

Decision on how the European Personnel Selection Office (EPSO) responded to concerns regarding the composition of an interview panel in a selection procedure for EU staff in the field of taxation (case 1169/2020/KT)

Decision

Case 1169/2020/KT - Opened on 24/07/2020 - Decision on 23/06/2022 - Institution concerned European Personnel Selection Office (No maladministration found) |

The case concerned how the European Personnel Selection Office (EPSO) assessed a candidate in an interview in the context of a procedure for recruiting EU civil servants in the field of taxation. The complainant considered that his low score in the interview was due to the fact that the interview panel did not include any expert in taxation. He was dissatisfied with how EPSO addressed his concerns.

In the course of the inquiry, EPSO provided adequate clarifications about the expertise of the selection board. The Ombudsman found nothing to suggest a manifest error in how EPSO had carried out the interview. The Ombudsman therefore closed the inquiry with a finding of no maladministration.

The complaint

1. The complainant took part in a selection procedure for recruiting EU civil servants, organised by the European Personnel Selection Office (EPSO) [1] . The selection procedure was organised to recruit experts in the field of taxation.
2. Having obtained sufficient scores at the earlier stages of the selection procedure (computer-based tests and 'talent screener'), the complainant was invited to its final stage, the assessment centre. The tests in the assessment centre included, among other tests, a field-related interview, which aimed to assess candidates' expertise in the field of taxation.
3. Following the assessment centre, EPSO informed the complainant that it had not placed him on the shortlist of successful candidates because he was not among the candidates with the highest overall score in the assessment centre (at least 116.5/180 points, whereas the complainant had scored 106.5/180) [2] .



4. The complainant asked EPSO to review its decision. He believed that the reason why he was not among the successful candidates was his score (63/100) in the field-related interview, which he considered to be unjustifiably low. He contended that the questions he had received during that interview had given him the strong impression that his interviewers were not experts in the field. Moreover, he claimed that the interviewers had not covered with their questions all the necessary thematic areas. In his view, his profile and his extensive professional experience, such as from the European Commission's Directorate-General (DG) for Taxation and Customs Union (TAXUD), fully matched the field-related competencies.

5. Following the review, EPSO informed the complainant that the selection board had concluded that his scores corresponded to his performance. EPSO added that there had been no error in the scoring process, that the results provided to the complainant were correct and that the selection board had fully complied with the procedural rules of the selection procedure. EPSO also said that the selection board has a wide discretion as regards the detailed contents of the tests, as well as their assessment, and that communication of the marks obtained for each competency constitutes an adequate and sufficient justification of the selection board's decision. EPSO confirmed its decision not to place the complainant on the shortlist of successful candidates.

6. The complainant then wrote again to EPSO, questioning his score in the field-related interview. He claimed that, although the aim of the selection procedure was to select candidates who would work for DG TAXUD, the panel that had interviewed him ('interview panel') did not include any expert from that DG. Rather, he was interviewed by staff members of the Commission's Legal Service and its Directorate-General for Competition (DG COMP), who did not have the necessary understanding of the tasks of the relevant profile. The complainant asked EPSO whether any staff member of DG TAXUD had a chance to review his score in the field-related interview. He also wished to obtain detailed feedback about his performance, such as what kind of expertise he lacked compared to other candidates.

7. EPSO replied that, once the selection board has responded to a request for review, the process is closed and any further correspondence on the matter is not taken into account.

8. The complainant then asked EPSO to at least reply to his question whether staff members of DG TAXUD were among those who had reviewed his marks for the field-related competencies.

9. In the correspondence that followed, EPSO said that the members of the selection board were qualified to assess the complainant's performance. It added that, as regards, in particular, the assessment of the field-related competencies, according to EU case-law, "*the composition of the examination panel assessing those competencies is to be considered regular and such as to 'guarantee an objective assessment by the selection board of the candidates' professional qualities in their performance in the oral tests' if it includes at least one member who is an expert in the field of the competition*".

10. The complainant then asked why, if the panel was supposed to include at least one expert



in taxation, his interviewers were instead competition law experts and members of a legal service.

11. Not having received a satisfactory answer to his questions, the complainant turned to the Ombudsman in July 2020.

The inquiry

12. The Ombudsman opened an inquiry into the complaint.

13. As a first step, the Ombudsman asked EPSO to respond to the complainant's claim regarding the absence of an expert in the interview panel. The Ombudsman also asked EPSO to explain to the complainant whether his scores for the field-related competencies had been reviewed by experts in taxation.

