

## **Decision of the European Ombudsman on complaint 1368/2006/MF against the European Commission**

Decision

**Case 1368/2006/MF - Opened on 31/05/2006 - Decision on 10/12/2007**

Strasbourg, 10 December 2007

Dear Mr B.,

On 11 May 2006, you submitted a complaint to the European Ombudsman against the European Commission concerning your application for the post of Director of the European Agency for Safety and Health at Work.

On 31 May 2006, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 12 September 2006.

On 19 September 2006, I forwarded it to you with an invitation to make observations, which you sent on 9 October 2006.

On 19 July 2007, I asked the Commission for further information in relation to your complaint and requested that it submit its reply by 30 September 2007.

The Commission sent its reply on 24 September 2007.

On 28 September 2007, the Commission's reply was forwarded to you, with an invitation to make observations, which you sent on 1 October 2007.

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

### **THE COMPLAINT**

According to the complainant, the relevant facts were, in summary, as follows:

Following an advertisement in "The Economist" of 9 July 2005, the complainant applied for the position of Director of the European Agency for Safety and Health at Work, in Bilbao, Spain (the "Agency").



Candidates were required to send their applications to the Director-General of the European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities ("DG EMPL") by 10 August 2005.

On 4 August 2005, the complainant sent his application by registered post. On 14 March 2006, the complainant sent a follow-up letter to the Commission in which he asked whether there was a delay in the interview process.

In his complaint to the European Ombudsman, the complainant alleged that the Commission had failed to acknowledge or to reply to his application for the position of Director of the Agency sent on 4 August 2005. He further alleged that the Commission had failed to reply to his follow-up letter of 14 March 2006. In this context, the complainant indicated that his address had changed since the time when he made his application but that "*all mail was redirected*".

The complainant claimed that the Commission should explain the reasons why he had not been selected for an interview. He further claimed that the Commission should apologise for the lack of reply to his letters.

## THE INQUIRY

### The Commission's opinion

The opinion of the Commission on the complaint was, in summary, as follows:

The background

A vacancy notice for the post of Director of the Agency was published on 5 July 2005.

According to the vacancy notice, applications had to be sent to DG EMPL by 10 August 2005.

DG EMPL received a total of 152 applications, out of which 13 were discarded following incomplete or late transmission of the application. Only 78 applications met the criteria set out in the vacancy notice.

The Commission was assisted in the recruitment process by a Human Resources consultant. The consultant examined the applications and drew up a "long short-list" of 14 candidates. Following a meeting of the pre-selection committee on 28 September 2005, which agreed on a "long short-list" while adding two candidates to the list proposed by the consultant, the consultant interviewed all the applicants concerned.

On 3 November 2005, the consultant reported on the interviews on the occasion of the second meeting of the pre-selection committee and proposed a short-list of candidates suitable for an interview with the pre-selection committee itself. The committee decided to invite applicants for an interview on 14 November 2005. On that basis, the pre-selection committee proposed a list of three candidates for consideration by the Consultative Committee on Appointments ("CCA"). The CCA confirmed the list of the three short-listed candidates.

The three candidates were therefore interviewed by the Commissioner responsible for Employment, Social Affairs and Equal Opportunities who recommended that these three



candidates be proposed by the Commission to the Management Board of the Agency. At its plenary meeting of 3 May 2006, the Managing Board of the Agency appointed Mr T. to the post of Director of the Agency.

The substance of the complaint

As regards the complainant's allegation that the Commission failed to acknowledge or to reply to his application sent on 4 August 2005, the Commission stated that the vacancy notice indicated that only the short-listed candidates would be invited for an interview. The notice did not foresee that the Commission would acknowledge receipt of all applications. The Commission waited for the decision of the Managing Board of the Agency before informing all candidates of the outcome of the selection process. The Commission sent the letters to all applicants on 15 June 2006.

As regards the complainant's allegation that the Commission failed to reply to his follow-up letter of 14 March 2006, the Commission pointed out that it had replied to the complainant's follow-up letter on 12 April 2006 and attached the letter to its opinion.

