

Decision of the European Ombudsman closing his inquiry into complaint 1094/2012/TN against the European Commission

Decision

Case 1094/2012/TN - **Opened on** 29/06/2012 - **Decision on** 20/06/2013 - **Institution concerned** European Commission (No maladministration found) |

The background to the complaint

1. The complaint to the Ombudsman concerned the way in which the Commission carried out a recruitment procedure (COM/TA/MARKT/12/AD8) for the selection of a temporary agent in the field of European security and defence in the Public Procurement Directorate of DG Internal Market and Services.

The subject matter of the inquiry

2. In his complaint, the complainant alleged that the Commission did not carry out the recruitment procedure in a fair and transparent manner.

3. In support of his allegation, the complainant argued that the vacancy notice was specifically tailored to the qualifications of a particular person, given that it stated that having a PhD in the field of defence and security and excellent knowledge of German were deemed to be advantages (the employee who the complainant considers was favoured appears to have a PhD in the field of defence and security, and excellent knowledge of German). The complainant also argued that the recruitment procedure was carried out in a hasty way, given that it was finalised in only two weeks from the interviews to the first official working day of the selected person.

4. The complainant claimed that the Commission should annul the recruitment procedure and launch a new one in a fair and transparent manner.

The inquiry



5. The Ombudsman asked the Commission to submit an opinion on the complaint, which it did on 19 September 2012. The opinion was forwarded to the complainant, who submitted his observations on 29 October 2012.

The Ombudsman's analysis and conclusions

A. The allegedly unfair and non-transparent recruitment procedure and related claim

Arguments presented to the Ombudsman

6. According to the complainant, the recruitment procedure in question, which was organised in the spring of 2012, was staged to re-hire an employee who was already holding the position and whose contract was about to expire.

7. The complainant argued that although German is the third working language of the Commission, in practice no particular preference is given to German-speaking candidates, except for posts dealing directly with Germany and Austria, that is, structural fund management in DG REGIO. Although Germany is indeed one of the most important players in the field of European security and defence, the unit in question deals with the whole EU defence procurement market and not a particular country. For example, Italy is also one of the main players in the field of defence public procurement.

8. In respect of the advantage of having a PhD, the complainant argued that there are quite a few good specialists in the field of defence procurement in the EU, most of whom do not hold a PhD. According to the complainant, experience is what matters in this field.

9. The complainant also stated that " *the active job description* " of this post published in SYSPER2 (the Human Resource Management information system of the Commission) is different from the one published in the vacancy notice. He indicated that the former does not give an advantage to the German language or a PhD, but to " *completely different fields* ".

10. Finally, the complainant pointed out that the recruitment procedure was finalised in only two weeks, from the interviews to the first official working day of the selected person. In the complainant's view, this means that the recruitment procedure was carried out in a hasty way, and he questioned whether the unsuccessful candidates had a chance to contest the results.

11. In his letter opening an inquiry into the complaint, the Ombudsman asked the Commission to explain, in its opinion, its procedure for having decided on the qualifications in the recruitment procedure concerned, and to:

(1) Clarify the reasons why a PhD in the field of defence and security was deemed to be a "



strong advantage " for the post in the Public Procurement Directorate of DG Internal Market and Services, particularly its explanation to the complainant that "[t] *his is so for any specialist vacancy*";

(2) Clarify the reasons why an excellent knowledge of German was deemed to be an asset for this particular post, particularly on the basis of the complainant's arguments that the post in question deals with the whole EU defence procurement market and not a particular country and that there are other countries that are important players in the field;

(3) Address the complainant's argument that " *the active job description* " of this post, published in SYSPER2, is different from the one published in the vacancy notice; and

(4) Address the complainant's argument that the recruitment procedure was carried out in a hasty way.

12. In its opinion to the Ombudsman, the Commission stated that the selection procedure in question was conducted in line with strict Commission rules guaranteeing fairness and equal treatment [1] . A number of external actors were involved throughout the process (the Joint Committee, Staff Unions, DG Human Resources and Security, and an experienced manager from outside DG MARKT chairing the selection panel) and ensured objectivity and equal treatment of all candidates. The qualifications required for the post were decided upon by the Joint Committee responsible for this task according to the relevant procedures and in such a way as to attract as many applications as possible from suitable candidates. The selection criteria used were in line with standard recruitment practices in DG MARKT. According to the Commission, the number of applications received shows " *the openness of the qualifications in the recruitment procedure* ".

13. The Commission stated that, unlike the criteria set out in the vacancy notice under "3.1 General conditions", "3.2.1. Qualifications" and "3.2.3. Experience", the criteria set out under "3.2.2. Advantages" were not used to exclude candidates. All candidates fulfilling the minimum requirements could apply and participate in the recruitment procedure in question.

14. According to the Commission, the selection panel, in which the representatives of the recruiting unit were in a minority and not presiding, carefully and objectively considered all applications. It short-listed the most suitable candidates, including some who did not have an advanced university degree, for the interview. The second candidate placed on the reserve list did not have an advanced university degree.

15. The Commission argued that, in case of specialist administrator posts, a PhD in the field can be considered to be an advantage, not only because of the resulting in-depth knowledge of the subject matter, but also because of the acquired research skills and the proven ability to work conceptually. The post in question includes the participation in a task-force to further develop legislation in the defence procurement sector. To fulfil this task, conceptual thinking and research skills are important qualities. The existence of both these qualities is demonstrated by a PhD. Practical experience in the field of defence public procurement, as mentioned by the



complainant, was an obligatory requirement under 3.2.3. of the vacancy notice, and an excellent knowledge of its specificities was considered to be an advantage under 3.2.2. of the notice.

