

Decision of the European Ombudsman closing the own-initiative inquiry OI/1/2013/FOR concerning the European Commission

Decision

Case OI/1/2013/FOR - **Opened on** 16/04/2013 - **Recommendation on** 27/06/2014 - **Decision on** 27/05/2015 - **Institution concerned** European Commission (Draft recommendation accepted by the institution) |

The inquiry concerns the selection of staff to work for the Commission in the area of development cooperation. Specifically, it concerned the requirement that recruits should have gained a minimum of four years of professional experience working on a project or programme in a developing country. The Ombudsman inquired into the issue and found that the wording of the Notice of Competition drafted by the Commission was unclear and ambiguous. She therefore made a draft recommendation to the Commission, which was accepted.

The background

1. This own-initiative inquiry is connected to an inquiry carried out by the European Ombudsman into complaint 2074/2011/ER. That inquiry concerned the allegedly discriminatory character of the requirements concerning professional experience and linguistic knowledge in a staff selection procedure organised by the European Personnel Selection Office (EPSO). As the Commission, and not EPSO, was responsible for drafting the relevant Notice of Competition, the then Ombudsman decided that there were no grounds for further inquiries into the complaint against EPSO and announced his intention to open an own-initiative inquiry against the Commission. [1]

The inquiry

2. The Ombudsman's own-initiative inquiry concerned the following allegation and claim:

Allegation

When requesting EPSO to organise Open Competition EPSO/AD/229/11, the Commission specified an eligibility criterion regarding professional experience which is contradictory, unreasonable or discriminatory.



Supporting argument

The requirement to have acquired four out of the requisite six years of professional experience by working on a project or programme in a developing country does not take into consideration the experience acquired at the international level or in transition countries.

Claim

In future, the Commission should refrain from specifying the aforesaid eligibility criterion.

3. In the course of this inquiry, the Ombudsman received, and took into account, the opinion of the Commission and the observations of the complainant in the earlier complaint (2074/2011/ER) against EPSO. Thereafter, the Ombudsman made a Draft Recommendation to the Commission. After receiving the response of the Commission to the Draft Recommendation, the Ombudsman invited the complainant in complaint 2074/2011/ER to make observations. The complainant provided no observations.

Allegedly contradictory, unreasonable or discriminatory eligibility criterion regarding professional experience

4. In its opinion after the opening of the own-initiative inquiry, the Commission argued that the eligibility criterion of having gained a minimum of four years of professional experience by working on a project or programme in a developing country was fully in line with the interest of the service taking into account that the aim of the competition was to recruit staff having broad experience in developing countries.

5. The Commission also explained that the relevant Notice of Competition (i) did not define the notion of " *experience [...] gained working on a project or programme in a developing country*", (ii) did not exclude taking into account experience which a candidate had gained while working in an international organisation, and (iii) entrusted the Selection Board with assessing candidates' experience, irrespective of whether they had been living in a developing country, in a transition country or elsewhere whilst working on a project or programme in a developing country. In conclusion, the Commission stated that the eligibility criterion in question was not contradictory and discriminatory. On the contrary, it was reasonable and justified.

6. In her observations, the complainant [2] expressed the hope that the Ombudsman would ask the Commission to reopen the selection procedure in question in order to allow candidates who had not applied for the competition because of the alleged contradictory, unreasonable and discriminatory criteria to participate in it.

The Ombudsman's draft recommendation



7. The Ombudsman noted that Notice of Competition EPSO/AD/229/11 describes the required professional experience as follows:

" 3. *Professional experience*

Minimum 6 years' professional experience in the field of development cooperation in one or more of the following sectors: macroeconomics, public finance management, public sector reform, private sector, trade, regional integration, environment and natural resources, climate change, energy, infrastructure, transport, water, rural development, food security, disaster risk reduction, agriculture, forestry, fisheries, governance, human rights, elections, parliament, judiciary, health, education, social cohesion, gender, children, indigenous peoples, decentralisation and local authorities.

At least 4 of the 6 years' experience must have been gained by working on a project or programme in a developing country, including 2 years as team leader.

[...]"

