

Decision of the European Ombudsman on complaint 878/2006/BU against the European Personnel Selection Office

Decision

Case 878/2006/BU - Opened on 10/05/2006 - Decision on 26/07/2007

Strasbourg, 26 July 2007

Dear Mr X,

On 24 March 2006, you submitted a complaint to the European Ombudsman against the European Personnel Selection Office ("EPSO") concerning the follow-up it gave to your requests for clarification in the context of your participation in selection procedure EPSO/CAST/EU/25/05.

In accordance with your request of 29 March 2006, your complaint has been treated confidentially.

On 10 May 2006, I forwarded your complaint to the Director of EPSO and asked EPSO to submit an opinion. EPSO sent its opinion on 27 June 2006, and I forwarded it to you with an invitation to make observations. No observations have been received from you.

By letter of 19 February 2007, I informed you that I was in possession of all the elements necessary for reaching a decision on your complaint and that further inquiries were thus not necessary.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant successfully passed the tests in selection procedure EPSO/CAST/EU/25/05 designed to constitute a database of candidates to be recruited as contract agents to carry out various tasks within the European institutions.

In order to obtain information on his rights and obligations as a contractual agent, the complainant consulted the European Commission's Civil Service portal on which he found the following information:



" There are **two sub-categories of contract agent** . The **first** covers those who are hired to work:

- in Commission Directorates-General to do manual or administrative support service tasks;
- in Commission Offices attached to a Directorate-General, such as the two Offices for Infrastructure and Logistics in Brussels and Luxembourg and the Paymasters Office;
- in Agencies ;
- in Commission Representations and Delegations .

As a contract agent of this type (contract staff "3a") you would enjoy longer-term employment prospects, with an initial contract running for a maximum period of **five years** and renewable for a maximum of five years. The contract can be converted into a contract of indefinite duration.

The **second sub-category** covers contract agents that can be hired to work in Commission's DGs dealing with other tasks than manual and administrative support tasks (contract staff "3b"). That is to say, they are recruited:

- temporarily to replace officials absent due to illness, maternity leave, etc.;
- as a response to acute staff shortages at times of intense work pressure;
- to undertake work for a temporary period providing additional capacity in specialised fields where officials with the required skills are not available.

As a contract agent of this type, you would have short-term employment prospects, working on the basis of contracts running **up to a maximum of three years** . The **minimum length of contract is three months** . " (1)

By e-mail of 24 March 2006, the complainant asked EPSO, among other things, what were the criteria for recruitment as a contract agent belonging to one of the above sub-categories "3a" or "3b".

By e-mail of the same day, EPSO answered as follows with respect to this part of the complainant's e-mail:

" 3A - 3b: 2 types of contract, no indicator of level;

- 3A can become indefinite;

- 3B contract for a maximum of 3 years " (2) .

By a further e-mail of the same day, the complainant stated that he still did not understand the distinction between the two sub-categories of contract staff, and asked EPSO the following question:

" (...) for two persons having the same qualifications, the same professional experience and the same potential, what are the criteria used to justify that a person A has the right to a contract of



the type 3A and another person to the a contract of the type 3B although, apparently, the work performed is more or less the same? What is to be understood under «tasks other than manual»? " (3)

By further e-mail of the same day of 24 March 2006, EPSO answered as follows:

" Exactly; but, the 3a can become indefinite. " (4)

Still on the same day of 24 March 2006 , the complainant submitted a complaint to the European Ombudsman. He alleged that EPSO failed properly to answer his query concerning the differences in treatment of the two sub-categories of contract agents "3a" and "3b", and claimed that EPSO should provide him with the required explanation.

THE INQUIRY

The opinion of EPSO

EPSO's opinion can be summarised as follows:

EPSO first noted that the complainant's questions fall within the remit of the recruiting institution, that is, the Commission, rather than within the remit of EPSO. Therefore, EPSO based its opinion on the information contained on the website of the Commission's Directorate-General for Personnel and Administration (5) , and provided an overview of the contract staff of the types "3a" and "3b" which is essentially the same as the overview contained on the Commission's Civil Service portal and cited above under the heading "The Complaint".

EPSO then addressed the complainant's first question concerning the criteria used for determining whether a person will be recruited as a contract agent "3a" or "3b". EPSO explained, in this regard, that every Directorate-General or service of the Commission is responsible for that part of its own budget intended for the recruitment of contract agents. EPSO added that the duration of the contracts offered depends essentially on the relevant budget and the purpose for which the contract is offered.

