



Decision on how the European Personnel Selection Office (EPSO) carried out a situational competency based interview in a staff selection procedure (case 299/2022/EIS)

Decision

Case 299/2022/EIS - Opened on 24/05/2022 - Decision on 13/12/2022 - Institution concerned European Personnel Selection Office (No maladministration found) |

The case concerned how the European Personnel Selection Office (EPSO) conducted a 'situational competency based' interview in the context of a procedure for the recruitment of EU civil servants ('administrators'). The complainant considered that he had not reached the minimum score required to be shortlisted because the interviewer rejected a clarifying question he had posed at the beginning of the interview. He was dissatisfied with how EPSO addressed his concerns.

The Ombudsman considered adequate the clarifications provided by EPSO on how the complainant's interview was conducted. There was nothing to suggest a manifest error in how EPSO had carried out and assessed the interview. The Ombudsman therefore closed the inquiry with a finding of no maladministration. However, she made a suggestion for improvement to EPSO for future similar selection procedures, namely that it communicate more clearly to candidates the types of questions allowed or not allowed during the interviews.

The complaint

1. In 2019, the complainant took part in a selection procedure organised by the European Personnel Selection Office (EPSO) for the recruitment of EU civil servants ('administrators') [1].
2. Having obtained sufficient scores at the earlier stages of the selection procedure, the complainant was invited to the final stage, the Situational Competency Based Interview. The interview was held to replace a group exercise that should have taken place at the 'assessment centre' stage of the procedure [2], but could not be organised due to the COVID-19 pandemic. [3] The interview involved a role-play type exercise between the candidate and the interviewer. The instructions for this exercise were included in the interview assignment [4], which EPSO provided to candidates prior to the test. It presented a fictitious scenario and provided background information and documents to be relied on by candidates during the preparation for the interview.
3. The interview assignment contained the following instructions: "*IMPORTANT NOTICE: This*



assignment describes the working situation to which the Situational Competency Based Interview will refer in some parts. The problems have not been fully elaborated, the information is partial, additional research is allowed, and **candidates will be allowed to ask questions during the interview** " (emphasis added).

4. Following the interview, EPSO informed the complainant that it had not placed him on the shortlist from which successful candidates may be recruited (the 'reserve list'), because he had not reached the minimum overall score required (61 points, whereas the complainant had scored 60.5 points).

5. The complainant asked EPSO to review its decision. He claimed to have asked a clarifying question at the beginning of the interview. According to him, the interviewer had categorically rejected his question. The complainant said that he interpreted this as a clear instruction that no questions at all would be allowed throughout the interview.

6. The complainant believed that the interviewer's reaction, which he considered to entail a violation of the interview's pre-established rules, was the reason why he missed the threshold to be admitted to the reserve list by 0.5 point. He believed he was prevented, as a candidate, from getting any information that was omitted from the assignment. He also believed that he could have used this information in his response. This situation fundamentally altered the nature of the assignment and meant he could not demonstrate his ability to interact with others.

7. The complainant also found that the reaction to his question negatively affected his performance and results in the interview. This was so because his preparation would have been different had he known that interviewers would not allow candidates to ask questions. The stress that this situation caused also affected his performance not only during the interview, but also during a subsequent interview on the same day. In any event, the complainant contended that EPSO disregarded the instructions of the assignment concerning the possibility for candidates to ask questions throughout the test.

8. Following the review, EPSO informed the complainant that the selection board had concluded that his scores corresponded to his competencies. According to EPSO, the selection was based on a comparative assessment, and only candidates who had obtained all pass marks as well as the highest aggregate marks could be placed on the reserve list. EPSO argued, with reference to relevant EU case-law, that selection boards enjoy a wide discretion concerning the methods and the detailed contents of the tests, as well as their assessment. A candidate's personal conviction about their merits is not in itself evidence of manifest error of assessment. EPSO added that the communication of the marks obtained for each competency constitutes an adequate and sufficient justification of the selection board's decision as regards a candidate's performance in a test. Candidates cannot challenge a decision by invoking their professional experience, their qualifications, the opinion of their hierarchy or the results obtained in other selection procedures.

