a decision, by listing all three steps. As such, the Ombudsman finds that no additional inquiries are justified on that aspect of the complaint.

How Frontex assessed the complainant's application throughout the selection procedure

Arguments presented to the Ombudsman



16. The complainant argued that he had to bring certain documents confirming his qualifications with him during the interview, but that these documents were not assessed by the selection board. In addition, he claimed that the interview questions did not test adequately his knowledge and skills, and that the scores obtained were too low considering his experience in the field. In particular, the complainant argued that, given his 10 years of experience in the border guard and the military police, he should have obtained a score much better than 47% for the category “*Prior relevant, work experience in the law enforcement sector*”.

17. The complainant stated that some of his additional achievements (such as *carrying out return activities* or *logistic management*) were not evaluated by Frontex, even though they qualified as “advantageous criteria” in the vacancy notice.

18. The complainant also argued that Frontex had weighted some of his scores according to a system that the complainant did not know about (and which is not explained in the vacancy notice).

19. Frontex explained that the complainant’s additional achievements were assessed during the initial stages of the selection procedure. During the interview, the selection board assessed only the answers given by candidates. It did not take into account any additional supporting documents that the candidates brought that day. The selection board had assessed the documents he provided during the initial stages of the procedure.

20. Frontex provided the Ombudsman with a copy of the interview evaluation report during the inspection meeting. This report, signed by all members of the selection board who carried out the interview, shows that the complainant scored 7/15 points for prior law enforcement experience, which corresponds to the score of 47% communicated by Frontex to the complainant. The total score for the complainant’s performance during the interview was 48%.

21. Frontex stated that it had established the weighting system to be used for the whole selection procedure before publishing the vacancy notice for that position. To support this, Frontex presented to the Ombudsman a copy of the minutes of the kick-off meeting for the Standing Corps selection procedure. The document sets out the methodology for calculating overall scores and for determining the weight of points and the individual percentage points during the selection procedure, as well as the score thresholds for each stage. Frontex does not publish the weighting system in order not to influence how applicants present their applications.

The Ombudsman's assessment

22. EU case-law has established that selection boards have a wide margin of discretion when they evaluate a candidate’s qualifications and professional experience during a selection procedure for a position with the EU administration. The discretion of selection boards is even broader during an oral interview. This is due to the uncertainty inherent to this type of testing, the content of which can vary depending on the experience and personality of individual candidates and their responses to the selection board’s questions. [4] Against this background,



it is not the Ombudsman's role to substitute her own assessment for that of the selection board. The Ombudsman's role is rather to verify that selection boards have not made a manifest error in law or in fact when exercising their discretion. [5]

23. In this case, the Ombudsman inquiry team inspected Frontex's file, in particular the relevant documents showing how the selection board scored the complainant's performance during the interview, the weighting system and the overall methodology used during the procedure. The Ombudsman finds nothing to suggest that the selection board made a manifest error when it assessed the complainant's application in the first stages of the procedure, or when it assessed his performance during the interview.

24. Having examined the relevant documents, the Ombudsman confirms that Frontex took into account his experience and additional achievements in the initial stage of the selection procedure, based on the supporting documents provided by the complainant. He received enough points to be subsequently invited to the interview. The selection board took into account only the answers given during the interview to assess his performance, and not the supporting documents that the complainant had brought that day. This is in line with the vacancy notice for the procedure.

25. After the interview, the selection board scored the complainant's performance according to several criteria. The complainant takes issue mainly with the score of 47% for his past professional experience. In light of the very wide margin of discretion that EU case-law has established that selection boards have, the Ombudsman cannot question that score. However, she finds, no sign of manifest error in how Frontex followed the procedure.

26. The Ombudsman inquiry team also reviewed the minutes of the meeting during which Frontex had established the weighting system and overall methodology for the selection procedure. The Ombudsman finds no indication that there was a manifest error in how Frontex devised the weighting system and methodology. Frontex's decision not to publish the weighting system in order not to influence the application process is reasonable. It is also in line with EU case-law. [6] Based on the above, the Ombudsman finds that there was no maladministration in how Frontex assessed the complainant's application.

Conclusions

Based on the inquiry, the Ombudsman closes this case with the following conclusions [7] :

No further inquiries are justified concerning the procedures in place at Frontex for dealing with requests for review in the context of selection procedures.

There was no maladministration in how Frontex assessed the complainant's application and performance.

The complainant and Frontex will be informed of this decision .



Tina Nilsson Head of the Case-handling Unit

Strasbourg, 04/03/2022

[1] The recently established European Border and Coast Guard Standing Corps will consist of up to 10 000 operational staff by 2027, and will be deployed along the external land, sea and air borders of the European Union and the Schengen Area. The Standing Corps will be trained and equipped to assist Member States and contribute to ensuring safe, secure and well-functioning external borders of the EU and the Schengen area. The first Standing Corps staff were deployed in 2021.

[2] It is common in selection procedures organised by the EU administration to have “selection boards”, which are composed of evaluators responsible for selecting candidates at each stage, based on pre-determined criteria, and drawing up the final list of successful candidates.

[3] 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]. While the EU Staff Regulations apply to staff members already working in the EU administration, the formal complaint procedure under Article 90(2) is also open to applicants in EU selection procedures.

[4] See the judgment of the General Court of 30 November 2005, *Philippe Vanlangendonck v European Commission*, case T-361/03, paragraph 39.

[5] See the judgment of the Court of First Instance of 11 February 1999, *Chantal Mertens v Commission of the European Communities*, case T-244/97, paragraph 44.

[6] EU case law has consistently maintained that the selection boards enjoy a wide discretion concerning the methods and the detailed contents of the tests for EU selection procedures, as well as their assessment. The selection boards’ discretion also extends to the choice of correction methods and the establishment of the scoring criteria prior to the tests. See judgment of the Court of First Instance of 19 February 2004, *Spyridoula Konstantopoulou v Court of Justice of the European Communities*, case T-19/03, paragraphs 48 and 60.

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