14. EPSO replied that the selection board involved in the assessment of the complainant's field-related competencies, both during the interview and in the context of his request for review, included experts in the field of the selection procedure. EPSO added that the institution responsible for nominating the selection board members should define the required expertise and decide what constitutes an expert in a given field. The duty of EPSO is to ensure that experts are always involved in all tests in which expertise is assessed.

15. The Ombudsman asked the complainant for comments on EPSO's reply. In his comments, the complainant claimed that EPSO had still failed to provide a concrete answer to his questions. In his view, EPSO's generic reply did not explain whether any taxation expert or representative of DG TAXUD had been involved in the assessment of his performance. He reiterated that his interview was conducted by staff members of the Commission's Legal Service and DG COMP. As such, the interview panel lacked the necessary expertise in taxation, and was thus not in a position to properly assess his performance. As a result, he had been treated unequally compared to other candidates who had been interviewed by experts. The complainant repeated his question whether any staff member from DG TAXUD had a chance to review his marks and asked again for detailed feedback about his performance.

16. Subsequently, the Ombudsman inquiry team inspected EPSO's file relevant to the case. After the inspection, the Ombudsman inquiry team sent to EPSO follow-up questions. The inspection report, with EPSO's detailed explanations in reply to the follow-up questions, is annexed to this decision.

The Ombudsman's assessment

On the composition and expertise of the selection board Introductory observations

17. The rules concerning the composition of a selection board in an open competition are set out in the EU Staff Regulations [3]. The members of the selection board must be chosen from staff members whose function group and grade is at least equal to that of the post to be filled.



18. A selection board must be composed in such a way as to guarantee an objective assessment of the performance of candidates as well as to secure the recruitment of officials of the highest standards of ability. [4] The specific requirements that the members of the selection board have to meet vary according to the particular circumstances of each selection procedure [5] .

19. As regards expertise, there are no specific provisions in the EU Staff Regulations that indicate the level of expertise required of the members of a selection board. However, according to EU case-law, **at least one member of the selection board must be an expert in the field of the selection procedure.** [6]

20. The complainant seems to contend that, to be considered an expert in the field of the selection procedure in question, a selection board member had to work for DG TAXUD.

21. However, according to the notice of open competition [7] , EPSO was organising the selection procedure “ *[... to draw up two reserve lists from which the European Commission, mainly the Directorate-General for Taxation and Customs Union (DG TAXUD), may recruit new members of the civil service [...]]*” [8] .

22. In addition, in describing the tasks of the policy officer in the field of taxation, the notice of competition further specifies: “ *As a policy officer in a unit in the indirect or direct tax directorate of DG TAXUD or in one of the fiscal state aid units of Directorate-General for Competition (DG COMP), you will be expected to [...]*” [9] . Thus, DG TAXUD is not the exclusive future employer of the successful candidates, who may well be invited to work for DG COMP.

Findings

23. The inspection of EPSO's file and the explanations that EPSO provided in response to the Ombudsman inquiry team's follow-up questions (see the inspection report annexed to this decision) do not indicate any irregularity in the composition of any of the two panels, that is, the interview panel and the one that dealt with the complainant's request for review ('review panel').

24. **In particular, each panel included an expert in the field of the selection procedure** . As regards the interview panel, one of the two members worked for DG COMP, State Aid Directorate, Tax Planning Practices Unit. As regards the review panel, one of the two members worked for DG COMP, State Aid Directorate, Fiscal Aid Unit.

25. In light of the clarifications that EPSO provided in the course of the inquiry, the Ombudsman considers that the complainant's concerns about the composition of the selection board have now been adequately addressed.

On the evaluation of the complainant's performance in the field-related interview

26. In assessing candidates, selection boards are bound by the selection criteria for the selection procedure in question. At the same time, according to EU case-law, selection boards have a wide margin of discretion when assessing a candidate's qualifications and professional experience against those criteria. [10] The margin of discretion is even wider when it comes to oral tests. [11] Moreover, selection boards have a wide discretion concerning the specificities



and the detailed contents of the tests. [12]

27. In light of the above, the Ombudsman's role is thus limited to determining whether there was a manifest error by the selection board. [13]

28. A candidate's personal belief about their performance cannot call into question the selection board's assessment and does not constitute, in itself, evidence of manifest error by the selection board. [14] Similarly, the fact that a candidate with extensive relevant professional experience received a lower score in the field-related interview (compared to his scores in other parts of the selection procedure) is not, in itself, evidence of a manifest error, as each stage of a selection procedure is assessed separately. In this case, the complainant's professional experience had been evaluated at an earlier stage of the selection procedure (the talent screener), following which the complainant was invited to the assessment centre.