As regards the complainant's claim that the Commission should explain the reasons why he had not been selected for an interview, the Commission stated that his application had been considered to be eligible. However, the complainant had not been selected for an interview because his experience in occupational safety and health issues was limited to compliance with health and safety regulations as part of his responsibilities in the finance and human resources fields. In addition, he did not demonstrate experience in working with institutions of the European Union and public authorities.

In conclusion, the Commission recognised that there had been a slight delay in informing the applicants about the outcome of the selection process. Letters were sent out to all applicants on 15 June 2006. The complainant's application was assessed in accordance with the criteria set out in the notice of vacancy. For the reasons set out above, he was not, however, selected for the "long short-list".

#### **The complainant's observations**

In his reply, the complainant stated that that he wondered why the candidates who had not been short-listed had not been informed sooner of the outcome of the selection procedure.

The complainant further stated that the copy of the letter attached to the Commission's opinion and allegedly sent to him on 12 June 2006 did not contain a destination address and that he did not receive it. He put forward that he had no reason to accept that it had even been sent.

The complainant stated that he did not expect to succeed in his application and repeated that the object of his complaint was the alleged lack of responsiveness and common courtesy from the Commission.

#### **Further inquiries** *The request for information addressed to the Commission*

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Commission to provide him with information on the following points:



" 1) In its opinion, the Commission stated that it had waited until the Managing Board of the Agency had appointed its new Director before informing the other candidates. It appears, however, that the new Director was appointed on 3 May 2006.

*Could the Commission please explain why the other candidates were only informed of the outcome of the selection process by letter of 15 June 2006, that is, more than a month after the decision to appoint the new Director of the Agency had been taken?*

2) The Ombudsman notes that the closing date for applications was 10 August 2005 and that unsuccessful candidates were only informed of the outcome of their application after the successful candidate had been appointed on 3 May 2006.

*In these circumstances, could the Commission please explain why it nevertheless considers that it was compatible with principles of good administrative behaviour not to send an acknowledgment of receipt to candidates?*

3) In its opinion, the Commission stated that it had replied to the complainant's letter of 14 March 2006 by letter dated 12 April 2006. The Ombudsman notes that the copy of this letter that was enclosed with its opinion bears no address and that the complainant, in his observations, expresses doubts as to whether it was sent to him. Could the Commission please comment on this point? "

*The Commission's reply*

In its reply, the Commission made, in summary, the following statements:

(1) *As regards the first issue that the candidates were informed of the outcome of the selection process on 15 June 2006, that is, more than a month after the decision to appoint the new Director of the Agency had been taken*

The Commission stated that the standard Selection procedure for appointments of Heads of Agencies, as specified in the " *Guidelines for the appointment of heads of Community agencies* " (1) provided the following:

" *[i]t is only after the College has taken its decision that all the candidates are informed about the result of their application* ".

The Commission repeated its argument that it therefore waited for the decision of the Managing Board of the Agency before informing all candidates about the outcome of the selection procedure. The new Director was indeed appointed by the Board on 3 May 2006 and the Commission informed all candidates about the outcome of the procedure on 15 June 2006. The Commission "reiterated" its apologies about the delay in informing the candidates of the outcome of the selection procedure.

(2) *As regards the second issue concerning the alleged failure to send an acknowledgement of receipt to candidates*



The Commission stated that the " *Guidelines for the appointment of heads of Community agencies* " did not foresee that its Services should send an acknowledgement of receipt to candidates. However, the Commission agreed that some feedback should have been given to the candidates in the course of the selection procedure.

Subsequently, the Commission stated that, in case of external publications of posts, it now requires that all candidates are sent an information note, after the pre-selection committee has done an initial screening of the applications. This new policy is designed to allow it to consider any written appeals against this initial screening. In addition, candidates who are not short-listed after pre-selection interviews are also informed in writing.

