

Decision on how the European Insurance and Occupational Pensions Authority (EIOPA) carried out a selection procedure (case 921/2021/VB)

Decision

Case 921/2021/VB - **Opened on** 15/06/2021 - **Decision on** 05/04/2022 - **Institution concerned** European Insurance and Occupational Pensions Authority (No maladministration found) |

The case concerned how the European Insurance and Occupational Pensions Authority (EIOPA) organised a remote 'pre-screening written test' in a selection procedure. The complainant took issue with the EIOPA's decision to organise the test remotely and with how the test was organised. He also argued that, as the EIOPA offered two different dates on which candidates could take the test, there was a risk that candidates could share test questions with each other.

The Ombudsman found that both the decision to organise the pre-screening test remotely and how the test was organised was reasonable. The EIOPA also took sufficient safeguards to minimise the risk that candidates could share test questions with each other.

The Ombudsman closed the inquiry finding that there was no maladministration by the EIOPA.

Background to the complaint

1. The complainant took part in a selection procedure for the recruitment of 'experts' organised by the European Insurance and Occupational Pensions Authority (EIOPA) [1] .
2. Based on the complainant's score in the pre-screening remote written test, the EIOPA did not admit him to the next stage of the selection procedure.
3. Dissatisfied with the EIOPA's decision, the complainant submitted an administrative complaint [2] . He took issue with the EIOPA's decision to organise the test remotely. In particular, he argued that:
 - the EIOPA did not supervise candidates during the test, it did not check their identity and it did not anonymise their tests;
 - the EIOPA breached the principle of equal treatment by allowing candidates to take the test on



two different dates;

- he received the test several minutes later than other candidates due to internet problems, placing him at a disadvantage, as candidates had to complete the test in a defined time.

4. The EIOPA rejected the administrative complaint. It said that:

- In light of the COVID-19 pandemic, the pre-screening written test could only be organised remotely.
- Candidates could use any source of information during the test and were asked to declare on their honour that they performed the test individually without assistance from other people. Thus, close supervision or identification were not necessary.
- The members of the selection committee [3] received the names of all candidates and signed a declaration stating the absence of any conflict of interest. In light of this, the presence of candidates' names on their tests could not have influenced the selection committee's objectivity and impartiality.
- The complainant was not penalised for the delay in submitting the test. In addition, his score was far below the required passing mark, so it is unlikely that the result would have been significantly different if the problem had not occurred.

5. Dissatisfied with the EIOPA's reply, the complainant turned to the Ombudsman in May 2021.

The inquiry

6. The Ombudsman opened an inquiry into the complaint, asking the EIOPA to provide additional information on how the pre-screening written test was organised and on the decision to offer two dates for the test.

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

The decision to hold the pre-screening test remotely and how it was organised

Arguments presented to the Ombudsman

8. The EIOPA explained that, in light of the number of applications received for the selection procedure, it decided to organise a pre-screening test.

9. As the selection procedure was organised during the COVID-19 pandemic, the test could only be held remotely.

10. Regarding the information about the technical requirements to take the test remotely, the EIOPA informed candidates that they were responsible for their own equipment and internet



connection and that they were expected to use Microsoft Office Suite programmes for the test. The EIOPA also asked candidates to report immediately any technical issues and informed them that its staff would be available to provide technical assistance during the test.

11. To ensure that all candidates would receive the test at the same time, they were all blind copied in the same email. The EIOPA said that the complainant did not report having received the email late. In any case, the complainant was not penalised for the slight delay in submitting his test.

12. The EIOPA's candidates manual [4] mentions that written tests are anonymous. However, the pre-screening written test is a different step in the procedure, which is separate to the written test referred to in the manual.

13. Anonymising the pre-screening test would have required additional time and resources that the EIOPA did not have at the time. In addition, the impartiality of the selection committee was guaranteed by the fact that the members of the committee had signed declarations on the absence of conflict of interest.

14. As of October 2020, the EIOPA has relied on an external service provider to organise and invigilate remote written tests. The service provider also handles communication with candidates and anonymises all tests. However, due to the time needed to finalise the procurement procedure, the external provider was not yet available when the EIOPA carried out the pre-screening test in this case.

15. The complainant finds it inconsistent that the EIOPA decided to organise an unsupervised pre-screening written test without verifying candidates' identities and, later, a supervised written test.

16. The complainant said that, if the EIOPA intended to hire an external service provider to organise and supervise remote written tests, it could have postponed the pre-screening test until the provider had been hired.

The Ombudsman's assessment

17. During the COVID-19 pandemic, EU institutions had to adapt their recruitment practices to the public health measures in place, and organising tests remotely was a widespread practice to this end.

18. When organising remote tests, EU institutions should ensure that candidates are informed about the minimum technical requirements to take the test and the procedure to follow in case of technical problems during the test.

