

Decision on how the European Border and Coast Guard Agency (Frontex) dealt with a complaint about alleged irregularities in two selection procedures for contract staff (RCT-2017-00048 and Frontex/17/CA/FGIII/26.1) (case 174/2021/KT)

Decision

Case 174/2021/KT - Opened on 23/02/2021 - Decision on 30/11/2022 - Institutions concerned European Border and Coast Guard Agency (No maladministration found) | European Border and Coast Guard Agency (Settled by the institution) | European Border and Coast Guard Agency (No further inquiries justified) |

The complainant took part in two selection procedures for contract staff, organised by the European Border and Coast Guard Agency (Frontex) in 2018 and 2019. He was dissatisfied with how Frontex dealt with his administrative complaint about the evaluation of his application in the 2018 selection procedure, in which he was unsuccessful. He also complained that Frontex had failed to reply to his request for feedback regarding the 2019 selection procedure.

In the course of the inquiry, Frontex provided the complainant with feedback regarding the 2019 selection procedure. As regards the 2018 selection procedure, the Ombudsman found nothing to suggest a manifest error in how Frontex had assessed the complainant's application. However, the Ombudsman considered that Frontex had not dealt with the complainant's administrative complaint in an entirely satisfactory manner.

Given that the inquiry revealed no manifest error of assessment, the Ombudsman considered that no additional inquiries would be justified into that aspect of the complaint. The Ombudsman suggested, however, that Frontex improve how it communicates to applicants the redress possibilities in the context of its staff selection procedures, as well as how it processes and keeps records of complaints by unsuccessful applicants.

The complaint

1. In 2018, the complainant applied to a selection procedure [1] organised by the European Border and Coast Guard Agency (Frontex) to recruit contract staff with various duties. The selection procedure included an initial screening stage, during which all the eligible applicants would be assessed against certain criteria. Applicants with the highest score at this stage would



be invited to a written test and an interview.

2. The complainant was not among the applicants with the highest score at the screening stage and Frontex excluded him from the selection procedure. The complainant then made an administrative complaint against Frontex's decision to exclude him from the selection procedure. As he had received no response, the complainant turned to the Ombudsman in July 2020.

3. The Ombudsman opened an inquiry and, among other things, asked Frontex to reply to the complainant's complaint. [2] In its reply, Frontex stated that the selection committee [3] had re-examined and confirmed its initial assessment: the complainant's score was 65%, whereas the threshold to be invited to the subsequent stage of the selection procedure was set at 70%.

4. After Frontex replied, the Ombudsman closed the case with a suggestion to Frontex to improve its communication with unsuccessful applicants at all stages of its staff selection procedures.

5. Dissatisfied with Frontex's reply to his administrative complaint, the complainant turned again to the Ombudsman in January 2021. He claimed that Frontex had failed to address his specific arguments about how his application was assessed in the 2018 selection procedure. He also complained that Frontex had failed to respond to his request for feedback regarding the outcome of an interview and a test he had attended for a vacant post in August 2019, in his capacity as a successful candidate included on the shortlist drawn up in the context of another selection procedure [4] ('2019 selection procedure').

The inquiry

6. The Ombudsman opened an inquiry into the following aspects of the complaint:

a) Frontex's assessment of the complainant's application in the 2018 selection procedure, as well as the complainant's concerns about how Frontex dealt with his administrative complaint regarding that procedure;

b) Frontex's failure to provide the complainant with feedback regarding the 2019 selection procedure.

7. As a first step, the Ombudsman asked Frontex to reply to the complainant's request for feedback on his performance in the 2019 selection procedure.

8. In the context of the inquiry, Frontex responded to the complainant's request for feedback regarding the 2019 selection procedure. Subsequently, the Ombudsman inquiry team held a meeting with Frontex and inspected documents relating to the 2018 selection procedure, and then asked Frontex additional questions and inspected additional documents. The complainant submitted comments on the subsequent inspection report (the report can be found in the annex to this decision).



9. This decision takes into account the arguments and views put forward by both parties.

The Ombudsman's assessment

2018 selection procedure

10. In assessing candidates, selection committees are bound by the selection criteria for the selection procedure in question. At the same time, according to EU case-law, selection committees have a wide margin of discretion when assessing a candidate's qualifications and professional experience against those criteria. [5] The Ombudsman's role is thus limited to determining whether there was a manifest error by the selection committee. [6] A candidate's personal belief about their performance cannot call into question the selection committee's assessment and does not constitute, in itself, evidence of manifest error by the selection committee. [7]

11. The documents and explanations obtained from Frontex in the course of this inquiry (see the inspection report annexed to this decision) do not indicate any manifest error in how the selection committee assessed the complainant's application during the screening stage of the selection procedure.

12. The complainant was assessed against four pre-established criteria by three individual assessors. Those four criteria corresponded to four out of the five professional competencies mentioned in the vacancy notice. [8] For each of the four professional competencies applicants were awarded from 0 to 5 points. So, the maximum number of points an applicant could obtain from an assessor for all four competencies was 20 points (four competencies times five points). The maximum number of points an applicant could obtain at the screening stage was thus 60 points (three assessors times 20 points), which represented a total score of 100%.