*(3) As regards the third issue that the Commission's letter of 12 April 2006 bore no address and the complainant's doubts as to whether it was in fact sent to him*

The Commission confirmed that it did reply to the complainant's follow-up letter on 12 April 2006. This letter did not contain any destination address but was sent to the address appearing on the complainant's letter of 14 March 2006. The Commission further stated that its reply was recorded in DG EMPL's "ADONIS" register.

*The complainant's further observations*

In his further observations, the complainant stated that he appreciated the Ombudsman's intervention, which has resulted in changes to the procedure applied to the examination of applications. Such changes are respectful of a candidate's right to be informed as soon as possible, whether his/her application is still being considered for the relevant position.

The complainant further stated that, even if, as stated by the Commission, the procedure rules were set out in the " *Guidelines for the appointment of heads of Community agencies* ", he did not accept the fact that it had taken more than a month, after the date on which the decision had been taken to select one of the candidates for the post, to inform the unsuccessful candidates of the outcome of the selection procedure.

The complainant finally observed that he had been previously unaware of the existence of DG EMPL's "ADONIS" register.

## THE DECISION

### **1 The Commission's alleged failure to acknowledge or to reply to the complainant's application for the position of Director of the Agency**

1.1 Following an advertisement in "The Economist" of 9 July 2005, the complainant applied for the position of Director of the European Agency for Safety and Health at Work (the "Agency"). Candidates were required to send their applications to the Director-General of the European Commission's Directorate-General for Employment, Social affairs and Equal Opportunities ("DG EMPL") by 10 August 2005. On 4 August 2005, the complainant sent his application by registered post. In the absence of any acknowledgment of receipt or response to his application, the complainant sent a follow-up letter to the Commission on 14 March 2006 in which he asked whether there had been a delay in the interview process. In his complaint to the Ombudsman,



the complainant alleged that the Commission had failed to acknowledge or to reply to his application for the position of Director of the Agency sent on 4 August 2005.

1.2 In its opinion, the Commission stated that the vacancy notice indicated that only the short-listed candidates would be invited for an interview. The notice did not foresee that the Commission would acknowledge receipt of all applications. The Commission waited for the decision of the Managing Board of the Agency before informing all candidates 15 June 2006 of the outcome of the selection process.

1.3 In his observations, the complainant stated that he wondered why those candidates who were not short-listed had not been informed sooner of the outcome of the selection procedure.

1.4 In light of the Commission's opinion and the complainant's observations, the Ombudsman by letter dated 19 July 2007, asked the Commission, in the context of the complainant's first allegation, to explain to him (i) the reasons why the candidates were only informed of the outcome of the selection procedure by letter of 15 June 2006, that is, more than a month after the decision had been taken, and (ii) the reasons why the Commission considered that it was compatible with principles of good administrative behaviour not to send an acknowledgment of receipt to candidates.

1.5 In its reply, the Commission stated, as regards the first issue, that the standard Selection procedure for appointments of Heads of Agencies, as specified in the "*Guidelines for the appointment of heads of Community agencies*" provides that "*[i]t is only after the College has taken its decision that all the candidates are informed about the result of their application*". The Commission therefore waited for the decision of the Managing Board of the Agency before informing all candidates about the outcome of the selection procedure. The new Director was indeed appointed by the Board on 3 May 2006 and the Commission informed all candidates about the outcome of the procedure on 15 June 2006. The Commission "reiterated" its apologies about the delay in informing candidates of the outcome of the selection procedure.

As regards the second issue, the Commission stated that the "*Guidelines for the appointment of heads of Community agencies*" did not foresee that its services should send an acknowledgement of receipt to candidates. However, the Commission agreed that some feedback should have been given to candidates in the course of the selection procedure. Subsequently, the Commission stated that, in case of external publications of posts, it now requires that all candidates be sent an information note, after the pre-selection committee has completed an initial screening of the applications. This new approach is designed to allow the Commission to consider any written appeals against this initial screening. In addition, candidates who are not short-listed following pre-selection interviews are also informed in writing of this decision.

