

Decision of the European Ombudsman closing the inquiry into complaint 1076/2013/EIS against the European Personnel Selection Office (EPSO)

Decision

Case 1076/2013/EIS - **Opened on** 19/06/2013 - **Decision on** 23/06/2014 - **Institution concerned** European Personnel Selection Office (No maladministration found) |

The case concerned the allegedly discriminatory character of a selection criterion regarding professional experience acquired or studies pursued in a foreign country indicated in a call for expressions of interest issued by the European Personnel Selection Office (EPSO).

The complainant, an Italian citizen, had been working for the EU in Ispra, Italy, for three years. He took part in a selection procedure organised by EPSO. One of the questions included in the 'Talent Screener' section of the application form queried whether the candidate had "[p]rofessional experience (or [had pursued] studies) in a foreign country (not your country of origin) of longer than six consecutive months". Candidates were invited to reply to that question in the affirmative or in the negative. Given that the complainant had acquired his relevant experience by working for the EU in his country of origin, he replied to the question in the negative. This led EPSO to eliminate him from the next stage of the procedure. The complainant turned to the European Ombudsman and alleged that the question was discriminatory, since it did not take into account specific circumstances.

The Ombudsman inquired into the issue and found that EPSO had not made any manifest error of assessment, given that the requirement of experience gained in a foreign country was clearly established by the Call for expressions of interest and EPSO's position was also in line with the relevant case-law. The Ombudsman thus closed the case with a finding of no maladministration.

The background to the complaint

1. The subject matter of this complaint is the allegedly discriminatory character of a question regarding professional experience acquired or studies pursued in a foreign country. The question was included in an application form appended to a call for expressions of interest issued by the European Personnel Selection Office (EPSO).
2. The complainant is an Italian professional psychologist who responded to call for



expressions of interest EPSO/CAST/S/6/2013 which aimed at setting up a database of successful candidates from which to recruit contract staff as educational psychologists (Function Group IV) [1] , hereinafter referred to as the 'Call'. The Call was published on EPSO's website on 5 February 2013.

3. The selection procedure consisted of the following two phases:

– *Phase A* : Selection based on qualifications – CV screening (to select the candidates to be invited to sit the competency test); and

– *Phase B* : Competency test.

4. According to the Call, candidates were screened in Phase A on the basis of their qualifications, particularly in terms of their diplomas and professional experience. The candidates whose academic and professional background best matched the duties indicated in the job description were invited to Phase B, that is, the competency test. In Phase A, question number 6 for the purposes of the CV screening queried whether candidates had "[p]rofessional experience (or [had pursued] studies) in a foreign country (not your country of origin) of longer than six consecutive months". Candidates were invited to reply to this question in the affirmative or in the negative. The complainant replied to that question in the negative.

5. On 8 May 2013, the complainant received a letter from EPSO informing him that he had achieved a total score of 14 points in Phase A, which was not sufficiently high to qualify him for Phase B. In fact, in order to be admitted to Phase B, candidates had to score at least 15 points.

6. On 9 May 2013, the complainant wrote to EPSO and explained that his answer to question number 6 resulted in his not being admitted to Phase B, given that he only needed one more point to be admitted to the next stage. He argued that the question was discriminatory, because it did not allow certain specific circumstances to be taken into account. In fact, the complainant had been working for the Joint Research Centre (JRC) of the European Commission in Ispra (Italy) for three years. However, given that the JRC is located in his country of origin, he could only answer that question in the negative, even if, he argued, his experience was actually equivalent to any experience gained in a foreign country. In his view, EU institutions situated in the candidate's country of origin should be considered "*foreign territory*" in such cases.

7. On 5 June 2013, EPSO replied to the complainant. With reference to the Call, it explained that only those candidates who obtained the highest number of points had their answers processed by the selection panel in Phase B of the selection procedure. According to EPSO, "*there were many candidates who matched more asset criteria*" than the complainant. Bearing this in mind, and notwithstanding the arguments included in the complainant's e-mail, EPSO upheld its earlier decision.

The inquiry



8. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim.

Allegation

EPSO failed to address the complainant's argument that its selection criterion concerning professional experience or studies in a foreign country is discriminatory.