13. The calculation of the complainant's total score at the screening stage (39 out of 60 points), including how Frontex translated this score into a percentage (65%), was correct and in line with the pre-established rules. The complainant's total score was below the pre-established threshold for being invited to the written test and the interview (42 out of 60 points, that is, 70%).

14. It is also clear from the inspected documents that each member of the selection committee evaluated individually each applicant. There were no sub-criteria (within the span of 0-5 points) for scoring the four competencies assessed during the screening stage. Frontex explained that how the individual members of the selection committee awarded points within this span (of 0-5 points) was within their 'margin of appreciation'. Considering the wide discretion of a selection committee in general, the Ombudsman finds this explanation sufficient. [9]

15. In any case, each of the selection committee members awarded broadly similar points to the complainant for each of the four competencies. This consistency is reflected also in the total score that the complainant received from each of the three selection committee members, which



did not vary significantly.

16. As regards the complainant's administrative complaint, the Ombudsman finds that the information and internal documents provided by Frontex fail to show that Frontex applied, in this case, a clearly defined and sufficiently documented procedure. This concerns both how it processed the administrative complaint as such and the record keeping of the selection committee's work.

17. In particular, in its reply to the complainant's administrative complaint, Frontex stated that the initial assessment of the complainant's application had been *"re-considered and confirmed by the Selection Committee [...] to ensure that there was no manifest error of the assessment"*. During the inspection meeting with the Ombudsman inquiry team, Frontex said that the decision on the *"admissibility"* of an administrative complaint is *"drafted"* by its human resources and legal sector (and not by the selection committee) and that, *"if an applicant considers that they deserved more points, the Selection Committee can re-assess the application and can decide to confirm or change (in a case of manifest error of assessment) the initially awarded marks"*.

18. An internal briefing note on the selection procedure [10], provided to the Ombudsman after the meeting, does not sufficiently explain the work of the selection committee in re-assessing the complainant's application. In particular, it does not contain any re-assessment note drawn up by the selection committee. It is also not sufficiently informative about the role of Frontex's human resources and legal sector in the examination of the administrative complaint. In general, the briefing note gives the impression of an incomplete document, still at draft stage.

19. In the context of a separate inquiry [11], the Ombudsman established that Frontex offers three different options for unsuccessful applicants: (i) request for feedback; (ii) request for review, and iii) administrative complaint. At the time, these options were not made sufficiently clear to applicants. The Ombudsman thus welcomed the fact that, in March 2021, Frontex updated the standard text of its vacancy notices and improved how it communicates to the applicants the redress possibilities in the context of staff selection procedures. [12]

20. In the selection procedure in question in this case, both the vacancy notice and Frontex's documents relating to how it processed the complainant's administrative complaint (internal briefing note, reply to the complainant) date from 2020, that is, they precede the Ombudsman's inquiry in the above case. Given that Frontex's redress mechanism open to unsuccessful applicants was subsequently clearly defined, and taking into consideration that no manifest error of assessment was identified in Frontex's decision in this case, the Ombudsman finds that no additional inquiries are justified into how Frontex processed the complainant's administrative complaint.

21. That said, the Ombudsman regrettably notes that in the latest vacancy notice published on Frontex's website [13] deviates from the improved standard text about its redress mechanism. The text of the vacancy notice in question, as well as the webpage to which the vacancy notice refers, fail to clearly inform applicants about all the available redress possibilities and how to make use of them.



22. The Ombudsman therefore considers it necessary to make some suggestions for improvement to Frontex in relation to how it communicates to applicants the redress possibilities in staff selection procedures, as well as how it processes administrative complaints and keeps records of and documents its internal work in that regard.

23. First, the Ombudsman suggests that Frontex make clear in *all* its vacancy notices *all* the redress possibilities for unsuccessful applicants, as established in the context of the previous inquiry (request for feedback, request for review, administrative complaint, any other means of appeals), as well as how to make use of them. This includes specifying the appropriate channel for each redress possibility (e.g. functional mailbox) [14] and briefly explaining any applicable procedure and time-limits.

24. As regards, in particular, administrative complaints, the information that Frontex provides to applicants in its latest vacancy notice refers only to the possibility to submit such complaints *by post*. [15] Yet, in the context of the previous inquiry mentioned above, Frontex said that it accepts administrative complaints both by post and *electronically*. The Ombudsman thus considers that Frontex should include *explicitly* in its vacancy notices information on the possibility for applicants to submit an administrative complaint also *electronically*. Regarding administrative complaints sent *by post*, it would be useful to also include in the relevant section in the vacancy notices that this should be done by *registered* mail (to prevent any issues relating to undelivered post or unclear submission date).

