

Decision of the European Ombudsman closing her own-initiative inquiry OI/10/2015/NF concerning EPSO's procedure for dealing with requests for review made by candidates in open competitions

Decision

Case OI/10/2015/NF - **Opened on** 17/06/2015 - **Decision on** 21/12/2016 - **Institution concerned** European Personnel Selection Office (No further inquiries justified) |

This own-initiative inquiry concerned the European Personnel Selection Office's ('EPSO's') handling of requests for review made by unsuccessful candidates in selection competitions. In particular, the inquiry focused on delays by EPSO in responding to candidates' review requests.

The Ombudsman opened the inquiry after she received complaints which suggested that EPSO was facing serious difficulties in handling review requests within a reasonable period of time. The purpose of the inquiry was to establish if there were systemic issues giving rise to the delays and, if so, to help EPSO bring about improvements to the procedure. The inquiry also sought to ensure that clear and accurate information about the request for review procedure is provided to candidates.

The Ombudsman acknowledges that EPSO has made genuine efforts to anticipate and prepare for dealing with peaks in the volume of requests for review. EPSO has also sought to tackle delays and to improve, generally, the information it provides to candidates. During the period while this inquiry has been underway, EPSO has succeeded in eliminating the backlog of pending requests for review.

To avoid excessively long delays in the future, the Ombudsman closes this inquiry with a number of suggestions intended to help EPSO ensure that all candidates who make a request for review receive a timely and tailored response.

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The background to the inquiry

1. The EU institutions recruit new civil servants through selection procedures, usually referred to as 'open competitions'. These procedures must comply with rules set out in the EU Staff Regulations. [1] The rules describe the roles of the 'appointing authority' (which is the institution that seeks to recruit the new staff) and the 'selection board' (which is a body appointed for each competition to draw up a reserve list of candidates who can then be recruited by the appointing authority). [2] The appointing authority draws up the notice of competition, which contains the criteria for selecting candidates and the manner in which tests will be carried out. After the competition has ended, the appointing authority can appoint successful candidates to vacant posts. The selection board is appointed by the appointing authority. It is responsible for drawing up and evaluating the tests and interviewing candidates. It then draws up the final list of successful candidates (the so-called 'reserve list') for the appointing authority. A selection board is made up of officials already working in the EU institutions. A selection board can consist of permanent members (who are appointed usually for 2 to 4 years to ensure consistency across selection procedures) and non-permanent members (appointed for a particular selection process to bring technical expertise).

2. In 2002, a number of EU institutions [3] decided to create an interinstitutional body, the European Personnel Selection Office ('EPSO'). [4] EPSO has since then been responsible for organising, on behalf of appointing authorities, the competitions aimed at selecting new EU officials. EPSO also provides support to the selection boards and helps them communicate their decisions to candidates.

3. Candidates who are successful in the selection procedures are placed on 'reserve lists' and may then be recruited by the various EU institutions to become EU civil servants. Unsuccessful candidates can request a review of the decisions excluding them from a competition. A review seeks to establish if there was a material error in the assessment of a candidate or if the rules governing the selection competition were complied with. [5] This inquiry concerned EPSO's procedure for dealing with such review requests made by candidates.



4. The inquiry was opened [6] after the Ombudsman had received more than 30 complaints which suggested that EPSO was facing serious difficulties in handling requests for review within a reasonable period of time. [7] The aim of the inquiry was to assist EPSO in identifying possible systemic improvements to the procedure.

The inquiry

5. The Ombudsman identified the following points to be examined as part of her inquiry:

1. *Delays in replying to requests for review (it was noted that certain replies were actually sent after the reserve lists of successful candidates had been published).*

2. The completeness and usefulness of the information given to candidates about the request for review procedure, including *whether the holding replies sent to candidates were adequate.*

3. The applicable rules and procedures, notably how selection boards carry out their tasks.

6. As a first step in the inquiry and with a view to gaining a full understanding of the procedure, Ombudsman staff met with their EPSO counterparts to obtain information, to exchange views, and to inspect relevant documents. [8] A second meeting, also including an inspection of documents, was organised to clarify remaining issues and to allow the Ombudsman to finalise her analysis. [9] This decision takes account of all the information gathered from these meetings as well as from written correspondence with EPSO. [10]

7. Among the most important points to emerge from the meetings were the following:

Time taken to reply: EPSO said that delays in replying to requests for review first arose in 2014 when the number of requests for review doubled compared with the previous year. To speed up the handling of these requests for review, EPSO re-organised how its legal team worked with the aim of simplifying the internal workflow. As a temporary measure, it also used more personnel to assist the legal team with the caseload. EPSO also identified technical issues with its IT system which had complicated the processing of requests for review. Moreover, with a view to streamlining the process, EPSO drafted simplified standard letters on which its replies to requests for review could be based. These new standard letters include fewer details and cover broader categories of circumstances than was previously the case.