1.6 In his further observations, the complainant stated that he appreciated the Ombudsman's intervention which has resulted in changes in the procedure for the examination of the applications, such changes being respectful of a candidate's entitlements to be informed, as soon as possible, whether his/her application is still being considered for the relevant position.



The complainant further stated that, even if, as stated by the Commission, the procedure rules were set out in the " *Guidelines for the appointment of heads of Community agencies* ", he did not accept the fact that it had taken more than a month after the date on which the decision had been taken to inform the candidates of the outcome of the selection procedure.

1.7 As regards the Commission's alleged failure to reply to the complainant's application for the relevant post sent on 4 August 2005, the Ombudsman observes that it emerges from the Commission's opinion that the latter replied to the complainant's application by letter of 15 June 2006. Given that the complainant's application was therefore replied to in the course of the present inquiry, the Ombudsman considers that what needs to be examined is whether the Commission sent its reply within a reasonable period of time or, if not, whether it provided a reasonable explanation for the delay which occurred in replying.

1.8 In this context, the Ombudsman notes that the vacancy notice for the selection of the Director of the Agency (2) provided the following:

*" [s]hort-listed candidates will be invited for interview on the basis of a comparative evaluation of their merits relevant to the post. A final short list of candidates will then be proposed by the Commission to the Administrative Board of the Agency which will appoint the Director.*

*The successful candidate will be expected to take up the post by 15 September 2006 "*

1.9 The Ombudsman finds it useful to recall that, pursuant to Article 17 of the European Code of Good Administrative Behaviour (3) :

*" 1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. (...) "*

*" 2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author thereof as soon as possible. (...) "*

1.10 In the present case, the Ombudsman notes that an overall period of time amounting to more than ten months elapsed between the complainant's application for the relevant post (that is, 4 August 2005) and the day on which the complainant was informed of the outcome of the selection procedure (that is, on 15 June 2006). The Ombudsman considers that this went manifestly beyond what could be considered to constitute a reasonable period of time for acknowledging an application. In order to justify this delay in informing the complainant of the outcome of the selection procedure, the Commission invoked a provision set out in the " *Guidelines for the appointment of heads of Community agencies* ", pursuant to which it had to wait for the decision of the Managing Board of the Agency, before communicating with the candidates.

1.11 The Ombudsman notes that it clearly emerges from the Commission's opinion that the





selection procedure was divided into several steps, starting from the drawing up, on 28 September 2005, of a "long short-list" of 16 candidates and finishing on 3 May 2006, when the final decision of the Agency's Managing Board to appoint the successful candidate to the post of director was taken on the occasion of its plenary meeting.

1.12 First, the Ombudsman would like to point out that a distinction has to be made between an acknowledgment of receipt and a substantive reply made to a candidate's application. The issue of the alleged failure to send an acknowledgment of receipt to the complainant's allegation will be dealt with in the remaining points of Part 1 of the present decision.

Secondly, the Ombudsman is of the view that, in case a recruitment procedure would entail various steps, on the occasion of which several candidates' applications were to be excluded, it is in the interest of the candidates, that is to say, European citizens, to be informed accordingly in a systematic way, and as reasonably soon as possible.

1.13 In the complainant's case, the Ombudsman considers that, while it is reasonable for the Commission to require a significant period of time in order to carry out all the various steps of the selection procedure, it should, nonetheless, have informed the complainant that his candidacy was not successful, as soon as it had decided not to put his name on the "long short-list" of candidates invited for an interview, that is, on 28 September 2005.

1.14 The Ombudsman however notes that, in its reply to his request for further information, the Commission "reiterated" (4) its apologies about the delay which occurred in informing candidates of the outcome of the selection procedure. In this reply, the Commission further acknowledged that it should have informed the candidates of the state of progress in dealing with their applications in the course of the selection procedure. The Ombudsman notes that the Commission further stated that, as from the date of its reply, in the case of external publications of posts, it endeavours to send an information note to the candidates who are not short-listed by the pre-selection Committee, in order for them to be able to lodge an appeal against the relevant decision. The Commission also endeavours to inform in writing candidates who are not short-listed after the pre-selection interviews about the relevant decision.

