

Decision on how the European Food Safety Authority (EFSA) assessed the complainant's application in a selection procedure for the position of head of unit(case 2203/2021/FA)

Decision

Case 2203/2021/FA - Opened on 11/01/2022 - Decision on 04/05/2022 - Institution concerned European Food Safety Authority (No maladministration found) |

The case concerned how the European Food Safety Authority (EFSA) assessed the complainant's application in a selection procedure for the position of head of unit. The complainant took issue with how EFSA assessed his application, both initially and following his request that it review its assessment, after which he was awarded a lower score.

The Ombudsman found nothing to suggest a procedural error, or a manifest error in how the selection board assessed the complainant's application in the CV screening phase and in the context of the request for review. The Ombudsman considered that EFSA acted in line with its obligations when communicating the results of the selection procedure and the review to the complainant. The Ombudsman also noted that nothing prevents selection boards from reducing the scores awarded to an applicant following the request for review. She therefore closed the inquiry with a finding of no maladministration.

Background to the complaint

1. The complainant took part in a selection procedure organised by the European Food Safety Authority (EFSA) for recruiting a head of unit (finance). [1]
2. EFSA informed the complainant that his application had been unsuccessful. The complainant asked for additional information on the assessment of his application. EFSA provided him with his evaluation grid. He initially received a total score of 85/100. The threshold for being admitted to the next stage of the selection procedure was 88/100.
3. The complainant asked EFSA to review the assessment of his application. EFSA informed the complainant that the selection board reassessed his application and decided to reduce his score under the first selection criterion by two points, meaning he got 83/100 points overall. EFSA thus maintained its initial decision not to admit the complainant to the next stage of the



selection procedure.

4. The complainant lodged an administrative complaint [2] against EFSA's decision to lower his score following the review of his application. In particular, the complainant referred to EU case-law [3], and argued that EFSA failed to provide a 'statement of reasons' for its decision.

5. EFSA rejected the complaint and considered that it complied with its duty to state reasons by communicating the scores awarded to the complainant for each selection criterion.

6. Dissatisfied with EFSA's reply, the complainant turned to the Ombudsman in December 2021.

The inquiry

7. The Ombudsman opened an inquiry into how EFSA assessed the complainant's application in both the CV screening phase and following his request for review.

8. In the course of the inquiry, the Ombudsman's inquiry team inspected EFSA's file on the complainant's application. The inspection report was shared with both EFSA and the complainant for comments.

9. In his comments to the inspection report, the complainant reiterated his claim that EFSA failed to provide an adequate statement of reasons for its decision. He further argued that EFSA should not have lowered his score as it placed him in a less favourable position than had he not requested a review. The complainant also took issue with the absence of minutes of meetings during which EFSA reviewed applications.

The Ombudsman's assessment

10. According to EU case-law, selection boards enjoy a wide margin of discretion when assessing the qualifications and professional experience of candidates in selection procedures. [4] It is not the role of the Ombudsman to reassess an application that has been evaluated by a selection board. The Ombudsman would question the evaluation of a selection board only where there is indication of a manifest error of assessment or a procedural error. [5]

11. The Ombudsman's inspection of the file did not indicate any procedural error or a manifest error of assessment of the complainant's application in both the CV screening phase and following his request for review. EFSA assessed the complainant's application on the basis of pre-established scoring criteria and a pre-defined scoring methodology. The inspection showed that EFSA has sufficiently clear records regarding how the selection procedure was organised and how the complainant's application was assessed.

12. The Ombudsman further considers that EFSA acted in line with its legal obligations when



communicating the outcome of the selection procedure and of the request for review to the complainant. The complainant's application was rejected at the CV screening stage, during which the selection board carried out a qualitative and comparative assessment of applications. According to EU case-law, the communication of the scores awarded to a candidate is an adequate statement of reasons at the stage of a selection procedure where the institution carries out a comparative assessment of applications based on the abilities and merits of candidates. This is to ensure the respect of the principle of secrecy regarding the proceedings of the selection board. [6] Only the first stage of a selection procedure, where the eligibility of a candidate is assessed, is not covered by the secrecy of the proceedings as this is based on objective factors, such as the eligibility criteria. [7]

13. As regards the decision to reduce the complainant's score, we note that nothing prevents selection boards from reducing the scores awarded to an application following a request for review. The purpose of such a review procedure is to provide a new assessment of a candidate's application that has been rejected. The fact that the reassessment of the complainant's application resulted in a lower score does not negatively affect his situation, as he had already been excluded from the selection procedure.

14. On the basis of the above, the Ombudsman finds no maladministration in how the selection board assessed the complainant's application both in the CV screening stage and in the context of the request for review.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [8] :

There was no maladministration in how the European Food Safety Authority assessed the complainant's application.

The complainant and EFSA will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 04/05/2022

[1] reference EFSA/X/AD/2021/01

[2] On the basis of Article 90(2) of the Staff Regulations

[3] **Judgment of the Court of 4 July 1996. - European Parliament v Angelo Innamorati -**



Case C-254/95 P:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0254> [Link]

[4] Judgment of the General Court of 11 February 1999, Case T-244/97, *Mertens v Commission*, paragraph 44: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61997TJ0244> [Link]; Judgment of the General Court of 11 May 2005, Case T-25/03, *De Stefano v Commission*, paragraph 34: <http://curia.europa.eu/juris/celex.jsf?celex=62003TJ0025&lang1=en&type=TXT&ancre> [Link]=.

[5] See Decision of the European Ombudsman closing the inquiry into complaint 14/2010/ANA against the

European Personnel Selection Office, paragraph 14 (decision available here:

https://www.ombudsman.europa.eu/cases/decision.faces/en/10427/html.bookmark#_ftnref5 [Link]); and Judgment of the Court of First Instance of 31 May 2005, Case T-294/03, *Gibault v Commission*, paragraph 41: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62003TJ0294> [Link].

[6] As provided in Article 25 of the Staff Regulations

[7] see Judgment of the Court of 4 July 1996, Case C-254/95 P, *European Parliament v Angelo Innamorati*, ECLI:EU:C:1996:276 paragraphs 27 to 33: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0254> [Link]; Judgment of the General Court of 22 September 2021, Case T-435/20, *JR v European Commission*, paragraphs 52 to 57: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62020TJ0435> [Link]

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