9. EPSO also stated, as regards the interview, that "*assessors have to time-manage exchanges and decide on the best course of action, in the interest of the candidates*".



10. Dissatisfied with EPSO's reply, the complainant turned to the Ombudsman in February 2022.

The inquiry

11. The Ombudsman opened an inquiry into the complaint.

12. As a first step, the Ombudsman asked EPSO to provide (i) further clarifications on the specifics of the interview as well as on the assessment of the complainant's performance in it, and (ii) the file relevant to the case. The Ombudsman's request for reply covered the following issues:

1) How did EPSO reconcile the fact that, based on the instructions given to candidates in the interview assignment, they would be allowed to ask questions during the interview, with the fact that the complainant's clarifying question at the beginning of the test appeared to have been rejected; and

2) If the rejection of the question at the beginning of the complainant's interview was part of the 'resilience testing' of candidates, how did EPSO ensure that all candidates were treated equally? Did the interviews of the other candidates start in the same way?

13. In response to the Ombudsman's first question, EPSO stated that the decisions adopted in the context of a selection procedure are presumed to be valid and regular unless candidates prove the existence of error or illegality. Their personal conviction in itself does not constitute such evidence. It also referred to the selection board's broad margin of discretion in the conduct and assessment of the tests, and added that this discretion is even broader in oral tests, due to their less standardised nature and to the fact that candidates have different ways to react to the questions, depending on their experience and personality.

14. Regarding the interview in general, EPSO explained that, while candidates were allowed to ask clarifying questions, they were not supposed to formulate questions " *to frame an interview and take initiative* ". It was not the interviewers' role to help candidates by providing them with missing information; rather, their role was to assist with organisational matters and eventually clarify questions.

15. Regarding the complainant's interview, EPSO explained that it had not recorded the interviews and there was no " *incident report* " concerning the complainant. Therefore, it was not possible to judge the adequacy of the interviewer's reaction to the complainant's question. As there was no recording of the complainant's interview, EPSO had contacted a member of the selection board who had interviewed him. That member had concluded, after examining the scoring notes taken during the test, that the complainant had asked questions such as " *could you tell me when the meeting is?* "

16. EPSO explained that " *candidates were supposed to come up with possibilities of timing/agendas rather than ask the Board for guidance* ". Based on the review of the competition documentation and the complainant's file, EPSO concluded that no material mistakes or illegalities had taken place during his interview, and that the selection board had



applied the assessment criteria in the same manner as it did with all the other candidates throughout the selection procedure.

17. EPSO stated that the complainant's argument that he would have prepared for the interview differently, had he known that questions would not be allowed, "*should be considered with caution*", since the only feasible way to prepare for the interview was to thoroughly read and assimilate the content of the files and documents disclosed to the candidates beforehand.

18. In response to the Ombudsman's second question, EPSO stated that the rejection of candidates' questions at the beginning of the test was not part of a specific pre-established method for checking their resilience. Interviewers were advised to test the candidates' resilience throughout the interview and, especially, after the first 10 or 20 minutes if they appeared relatively confident. No specific instruction was given that resilience should be tested at the very beginning of the interview.

19. Subsequently, the Ombudsman's inquiry team inspected the file relevant to the case. The inspection report is annexed to this decision.

The Ombudsman's assessment

How EPSO conducted the complainant's interviews

Introductory observations

20. As there are no technical means to retrieve the content of the interview, it is not possible for the Ombudsman to determine exactly what the complainant's question was at the beginning of the test. While the complainant believes that his question was of a clarifying nature, EPSO appears to consider that he posed questions that went beyond the purpose of the possibility to ask questions.

21. In any event, the Ombudsman has taken the view that EPSO is not required to keep an audio record of interviews. [5] In cases where there is no recording, it is sufficient for EPSO, when it assesses a request for review, to review the documentation from the test, including the evaluation sheets, observations and handwritten notes of the selection board. [6]

Findings

22. Since the instructions contained in the interview assignment indicated that candidates would be allowed to ask questions during the test, an outright rejection by the interviewer of a clarifying question raised by the complainant could have entailed a procedural irregularity.