1.15 The Ombudsman welcomes the approaches taken by the Commission in the course of the present inquiry. The Ombudsman particularly applauds the fact that these approaches were taken in accordance with the principles of good administration in order (i) to inform the candidates of the state of progress in the evaluation of their applications as reasonably soon as possible, and (ii) to enable them to appeal against any decision of a selection Committee concerning the inadmissibility of their applications. In these circumstances, the Ombudsman finds that no further inquiries are necessary as regards this aspect of the complainant's allegation.

1.16 The Ombudsman also notes that, in his further observations, the complainant repeated his view that he had been informed of the outcome of the selection procedure more than one month after the decision to appoint the new Director had been taken. In this regard, the Ombudsman notes that, in its further reply, the Commission apologised for the delay in informing candidates





of the outcome of the selection procedure. The Ombudsman considers that the above apology also concerns the period of time which elapsed between the date on which the decision to appoint the new Director was taken and the date on which candidates were informed about the outcome of the procedure. In these circumstances, the Ombudsman finds that no further inquiries are necessary as regards this aspect of the complainant's allegation.

1.17 As regards the Commission's alleged failure to acknowledge the complainant's application for the relevant post sent on 4 August 2005, the Ombudsman would like to recall Article 14(1) of the European Code of Good Administrative Behaviour which provides the following;

*" [e]very letter or complaint to the Institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period. "*

1.18 In the present case, the Ombudsman is of the view that, even if the notice of vacancy or the " *Guidelines for the appointment of heads of Community agencies* " did not explicitly foresee that an acknowledgment of receipt would be sent to candidates who applied for the relevant post, it appears that, in light of the above, it would have been good administrative practice for the Commission to have sent an acknowledgment of receipt to the candidates. The Ombudsman would like to highlight that an acknowledgement of receipt is particularly important where a citizen applies for a post at an institution or body of the European Union.

1.19 However, as mentioned above, the Ombudsman notes that, in its further reply, the Commission described the appropriate measures it had taken in the course of the present inquiry. The Ombudsman further notes that, in his observations, the complainant stated that he appreciated the Ombudsman's intervention which has resulted in changes in the procedure for the examination of applications.

1.20 On the basis of these considerations, the Ombudsman considers that no further inquiries into this aspect of the present allegation are necessary.

## **2 The Commission's alleged failure to reply to the complainant's follow-up letter of 14 March 2006**

2.1 The complainant alleged that the Commission had failed to reply to his follow-up letter of 14 March 2006.

2.2 In its opinion, the Commission stated that it had replied to the complainant's follow-up letter on 12 April 2006. The Commission attached a copy of the letter to its opinion.

2.3 In his observations, the complainant stated that the letter that was allegedly sent to him by the Commission on 12 June 2006 did not contain a destination address and that he did not receive it. He put forward that he had no reason to accept that it had even been sent.

2.4 In his request for further information, the Ombudsman asked the Commission to comment on the issue that the copy of the Commission's letter of 12 April 2006 attached to its opinion bore no address and that the complainant, in his observations, expressed doubts as to whether it was sent to him.



2.5 In its reply, the Commission confirmed that it did reply to the complainant's follow-up letter on 12 April 2006. This letter did not contain any destination address but was sent to the address appearing on the complainant's letter of 14 March 2006. The Commission's reply was recorded in DG EMPL's register (ADONIS).

2.6 The Ombudsman notes that, in his complaint to him, the complainant indicated that his address had changed since the time he submitted his application but that "*all mail was redirected*". The Ombudsman further observes that, despite the fact that the Commission's letter does not specify any destination address, it however contains a registration date, namely 12 April 2006. It further contains a filing reference, namely "EMPL/F/1/SB D (2006) 7734". Further, the letter is recorded in DG EMPL's ADONIS register.