16. The Commission stated that, similarly, an excellent knowledge of German was also considered to be an asset and not an essential requirement as was knowledge of English and French. German is the third working language of the Commission. Knowledge of German is, therefore, generally an asset. The Commission considers it worth noting that, after the United Kingdom (with EUR 39 650 million in defence expenditures in 2011) and France (EUR 38 445 million), Germany (EUR 34 630 million) is one of the three most important players in the European defence market. The ability to work in English, French and German, along with the ability to discuss with stakeholders in these languages, is therefore a clear advantage in the defence sector. The Commission noted that, in comparison, the defence expenditures of Italy, the country mentioned by the complainant, amount to EUR 21 741 million.

17. According to the Commission, it is correct that parts of the active job description in Sysper2 are not exactly the same as in the published vacancy notice. The purpose of the information contained in Sysper2 is different from that of the information published in the vacancy notice. Whilst the job description at the time when it is drafted focuses on the job profile to allow, for example, an appraisal of the job holder, the vacancy notice focuses on the job requirements which the unit having the vacant post is in need of at the time the vacancy notice is published.

18. The Commission also argued that whilst it might be true that other Commission recruitment procedures take longer, this procedure was not carried out in a hasty way. The recruitment procedure was conducted in a way that respected all the applicable rules. The candidate that was finally selected could be recruited quickly because he had already worked for the Commission before the start of his contract, and, consequently, there was no notice period with respect to a former employer, as well as no need to carry out a medical examination or to establish a personal file.

19. In his observations on the Commission's opinion, the complainant argued that experience in the professional field results not from an academic degree, but from extensive work experience. While research skills are important, research is not the main task of an administrator in the Commission. Moreover, other Commission DGs that also work in the domain of defence policy do not, to the complainant's knowledge, consider a PhD to be an advantage in their selection procedures. According to the complainant, the fact that holding a PhD was considered to be a *strong* advantage could confuse or even discourage many potential candidates. In addition, although the Commission stressed that the post included developing legislation in the defence procurement area, legal experience or a degree in law was not considered to be an advantage.

20. The complainant added that the way in which the Commission determines the relevance of languages depending on defence expenditure is discriminatory. However, the EU should take into account the interests of all Member States, not only the most powerful ones.

21. In the complainant's view, the Commission tried to downplay the role of Sysper2. The complainant stated that the job description in Sysper2 is used not only for the appraisal of the



job holder, but also for the internal selection of EU staff. All vacant Commission posts are published in Sysper2, and EU staff can access this information, that is to say, the job description, requirements etc. The unit manager must ensure that the job descriptions are up to date. It is therefore misleading for the Commission to argue that the information in Sysper2 is not used for recruitment.

22. According to the complainant, the recruited person took up the position on 1 May 2012, whereas the other candidates invited for an interview were only informed of the outcome of the recruitment procedure in the second week of May. The complainant thus maintained that the other participants did not have a right to an appeal, given that, by the time they received the rejection letters, the incumbent employee had already continued his career.

The Ombudsman's assessment

23. The Ombudsman first points out that, according to the established case-law of the EU Courts, the appointing authority enjoys a wide discretion in determining, in light of the abilities required for the posts and the interests of the service, the rules and conditions under which a competition is organised. An instance of maladministration can only occur if the choice made by the appointing authority as regards how to organise a competition is not made within reasonable limits and if the appointing authority uses its powers in this regard in a manifestly erroneous way [2] .

24. In respect of the recruitment procedure in the present case, the Ombudsman notes that the qualifications questioned by the complainant did not constitute obligatory requirements, but rather were considered to be a "strong advantage" (a PhD in the field of defence and security) and an "asset" (an excellent knowledge of German). The Ombudsman notes the Commission's argument that in-depth knowledge, conceptual thinking and research skills would be important qualities for the post. In its view, the existence of these qualities is demonstrated by a PhD. Even if, as argued by the complainant, the *main* task of the post would not be research, and even if other Commission DGs working in the area of security and defence would not consider a PhD to be an advantage, this does not necessarily mean that the Commission's argument is incorrect. In respect of the complainant's argument that work experience is more important than an academic degree, the Ombudsman notes that the notice in fact *required* candidates to have at least six years of professional experience in the field of defence public procurement, related to the duties described.

25. The complainant argues that it is discriminatory for the Commission to base its language needs on the defence expenditures of certain countries. He added that the EU should take into account the interests of all Member States and not only those of the most powerful ones. The Ombudsman does not, however, consider the reference in the Commission's opinion to the level of defence expenditure of certain Member States to imply an exclusive or discriminatory focus on the interests of those Member States.

26. In respect of the job description in Sysper2 and the one in the vacancy notice, the



Ombudsman considers the Commission's explanation (in summary, that the needs of the service may change over time and that such changes are reflected in the vacancy notice for a vacant post, even if Sysper2 has not been updated) to be reasonable. The Ombudsman also considers the Commission's explanation as to why the chosen candidate could be recruited quickly to be reasonable. In addition, it would clearly not be in the interests of efficient administration for a recruiting EU institution to refrain from appointing a selected candidate until the three-month deadline for making a complaint under Article 90(2) of the Staff Regulations has expired, and possibly much longer if a complaint about the recruitment procedure has been submitted.

27. On the basis of the above, the Ombudsman does not find that the Commission failed to organise the recruitment procedure within reasonable limits or that it used its powers in this regard in a manifestly erroneous way. The Ombudsman therefore finds no maladministration by the Commission. Accordingly, the complainant's claim must fail.

B. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

There has been no maladministration.

The complainant and the Commission will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 20 June 2013

[1] Article 2 of Commission Decision C(2004)1597/5 of 21 April 2004 on a new policy for the engagement and use of temporary agents.

[2] See, for example, case T-256/01 *Pyres v Commission* [2005] ECR-SC I-A-23 and II-99, paragraph 36.