How selection boards carry out their work: EPSO said that the selection boards play a crucial role. The selection boards are responsible for the initial decisions on which candidates are successful as well as for the substantive decision on each request for a review of an initial decision. The selection boards meet to decide on review requests very soon after the expiry of the deadline for submitting such requests, usually within two weeks. Where a delay occurs, it arises subsequently when EPSO must draft a **reasoned** reply reflecting the substantive decision already taken by a selection board. The level of detailed reasoning that selection



boards provide to EPSO, for it to substantiate the boards' decisions, varies significantly from one selection board to another. The more detailed the reasoning documented by the selection boards, the easier it is for EPSO to draft thorough replies quickly to requests for review. The less detailed the reasoning given by the selection boards for review decisions, the more difficult and time-consuming it is for EPSO to draft appropriate replies.

Publication of reserve lists: Since EPSO sometimes publishes reserve lists of successful candidates before providing replies to all requests for review, EPSO stated that, in drafting and sending the replies, it deals first with requests from candidates who have obtained a positive selection board decision. This allows EPSO to readmit the candidates concerned to the competition as quickly as possible. EPSO said that, as it gives priority to communicating positive selection board decisions, it has almost always been able to readmit successful candidates to the next stage of the competition.

Information to candidates: EPSO said that it intended to revise the information it provides to candidates, notably in letters informing unsuccessful candidates of their results and in its holding replies to requests for review. Notably, it will include information on appeal possibilities. EPSO also stated that it planned to draw up and publish a Frequently Asked Questions (FAQ) document for its website to set out the most commonly used unsuccessful arguments for requesting a review (thereby allowing candidates to make informed decisions as to the usefulness of submitting a request for review).

The Ombudsman's assessment

8. This inquiry raises issues faced by every public administration on a daily basis: how, with limited resources, can a public administration provide a timely, tailored, well-reasoned and ultimately correct response to individual citizens. The Ombudsman appreciates that EPSO has made genuine efforts to prepare for peaks in its request for review workload, to tackle the delays it has faced and to improve, generally, the information it provides to candidates to reassure them that their requests are being handled in accordance with the principles of good administration.

9. The Ombudsman is pleased to learn that the situation has improved significantly since the Ombudsman's inquiry was opened. EPSO has now succeeded in eliminating its backlog of pending requests for review. This development should allow EPSO the necessary time to reflect on the suggestions set out below, so that the request for review procedure serves its purpose as an effective internal review mechanism, through which candidates receive a duly considered, well-reasoned, but also timely response.

10. Before making these suggestions, it is relevant to examine the role of selection boards in this procedure.

11. The EU Staff Regulations create a 'power sharing arrangement' between: (i) the appointing authority, and (ii) selection boards. The appointing authority draws up the notice of competition



and, after the competition has ended, appoints successful candidates to vacant posts. A selection board is responsible for drawing up tests, and evaluating and interviewing candidates. It then draws up a list of candidates (the so-called 'reserve list') from which the appointing authority recruits new officials. [11]

12. This division of tasks was not, and in fact could not be, affected by the creation of EPSO. The decision [12] setting up EPSO expressly states that **EPSO is to exercise the powers conferred on the appointing authority** with regard to competitions. [13] EPSO cannot carry out the tasks of the selection boards. Most notably, EPSO cannot carry out a selection board's task of evaluating candidates and placing them on a reserve list. This implies that the core work involved in dealing with requests for the review of a candidate's results can be carried out only by selection boards.

The time aspect and procedural issues [14]

13. While EPSO has made a considerable effort to manage the workload resulting from the sharp increase in requests for review received since 2014, the time taken to deal with such requests has continued to fluctuate. While, on average, it took EPSO 3.75 months to handle requests for review in 2013, EPSO needed 5.75 months to deal with requests for review in 2014. This fell to 3.5 months on average for requests for review received in the first half of 2015. For the full year 2015, the average time to deal with requests for review increased again to 4.75 months. In 2016, EPSO has succeeded in eliminating its backlog of pending requests for review and has reduced the average handling time. [15]

14. The situation has certainly improved significantly compared to the situation which led the Ombudsman to open the inquiry. However, these figures, coupled with complaints that the Ombudsman has continued to receive, lead the Ombudsman to conclude that, despite EPSO's commendable efforts of late, there were, for a period of time, excessively long delays.

15. The improvement in the time being taken to deal with requests for review is very welcome. To some extent, however, this improvement is a reflection of a temporary drop in the level of EPSO activity more generally. The fewer competitions EPSO runs in a given period, the fewer requests for review it is going to receive.