8. In her assessment, the Ombudsman addressed the Commission's argument that the relevant selection criterion allowed the Selection Board to take into account experience pertaining to the management of a project or a programme in a developing country, **irrespective of a candidate's place of employment and residence** . The Ombudsman noted that the complainant interpreted the above-mentioned criterion to mean that the candidates had to have experience acquired **in a developing country** . The Ombudsman further noted that the wording of the Notice of Competition could support two different interpretations: the words "*in a developing country*" could either refer to the term "*project or programme*" or to the place where the experience was physically obtained.

9. The Ombudsman therefore concluded on this point that a notice of competition should be worded as clearly as possible in order to enable potential candidates to decide whether or not they should apply. Even if the Commission's explanation as regards the interpretation of the relevant clause were to be accepted, it was clear that this wording would need to be clarified in future notices of competition. She concluded that the Commission had regrettably not addressed this issue in its opinion to the Ombudsman.

10. The Ombudsman further noted that the Commission failed to explain whether it had taken into consideration the fact that certain official EU documents state that experience gained in transition countries is an asset to the EU's development policy. Due to this failure, the Ombudsman was led to assume that the Commission did not take proper account of this circumstance and concluded that this constituted an instance of maladministration.

11 . The Ombudsman considered that, given the passage of time, it would not make sense to ask the Commission to reopen this competition. However, the Ombudsman considered that, when planning future competitions, the Commission should take due account of the issues



discussed above. She therefore made the following draft recommendation to the Commission:

When specifying the eligibility criteria to be included in notices of competition announcing open competitions in the field of development cooperation, the Commission should take into consideration the fact that official EU documents consider experience gained in transition countries to be an asset in the delivery of EU development programmes. The Commission should moreover clearly and unambiguously outline what experience the candidates are required to have.

12. In its reply to the draft recommendation, the Commission reiterated its previously expressed position that the selection boards have a significant degree of autonomy to decide whether a candidates' qualifications meet the requirements of the posts to be filled. It stated that the selection board had, in the competition in question, taken into account candidates with experience in the management of programmes or projects carried out in developing countries, **irrespective of the place of employment of the persons concerned** .

13. The Commission, however, agreed with the Ombudsman's draft recommendation as regards the need for an unambiguous outline of the experience that candidates needed to have. It expressed its commitment to clearly specify the required experience in future notices of competition. It stated that in the future, instead of referring to the experience in transition countries (as proposed in the draft recommendation), the notice would, for example, include a requirement of "*minimum X years of experience gained in the management of development cooperation projects or programmes at field level (in the beneficiary country)*" irrespective of whether the beneficiary country is a developing country, a transition country, or both.

14. The Commission concluded that the Ombudsman's remarks will be taken into account when specifying the eligibility and selection criteria for the 2015 external competition in the field of cooperation development

15. The Ombudsman invited the complainant to send her observations on the Commission's reply. However, she did not make use of this possibility.

The Ombudsman's assessment after the draft recommendation

16. The Ombudsman welcomes the Commission's response acknowledging the need for the wording of the requirement of professional experience to be clear and precise with a view to avoiding ambiguity. The Ombudsman also notes the Commission's commitment to avoiding such instances of unclear wording in future notices of competition. It is especially important that this will be taken into account in the wording of notices for the external competitions in the field of cooperation development in 2015. The Ombudsman concludes that the Commission has in this sense taken steps to implement the draft recommendation.

17. It is also clear that the Commission acknowledged that, as the Ombudsman had pointed



out in her draft recommendation, official EU documents consider experience gained in **transition countries** to be an asset in the delivery of EU development programmes. In fact, it can be understood from the example of a future description of a requirement for a post provided by the Commission, that experience gained in a transition country will be taken into account.

Conclusion

The Ombudsman closes this own-initiative inquiry with the following conclusion:

The Commission has accepted the Ombudsman's draft recommendation and taken steps to implement it.

The Commission and the complainant in inquiry 2074/2011/ER will be informed of this decision.

Emily O'Reilly

Strasbourg, 27/05/2015

[1] For further information on the background to the complaint 2074/2011/ER, the parties' arguments and the Ombudsman's inquiry and decision to open this own-initiative inquiry, please refer to the full text of the Ombudsman's decision available at:

<http://www.ombudsman.europa.eu/cases/decision.faces/en/49772/html.bookmark>

[2] Referral is being made to the complainant from the original case, i.e. complaint 2074/2011/ER.