2.7 The Ombudsman is of the view that the fact the Commission's letter did not contain any postal address does not mean, at first sight, that it had never been sent to the complainant. In fact, it appears reasonable to assume that the envelope did specify the complainant's address. Further, the fact that the complainant had changed his postal address since his application might explain why he had never received it, notwithstanding the fact that all his mail was, in principle, redirected to his new address. In view of these circumstances, the Ombudsman considers that there appears to be no need further to pursue his inquiry into this allegation.

2.8 However, the Ombudsman is of the view that, in the interest of proper communication with citizens, and also to allow for the identification of potential errors, it appears appropriate that each reply to a citizen's request should mention his/her address on the letter itself, and not only on the envelope. The Ombudsman will make a further remark in this regard.

### **3 The complainant's claims**

3.1 The complainant claimed that the Commission should explain the reasons why he was not selected for an interview. He further claimed that the Commission should apologise for the lack of reply to his letters.

3.2 As regards the complainant's first claim, the Commission stated that his application had been considered to be eligible. However, the complainant had not been selected for an interview because his experience in occupational safety and health issues was limited to compliance with health and safety regulations as part of his responsibilities in the finance and human resources fields. The Commission stated that, in addition, he did not demonstrate experience in working with EU institutions and public authorities. As regards the complainant's second claim, the Commission recognised that there had been a slight delay in informing the applicants about the outcome of the selection process. Letters were sent out to all applicants on 15 June 2006.

3.3 In his observations, the complainant stated that he did not expect to succeed in his application and repeated that the object of his complaint was the alleged lack of responsiveness and common courtesy from the Commission.

3.4 As regards the complainant's first claim, the Ombudsman notes that, in its first opinion, the



Commission clearly gave to the complainant the reasons why he had not been selected for an interview, namely, that his professional experience was limited to compliance with health and safety regulations and that he did not demonstrate experience in working with EU institutions and public authorities, notwithstanding the fact that his application had been considered to be eligible. In light of the above, the Ombudsman considers that there appears to be no need further to pursue his inquiry as regards the complainant's first claim.

3.5 As regards the complainant's second claim, the Ombudsman notes that, in its reply to his request for further information, the Commission "reiterated" (5) its apologies about the delay which occurred in informing the candidates of the outcome of the selection procedure. In these circumstances, the Ombudsman finds that no further inquiries are necessary as regards the complainant's second claim.

#### **4 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, the Ombudsman concludes that there appears to be no need further to pursue his inquiry. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

## **FURTHER REMARK**

The Ombudsman is of the view that, in the interest of proper communication with citizens, and also in order to allow citizens to identify potential errors, it appears appropriate that each reply to a citizen's request should mention his/her address on the letter itself, and not only on the envelope.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Commission staff working document " *Guidelines for the appointment of heads of Community agencies* " (COM(2005) 190 final)- SEC/2005/0625. This document is available at the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2005:0625:FIN:EN:HTML> [Link]  
(address valid at the date of the present decision).

(2) Ref./COM/2005/10001, OJ 2005, C 163, A/01. For the Job description, application forms and instructions for sending applications, the OJ refers to the following addresses:

[http://europa.eu.int/comm/dgs/personnel\\_administration/working\\_senior\\_mgt\\_fr.htm](http://europa.eu.int/comm/dgs/personnel_administration/working_senior_mgt_fr.htm) [Link]

and [http://europa.eu.int/comm/employment\\_social/news/2005/jul/bilbao\\_vacancy\\_en.htm](http://europa.eu.int/comm/employment_social/news/2005/jul/bilbao_vacancy_en.htm) [Link]



(addresses valid at the date of the present decision).

(3) The European Code of Good Administrative Behaviour is available on the Ombudsman's website ( <http://www.ombudsman.europa.eu/code/en/default.htm> [Link]).

(4) The Ombudsman notes that, in its first opinion, the Commission merely recognised that there had been a "slight delay" in informing the applicants about the outcome of the selection process, without making any apologies to the complainant. It was, therefore, in its further reply that the Commission apologised to the complainant for the first time.

(5) See footnote 4.