EPSO went on to address the complainant's second question concerning the description of tasks other than manual . EPSO stated that contract staff is sub-divided into 18 grades and four function groups corresponding to the duties performed. In this regard, EPSO reproduced the content of the table contained in Article 80(2) of the Conditions of employment of other servants of the European Communities, as follows:

Function group

Grades

Duties

IV

3



13 to 18

Administrative, advisory, linguistic and equivalent technical tasks

III

8 to 12

Executive tasks, drafting, accountancy and other equivalent technical tasks

II

4 to 7

Clerical and secretarial tasks, office management and other equivalent tasks

I

1 to 3

Manual and administrative support service tasks

On the basis of the above, EPSO explained that tasks other than manual are performed by staff belonging to a function group other than group I.

EPSO concluded by pointing out that it is responsible for the organisational part of the selection process for contract staff, but any question concerning the nature of the contracts falls within the remit of the institution concluding the contracts. EPSO stated that it regrets the fact that its last e-mail to the complainant did not contain an adequate answer, which would have consisted in providing him with contact details of the competent service. Therefore, EPSO asked the Ombudsman to transmit its apologies to the complainant.

The complainant's observations

The complainant did not submit any observations.

THE DECISION

1.1 Following his successful participation in selection procedure EPSO /CAST/EU/25/05, the complainant initiated an e-mail exchange with EPSO, in the course of which he sought information on the two sub-categories of contract staff, that is, "3a" and "3b". The complainant requested, among other things, (i) information on the criteria used to determine whether a person will be recruited as a contract agent "3a" or "3b", and (ii) information on "tasks other than manual".



In his complaint to the Ombudsman, the complainant alleged that EPSO failed properly to answer his query concerning the differences in treatment of the two sub-categories of contract agents "3a" and "3b" , and claimed that EPSO should provide him with the required explanation.

1.2 In its opinion, EPSO answered both of the complainant's questions and apologised for the fact that, in its e-mail of 24 March 2006 to the complainant, it did not provide him with an adequate answer.

In reply to the complainant's first question concerning the criteria used in determining whether a person will be recruited as a contract agent "3a" or "3b", EPSO referred to the budgetary limits of each Directorate-General or service of the European Commission. EPSO also explained that the duration of the contracts offered depends on the relevant budget and the purpose for which the contract is offered.

In reply to the complainant's second question concerning the description of tasks other than manual, EPSO referred to the sub-division of contract staff into the four function groups and to the corresponding duties performed as provided for in Article 80(2) of the Conditions of employment of other servants of the European Communities. EPSO explained that tasks other than manual are performed by contract staff belonging to a function group other than group I, that is, by contract staff belonging to function groups II to IV.

1.3 The Ombudsman welcomes the fact that EPSO promptly offered an apology to the complainant and provided him with the required explanations.

More precisely, EPSO informed the complainant that the duration of the contract agents' contracts depends on the relevant budget and the purpose for which the contract is offered, and that tasks other than manual are performed by contract staff belonging to a function group other than group I, that is, by contract staff belonging to function groups II to IV.

1.4 The Ombudsman invited the complainant to make observations on EPSO's answer and informed him that, in the absence of observations, he could close the case with a decision based on the information that he had already provided and the opinion received from EPSO. No observations from the complainant were received.

1.5 Given that, in the course of the present inquiry, EPSO provided adequate explanations to the complainant and apologised for not having answered his last e-mail of 24 March 2006 in an adequate manner, the Ombudsman considers that it has taken steps to settle the matter and appears to have satisfied the complainant.

2 Conclusion

For the reasons given above, the Ombudsman considers that EPSO has taken steps to settle the matter and appears to have thereby satisfied the complainant. The Ombudsman therefore closes the case.

The Director of EPSO will be informed of this decision.



Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) The above information is now available on the Commission's website (http://ec.europa.eu/civil_service/job/contract/index_en.htm [Link]).

(2) The French wording of this part of the reply was as follows:

" 3A - 3b : 2 types de contrat, pas un indicateur de niveau ;

- 3A peut devenir indéterminé ;

- 3B contrat de maximum 3 années "

(3) Translation by Ombudsman's services.

(4) Translation by Ombudsman's services.

(5) The Ombudsman was unable to open the link
(www.cc.cec/pers_admin/ext_staff/index_fr.html) provided by the Commission.