19. In this case, the EIOPA provided candidates with sufficiently clear information on the test environment and what to do in case of technical problems. As set out by the EIOPA, the



technical issue that the complainant encountered is not likely to have been decisive in preventing him from passing to the next stage of the selection procedure.

20. Regarding the decision not to supervise the test and check candidates' identities, the EIOPA provided a clear explanation for this already in its decision on the complainant's administrative complaint. That explanation is reasonable.

21. There is no general obligation regarding the anonymisation of the test under the EU Staff Regulations [5]. However, the EIOPA's candidates manual says that written tests will be anonymous. While there are no explicit rules concerning the pre-screening test in the EIOPA's candidates manual, it seems that there are no significant differences between a 'pre-screening written test' and a 'written test'. As such, if the EIOPA believes it is appropriate to anonymise candidates' written tests, this should be the case with all written tests, including preliminary tests. The EIOPA has confirmed that the external service provider will ensure this is the case for future tests.

22. However, even though the EIOPA did not anonymise the pre-screening written tests in this case, it took steps to ensure that the members of the selection board had no conflicts of interest, notably by requiring them to sign a declaration. The Ombudsman considers that this approach was reasonable.

23. Regarding the argument that the EIOPA should have postponed the pre-screening test until after it had hired the external service provider, the Ombudsman notes that the EIOPA organised the selection procedure to meet its recruitment needs, and the Ombudsman is not in a position to question this timing.

24. In light of the above, the Ombudsman finds there was no maladministration in how the EIOPA organised the pre-screening test.

The decision to organise the test on two dates

Arguments presented to the Ombudsman

25. Due to the number of eligible applicants, the EIOPA organised the test over two consecutive days, and offered candidates the possibility to choose a date.

26. Before taking the test, candidates were asked to declare on their honour that they would keep information about the test confidential until they were informed of the outcome of the procedure. Breaching the confidentiality requirement would result in disqualification. The EIOPA also argued that it would not be in the interest of a candidate to share questions with other candidates, as this would give their competitors an advantage.

27. Even if it were to be accepted that candidates taking the test on the second date were in an



advantageous position, the complainant took the exam on the second date.

28. The EIOPA said it has organised written tests at different times also before the COVID-19 pandemic: for example before and after oral interviews. Thus, the EIOPA places great importance on raising candidates' awareness of the need to comply with the requirement of not to divulge details of tests.

29. The complainant said that the possibility that questions are shared between candidates is not merely hypothetical and the EIOPA cannot know what the relationship between candidates is. He argued that the European Personnel Selection Office (EPSO) organises written tests on a single day to prevent information on the content of tests being shared among candidates.

The Ombudsman's assessment

30. According to EU case-law, in selection procedures for recruiting EU staff members, *"the date of the written tests should be the same for all candidates"*. However, this should be balanced against *"[t]he interest of participants not to have a date fixed for a test which is unsuitable"*. [6]

31. In this case, the EIOPA decided to offer candidates the possibility to choose between two consecutive dates to give them a certain flexibility. Candidates in a selection procedure often have work and personal commitments that they need to reconcile with test dates. As such, it is reasonable that the EIOPA sought to balance the requirement to organise tests on the same date with the legitimate interest of candidates to sit the exam on a suitable date.

32. While it is clearly against a candidate's individual interest to share questions with their competitors, as this would directly damage their chances of being successful in the selection procedure, this is not by itself sufficient to ensure that questions are not shared.

33. The possibility that candidates in a selection procedure could share questions with each other can only be excluded with certainty if all candidates take the test simultaneously. When written tests are taken on different dates, recruitment bodies should take measures aimed at minimising this risk.

34. In this case, the EIOPA offered candidates to sit the test on two consecutive calendar days. This minimised the amount of time in which it would have been possible to divulge questions and, if they were, the time that they could have been used for the purposes of preparation. In addition, candidates were required to submit a declaration that they would not disclose information on the tests and the EIOPA informed them that divulging the questions would lead to their exclusion from the procedure.

35. Against this background, the Ombudsman considers that the EIOPA took sufficient measures to minimise the risk that candidates could share the questions of the pre-screening written test with other candidates.



Conclusion

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

There was no maladministration in how the EIOPA organised the pre-screening tests.

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

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 05/04/2022

[1] Ref. 202011TAAD5.

[2] Article 90(2) 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] Each selection procedure has a selection committee, which is responsible for selecting candidates at each stage, based on pre-determined criteria, and drawing up the final list of successful candidates.

[4] https://www.eiopa.europa.eu/sites/default/files/vacancies/candidates_manual.pdf [Link].

[5] 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].

[6] Judgement of the Court of 27 October 1976, *Prais v Council* , 130/75, paras 13 - 15
<https://curia.europa.eu/juris/showPdf.jsf?jsessionid=C9020BD4FB811256723FA5584F00FE12?text=&docid=891218>
[Link].

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