25. The Ombudsman also suggests that Frontex systematically provide applicants with an acknowledgement of receipt of an administrative complaint *as such*. [16] This would make clear from the beginning how Frontex treats the applicants' submissions and what the applicable procedure is (in terms of admissibility deadlines, timeframes for processing, further means of appeal etc.).

26. In processing an administrative complaint, Frontex should also keep clear written records of how such complaints are dealt with. This includes any preparatory work, opinion, comments or notes made at each stage (for example, on the admissibility assessment of a complaint or on the substantive re-assessment carried out) and by each entity involved (internal departments, selection committee). The Ombudsman considers that keeping adequate records is important for transparency and also facilitates the work of any external review body that might be subsequently involved (the Ombudsman or the EU Courts).

2019 selection procedure

27. As mentioned above, after the Ombudsman opened the inquiry, Frontex responded to the complainant's request for feedback regarding this selection procedure. This aspect of the complaint had thus been settled by Frontex. [17]

Conclusions



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

The European Border and Coast Guard Agency (Frontex) has settled the aspect of the complaint relating to the selection procedure Frontex/17/CA/FGIII/26.1.

There was no maladministration in how Frontex assessed the complainant's application in the selection procedure RCT-2017-00048.

No further inquiries are justified concerning how Frontex processed the complainant's administrative complaint regarding the selection procedure RCT-2017-00048.

Suggestions for improvement

Frontex should improve how it communicates to applicants the redress possibilities in staff selection procedures, as well as how it processes administrative complaints and how it keeps records of and documents its internal work in that regard. This should necessarily include:

- a) making clear in all its vacancy notices all the redress possibilities available to unsuccessful applicants (such as request for feedback, request for review, administrative complaint, any other means of appeals), as well as how to make use of them (appropriate channel, time limits);**
- b) informing applicants in its vacancy notices about the possibility to submit an administrative complaint *also electronically*. Regarding administrative complaints sent *by post*, Frontex should specify in the relevant section in its vacancy notices that this should be done by *registered* mail;**
- c) systematically acknowledging receipt of an administrative complaint *as such* ;**
- d) keeping clear written records of how it deals with administrative complaints; this includes preparatory decisions, opinions, notes or comments made at each stage and by each entity involved (internal departments, selection committee).**

Frontex should inform the Ombudsman within three months of this decision of the measures it has put in place in response to these suggestions.

The complainant and Frontex will be informed of this decision .

Emily O'Reilly European Ombudsman



Strasbourg, 30/11/2022

[1] RCT-2017-00048 - General Call - Contract Staff (FG IV).

[2] Case 1161/2020/KT.

[3] Each selection procedure has a *selection board* or *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] Frontex/17/CA/FGIII/26.1 - Call for expressions of interest - Contract Staff (FG III - Assistant).

[5] 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: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62003TJ0025> [Link].

[6] 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, Case T-294/03, *Gibault v Commission*, paragraph 41: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62003TJ0294> [Link].

[7] Judgment of the Court of First Instance of 15 July 1993, *Camara Alloisio 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=> [Link].

[8] According to the vacancy notice, certain criteria would be assessed only for shortlisted applicants during interviews and/or tests. During the meeting with the Ombudsman inquiry team, Frontex explained that it had decided to test the fifth professional competency mentioned in the vacancy notice (IT proficiency) during the written test only. As the complainant was not invited to the written test, he was assessed only in four competencies.

[9] There may be selection procedures in which it could be useful for the selection committee to



set up a more detailed scoring grid to facilitate the work of the selection committee as regards both initial assessment of applications and potential reviews (following an appeal). Such a scoring grid could also facilitate any subsequent external review, such as by the Ombudsman.

[10] This document was designated as confidential.

[11] See Ombudsman's decision in case 56/2021/NH (paragraphs 10, 12 and 15), available at: <https://www.ombudsman.europa.eu/en/decision/en/153220> [Link].

[12] For an example of the revised text, see one of the vacancy notices currently published on Frontex's website: <https://microsite.frontex.europa.eu/en/recruitments/RCT-2022-00107> [Link] (paragraph 10).

[13] See vacancy notice RCT-2022-00081 (*Senior Officer – Team Leader Inspections (AD9) in /CO*), available at: <https://microsite.frontex.europa.eu/en/recruitments/RCT-2022-00081> [Link] (paragraph 10).

[14] The Ombudsman notes that, in the improved text used until recently, Frontex provided applicants with a functional mailbox for requests for feedback and requests for review. This is not the case with the latest vacancy notice mentioned above.

[15] See <https://frontex.europa.eu/careers/how-to-apply/appeal-procedure> [Link]

[16] It is reminded that, under the European Code of Good Administrative Behaviour (Article 14), the obligation to acknowledge receipt concerns “ *[e]very letter or complaint to the institution* ”, thus also requests for feedback or review from unsuccessful applicants.

[17] While this issue was not part of the inspection and meeting with Frontex, during the meeting Frontex spontaneously provided some details regarding that selection procedure. It stated that, in that selection procedure, the complainant had made it through the screening stage and was included in the shortlist of successful applicants but, in the end, nobody was recruited.