Claim

EPSO should (i) take into account experience gained by working for the EU institutions within the territory of a candidate's country of origin, and thus (ii) admit the complainant to the next stage of the selection procedure.

9. In the course of the inquiry, the Ombudsman received EPSO's opinion on the complaint and, subsequently, invited the complainant to submit comments in response to EPSO's opinion. The complainant did not avail himself of this possibility. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that EPSO failed to address the complainant's argument that its selection criterion concerning professional experience or studies in a foreign country is discriminatory and related claim

Arguments presented to the Ombudsman

10. In its opinion, EPSO argued that it follows from case-law of the Court of Justice of the European Union that the appointing authority enjoys wide discretion in determining the rules and conditions under which a competition is organised on the basis of the ability criteria required for the posts to be filled and the interests of the service [2] . Consequently, it took the view that it was entitled to consider only professional experience acquired or studies pursued in a foreign country as relevant.

11. EPSO also referred to the text of the Call and submitted that candidates who had worked or studied abroad corresponded to the profile sought. Although this profile may have some aspects in common with that of candidates who worked in a multicultural environment in their own country, EPSO argued that a candidate who has worked or studied abroad is more likely to be permanently immersed in a different culture in his or her day-to-day life and is more likely to be able to face the challenges of working or studying in a different language. There were thus differences between the profiles of candidates who have worked or studied abroad and those who have gained similar experience in their country of origin.



12. Finally, EPSO observed that the Call clearly referred to "[p]rofessional experience (or studies) in a foreign country (not your country of origin) of longer than six consecutive months". The relevant criterion was thus clearly established in advance and applied equally to all candidates. The complainant was aware of this when submitting his application on 11 March 2013.

The Ombudsman's assessment

13. The Ombudsman notes that, as EPSO has pointed out, it follows from settled case-law of the Court of Justice of the European Union that the appointing authority enjoys wide discretionary powers in determining the rules and conditions under which a competition is organised on the basis of the ability criteria required for the posts to be filled and the interests of the service [3]. Against this background, the Ombudsman's task is limited to ascertaining whether the selection panel's decision was vitiated by a manifest error of assessment.

14. The Ombudsman points out that the sixth criterion for CV screening set out in the Call referred to "[p]rofessional experience (or studies) in a foreign country (not your country of origin) of longer than six consecutive months". In the present case, the complainant acknowledges that his relevant experience was gained in his country of origin, although while working for an EU institution.

15. In its opinion, EPSO argued, in substance, that its position was in line with the relevant case-law and that the Call clearly laid down the requirement of professional experience acquired or studies pursued in a foreign country. The Ombudsman finds these arguments convincing. She also notes that the text in brackets quoted in the previous point of her decision ("*not your country of origin*") made it clear to applicants that experience in one's country of origin would not be considered. She thus finds EPSO's position convincing and in line with the relevant case-law.

16. As regards the complainant's argument that the criterion set out in the Call does not take into account situations where relevant experience has been gained by working for EU institutions within the territory of a candidate's country of origin, the Ombudsman notes that EPSO referred to differences between the profiles of candidates who have worked or studied abroad and those who have gained similar experience in their country of origin. Specifically, EPSO referred to differences stemming from being immersed in a culture different from one's own. The Ombudsman considers these arguments to be reasonable and thus concludes that EPSO did not commit any manifest error of assessment. It follows that the complainant's allegation that the relevant criterion was discriminatory cannot be sustained.

17. Given that the complainant's allegation cannot be sustained, his claim cannot succeed either.



Conclusion

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

There was no maladministration in EPSO's conduct.

The complainant and EPSO will be informed of this decision.

Emily O'Reilly

Done in Strasbourg on 23 June 2014

[1] The call for expressions of interest is available at:
http://europa.eu/epso/doc/call-cast-ped-s6-2013_en.pdf [Link]

[2] Case T-132/89 *Gallone v Council* [1990] ECR II-549, paragraph 27; T-207/95 *Ibarra Gil v Commission* [1997] ECR-SC I-A-13 and II-31, paragraph 66.

[3] See footnote 2, above.