16. It is thus important to reflect further on the functioning of the request for review procedure in order to ensure that, **in the event of another peak in workload**, similar delays do not reoccur in the future. The Ombudsman thus encourages EPSO to do its utmost to continue to seek systemic improvements in the request for review procedure and how it is applied to ensure that all candidates who make a request for review receive a timely answer, in accordance with Article 17 of the European Code of Good Administrative Behaviour on reasonable time-limits for taking decisions.

17. Of particular relevance is the fact that, following the decision of the selection board on a request for review, it often takes EPSO a number of months to draw up a reply communicating the selection board's decision to the candidate. As EPSO has explained, the selection board



usually decides within two weeks whether a candidate's request for review has been successful or not. The candidate, however, is not informed of this decision until EPSO writes to him or to her. While EPSO reacts immediately whenever the outcome of the review is positive, the reply may not be sent out for up to five months where the outcome of the request for review is negative. It is difficult to justify, on objective grounds, the discrepancy between the relatively limited time it takes the selection board to decide on a candidate's exclusion or readmission with the time taken by EPSO to communicate the reasoned decisions to candidates.

18. It appears that this delay occurs because EPSO must, when preparing replies to candidates, link the reasoning set out by the selection boards for their decisions with the facts present in candidates' files and the arguments raised by candidates in their review requests. EPSO also takes care to set out, in its letters conveying a negative review decision, the detailed reasons for that negative decision. EPSO and the selection boards share responsibility for the smooth functioning of the request for review procedure. Within their respective remit, both should thus make efforts to facilitate the processing of review requests by ensuring that the selection boards' decisions can easily be translated into reasoned replies to candidates.

19. As regards the selection boards' remit, **the Ombudsman is of the view that this delay could be minimised if selection boards took greater responsibility to provide EPSO with more detailed reasons for their decisions. In particular, the selection boards should make sure to link the reasoning underpinning their decisions to the facts present in a candidate's file and to the arguments put forward in a candidate's review request (which the selection board should have in front of it when it carries out the review).**

20. At the same time, the Ombudsman considers that EPSO could help selection boards. Helping the selection boards will in turn be of help to EPSO since it should mean that EPSO will have less to do once the selection board has made its review decision. The Ombudsman understands that EPSO has already reflected internally on this matter.

In order to assist the selection board to take greater responsibility in this area, EPSO should consider revising the template ('fiche jury') used by the selection board to record its decision and the guidance EPSO gives to the selection board on the practicalities involved in documenting decisions. EPSO should also pursue the ideas it put forward in the course of this inquiry to (i) provide additional training to selection board members on complaint handling and the practicalities of dealing with requests for review and to (ii) look into giving a bigger role to permanent selection board members in coordinating the recording of decisions.

21. Given that EPSO sometimes publishes the reserve lists of successful candidates before providing replies to **all** requests for review [16], the Ombudsman welcomes EPSO's statement that, by prioritising requests for review which have obtained a positive selection board decision, it is always able to readmit these successful candidates to the next stage of the competition.

22. In addition to the suggestions mentioned above, the Ombudsman has some further suggestions to help EPSO address delays in the procedure. First, EPSO should consider placing even more emphasis on estimating [17] the number of requests for review it expects to



receive and allocating staff resources accordingly to ensure it is adequately prepared for possible peaks in workload. An under-resourced request for review team seems to have been a factor contributing to the delays.

23. Second, EPSO should seek to identify technological solutions. EPSO's recent decision to overhaul its IT system, which had been identified as a source of complication in processing requests for review, is welcome. The Ombudsman invites EPSO, in its follow-up to this inquiry, to inform her of progress in this area.

24. In the event of an **unforeseeable peak** in review requests and the consequent delays, EPSO should consider quickly informing candidates who have submitted a request for review of possible delays. Communicating this information to candidates as soon as possible could help reduce the number of time-consuming individual requests for information EPSO receives about the procedure, and could free up resources for the actual handling of requests for review.

25. EPSO could at the same time indicate that it will give priority to replying to those requests for review which the selection board has deemed to be justified. This information could also be included in the information EPSO provides online regarding the request for review procedure (for example, in its general rules governing open competitions [18] or on the FAQ page on its website).

Information to candidates

26. Providing clear and accurate information to candidates about the procedure helps reassure candidates that their rights will be respected. It thus helps reduce the number of complaints and requests for information submitted to EPSO and to the Ombudsman.

27. The Ombudsman welcomes the fact that, in letters to candidates who have been unsuccessful in a competition, EPSO now includes a link to the general rules governing open competitions, which set out all available appeal possibilities [19] . In the context of a separate Ombudsman inquiry [20] , EPSO has also informed the Ombudsman that all future letters to candidates containing a negative decision will include a link to the FAQ page on EPSO's website, which includes a specific section on complaints.