23. According to EU case-law, "*a procedural irregularity can entail annulment of the act adversely affecting the applicant only if, were it not for that irregularity, the procedure could have led to a different result.*" [7] In the context of a selection procedure, EPSO must ensure that



the tests are conducted in an impartial and regular manner, but an irregularity occurring in the course of those tests affects their legality " *only if it is of a substantive nature or the applicant establishes that the irregularity concerned is such as to distort the results of the tests .*" [8]

24. EU case-law [9] has also established that it is for the applicant to provide sufficiently precise, objective and consistent evidence capable of supporting the veracity or plausibility of the facts in support of the contention that the procedural errors were substantial or liable to distort the results of the tests. In case it is claimed that it was the stress caused by those errors that had a negative impact on the applicant's performance or results, objective evidence needs to be provided thereof. [10]

25. The Ombudsman appreciates that how the complainant perceived his question at the beginning of his interview had been dealt with could have created a situation of stress. However, selection procedures are inherently stressful. In any event, it cannot be objectively verified whether and to what extent any possible stress was attributable to one or another factor.

26. Regarding the complainant's argument that he would have prepared differently for the interview had he known that questions would not be allowed, EPSO's argument appears to be reasonable. The inspection of the file and the clarifications provided by EPSO confirm that candidates needed no prior knowledge, beyond the information contained in the interview assignment, to succeed in the test.

27. Nevertheless, in order to avoid situations such as the one raised in this case, the Ombudsman finds that, in future selection procedures, EPSO could communicate more clearly to candidates which type of questions, if any, are allowed during the oral tests and which type of questions may not be accepted by the interviewers. The Ombudsman will make a suggestion for improvement in this regard.

How the complainant's performance in the interview was evaluated

28. 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. [11] The margin of discretion is even wider when it comes to oral tests. [12] Moreover, selection boards have a wide discretion concerning the specificities and the detailed contents of the tests. [13]

29. In light of the above, the Ombudsman's role is thus limited to determining whether there was a manifest error by the Selection Board [14] .

30. The inspection of the file did not indicate any manifest error in how the selection board conducted the interview and assessed the complainant's performance.



31. In particular, the questions asked were in line with the interview assignment and covered all three field-related competencies assessed, as indicated in the notice of competition. 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.

Conclusion

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

There was no maladministration in how the European Personnel Selection Office conducted the complainant's Situational Competency Based Interview and assessed his performance.

The complainant and EPSO will be informed of this decision .

Suggestion for improvement

In future selection procedures, EPSO should communicate more clearly, in the instructions given to candidates beforehand, which type of questions, if any, are allowed during the oral tests and which type of questions may not be accepted by the interviewers.

Emily O'Reilly European Ombudsman

Strasbourg, 13/12/2022

[1] EPSO/AD/373/19 - Administrators (AD 5):

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2019:177A:FULL&from=EN> .

[2] The assessment centre consists of different exercises aimed at assessing candidates' general and/or specific competencies. <https://epso.europa.eu/en/help/faq/2026>

[3] Addendum to Notice of open competition - EPSO/AD/373/19 - Administrators (AD 5):

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2020/444A/02&from=EN>

[4]

https://epso.europa.eu/sites/default/files/documents/general/situational_competency-based_interview_s

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[5] See point 18 of the Ombudsman's decision closing the inquiry into complaint 1468/2020/SF against the European Personnel Selection Office (EPSO), available at <https://www.ombudsman.europa.eu/en/decision/en/133803> .

[6] See previous footnote.



[7] See Order of the General Court, *GX v Commission* , T-556/16, paragraph 35, and the case-law cited therein:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=189125&pageIndex=0&doclang=EN&>

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[8] See previous footnote.

[9] See judgment of the General Court, *Rauff Nisthar v Commission* , T-341/21, paragraph 33 (available in French):

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=5EAEF88BB2CD8C87079E778A9038245>

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[10] See judgment in case *Rauff Nisthar v Commission* , cited above, paragraph 42.

[11] 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> ; 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=TXT&ancre =](http://curia.europa.eu/juris/celex.jsf?celex=62003TJ0025&lang1=en&type=TXT&ancre=).

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

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=135362&pageIndex=0&doclang=en&>

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[13] 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=>

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[14] 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); 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> .