29. The inspection of EPSO's file (see the inspection report annexed to this decision) does not indicate any manifest error in how the selection board conducted the field-related interview and assessed the complainant's performance.

30. In particular, the questions asked were in line with the notice of competition and covered all three field-related competencies assessed. There is also no error in how the selection board calculated the complainant's score per competency as well as his final score, according to the pre-established scoring grid.

On the complainant's request for detailed feedback

31. In view of its wide discretion mentioned above, a selection board is not required to give detailed feedback after oral tests, such as to explain to the candidate which answers were unsatisfactory or why it considered them unsatisfactory. [15] The marks obtained in the various tests in a staff selection procedure constitute an adequate statement of the reasons for a selection board's decision in relation to a particular candidate. [16]

32. Moreover, the work of the selection board is secret, in order to protect the selection board from any external pressure and, thus, to allow it to do its work independently and objectively. [17] This precludes disclosure of details relating to selection boards' comparative assessments of candidates. [18]

33. In this case, EPSO provided the complainant with the pass mark for the field-related interview (50/100), his overall score in the field-related interview (63/100), as well as with the 'qualifier' he had received for each of the three specific competencies assessed during the field-related interview ('strong', 'strong' and 'satisfactory', respectively). This is considered to be adequate feedback.

Conclusions

Based on the inquiry, the Ombudsman closes this case with the following conclusion [19] :



In light of the clarifications that the European Personnel Selection Office provided in the course of the inquiry, it has adequately addressed the complainant's concerns about the composition of the selection board.

There was no maladministration in how the European Personnel Selection Office conducted the complainant's field-related interview, assessed his performance in it and handled his request for feedback.

The complainant and EPSO will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 23/06/2022

[1] EPSO/AD/363/18 - Administrators (AD 7) - Field 2:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2018/368A/01&from=EN>
[Link]

[2] According to the notice of open competition, the selection board would “ *draw up a reserve list for each field - until the number of successful candidates sought [was] reached - of those eligible candidates who ha[d] obtained all pass marks as well as the highest overall marks following the assessment centre* ”.

[3] Article 3 of Annex III to Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20220101&from=EN>
[Link].

[4] In accordance with Article 27 of the EU Staff Regulations. See judgment of the Court of First Instance of 27 June 1991, *Valverde Mordt v Court of Justice*, T-156/89, paragraph 105:
<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=102896&pageIndex=0&doclang=EN&mode=lst&dir=&occ=firs>
[Link].

[5] Judgment of the Court of First Instance of 17 December 1997, *Karagiozopoulou v Commission*, T-166/95, paragraph 34:
<https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:61995TJ0166&from=FR> [Link]

[6] Judgment of the Court of First Instance of 22 June 1990, *Marcopoulos v Court of Justice*, T-32/89 and T/39/89, paragraph 37:
<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=102822&pageIndex=0&doclang=EN&mode=lst&dir=&occ=firs>



[Link]; *Valverde Mordt v Court of Justice*, cited above, paragraph 106.

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

[8] See page 1 of the notice of open competition (emphasis added).

[9] See page 3 of the notice of open competition (under 2, “Taxation”) (emphasis added).

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

[11] Order of the Civil Service Tribunal of 25 May 2011, *Meierhofer v Commission*, F-74/07 RENV [Link], paragraph 63:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=135362&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1> [Link]

[12] Judgment of the Court of First Instance of 19 February 2004, *Konstantopoulou v Court of Justice*, T-19/03, paragraph 48:

<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=48932&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1> [Link]

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

European Personnel Selection Office, paragraph 14:

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, *Gibault v Commission*, T-294/03, paragraph 41:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62003TJ0294> [Link].

[14] Judgment of the Court of First Instance of 15 July 1993, *Camara Allosio e.a. v Commission*, joined cases T-17/90, T-28/91 and T-17/92, paragraph 90:

<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61990TJ0017> [Link]; judgment of

the Court of First Instance of 23 January 2003, *Angioli v Commission*, T-53/00, paragraph 94:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=47998&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1> [Link].

[15] Judgment of the Civil Service Tribunal of 11 December 2012, *Mata Blanco v Commission*, F-65/10, paragraph 109:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=131681&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1> [Link].



[16] *Mata Blanco v Commission* , cited above, paragraph 107.

[17] Article 6 of Annex III to the Staff Regulations.

[18] *Mata Blanco v Commission* , cited above, paragraph 106.

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