28. Moreover, the Ombudsman believes that EPSO's recent initiative, to set out on a FAQ page on EPSO's website the most commonly used unsuccessful arguments for requesting a review, could go some way towards pre-empting the type of request for review that is unlikely to succeed. The Ombudsman notes, however, that only a limited amount of information concerning the request for review procedure has been made available, to date, in the FAQs on EPSO's website. [21] She encourages EPSO to pursue this matter further.

Conclusion

The Ombudsman commends EPSO's efforts thus far on this issue and closes the inquiry with



the following conclusion:

There are no grounds for further inquiries at present.

EPSO will be informed of this decision.

Suggestions for improvement

With a view to further improving the handling of requests for review, the Ombudsman suggests that EPSO:

- 1) Provide better support to selection boards so that they can give more detailed, and fact-based, reasons for their decisions on requests for review by
 - revising the template ('fiche jury') used by selection boards to record their decisions;
 - revising the guidance EPSO gives to selection boards on the practicalities involved in documenting decisions;
 - providing additional training to selection board members on complaint handling and the practicalities of dealing with requests for review;
 - giving greater responsibility to EPSO's permanent selection board members in coordinating how selection board decisions are recorded.
- 2) Further examine technological solutions to streamline the request for review procedure.
- 3) Take steps to estimate the number of requests for review it expects to receive and allocate staff resources accordingly.
- 4) Quickly inform candidates who have submitted a request for review of expected delays whenever there is an unforeseeable peak in requests. To help EPSO reconcile delays with its commitment to readmit candidates to the competition in the event of a positive reply, such a message to candidates could explain that EPSO will give priority to replying to those candidates whose request for review has been successful. This information could also be included in the information EPSO provides online regarding the request for review procedure.
- 5) Include more information online on the request for review procedure, including information on the most commonly used unsuccessful arguments for requesting a review.
- 6) Report, on a regular basis, to its Management Board on the matter of requests for review and on any problems in their processing. The Management Board represents the EU institutions on behalf of which EPSO runs the selection competitions and should thus



be made aware of any existing or potential problems in this area.

Emily O'Reilly European Ombudsman

Strasbourg, 21/12/2016

[1] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 1962 45, page 1385, last amended by Council Regulation 1416/2013 of 17 December 2013, OJ 2013 L 353, page 24.

[2] See Title III. Chapter 1 ('recruitment') and Annex III of the Staff Regulations.

[3] The European Parliament, the Council of the European Union, the European Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, and the European Ombudsman.

[4] 2002/620/EC: Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office OJ 2002 L 197, page 53.

[5] Point 3.4.3. 'Internal review procedure' of EPSO's general rules governing open competitions, OJ 2014 C 60 A, page 1. There are two types of requests for review: (i) those that the selection board has to decide on and (ii) those that EPSO has to decide on. The latter are very rare.

[6] The letter opening the inquiry is available here:
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/60261/html.bookmark>
[Link]

[7] Since the own-initiative inquiry was opened, the Ombudsman has received 16 further complaints concerning issues addressed in the inquiry. The Ombudsman decided not to open any complaint-based inquiries into the issues covered by the own-initiative inquiry, as long as the inquiry is ongoing.

[8] The report on the first meeting and inspection is available here:
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61018/html.bookmark>
[Link]



[9] The report on the second meeting and inspection is available here:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/74176/html.bookmark>
[Link]

[10] EPSO provided updated statistics and information to the Ombudsman in 2016.

[11] Judgment of the Civil Service Tribunal of 15 June 2010, *Pachitis v Commission*, F-35/08, ECLI:EU:F:2010:51, paragraphs 50–52.

[12] 2002/620/EC: Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office OJ 2002 L 197, page 53.

[13] Judgment in *Pachitis v Commission*, F-35/08, cited above, ECLI:EU:F:2010:51, paragraph 56.

[14] The relevant points from the third aspect contained in the Ombudsman's opening letter in this inquiry, namely 'Rules and Procedures', are covered in this section.

[15] Statistics and information provided by EPSO.

[16] It is not open to EPSO to delay publication of a reserve list simply because all replies to requests for review have not been finalised.

[17] Based on factors such as the number of selection competitions run in parallel; the expected number of applicants in a selection competition, based on previous experience; the type of selection competitions (generalist or specialist selection competitions), and whether a selection competition introduces a novel candidate profile.

[18] General rules governing open competitions, OJ 2014 C 60 A, page 1.

[19] See Points 3.4.3. 'Internal review procedure' and 3.4.4. 'Other forms of contestation' of EPSO's general rules governing open competitions, OJ 2014 C 60 A, page 1.

[20] Case 164/2015/NF concerning EPSO's failure to indicate appeal possibilities in its letter informing the complainant of the selection board's decision not to place him on the reserve list.

[21] Last checked on 20 December 2016.