

**Reply by the European Personnel Selection Office to a request for information
from the European Ombudsman**

**Own-initiative inquiry concerning open competition
EPSO/AST/154/212- ref. OI/1/2023/VS**

The inquiry

By letter dated 15 March 2023, the European Ombudsman informed EPSO that she had decided to open an own-initiative inquiry concerning the use of remote testing only for the 'pre-selection' tests in open competition EPSO/AST/154/22¹. EPSO replied on 15 June 2023, providing answers to the 11 questions asked by the Ombudsman.²

Following the cancellation of the competition announced by EPSO on 31 March 2023, the Ombudsman decided to extend her inquiry to also cover the reasoning behind this decision.

In this context, she asked EPSO to provide further details on the decision to cancel the competition. Notably, she asked for information on the reasons for resorting to this exceptional measure, as well as on its assessment of any other solutions that some candidates would have wished for, such as the retesting of candidates who had faced problems, or that the candidates who had passed the pre-selection tests could keep their points for a new selection procedure.

EPSO's comments

In its follow-up reply to the inquiry, EPSO would like to provide the Ombudsman with the following clarifications and comments.

The decision to cancel the competition was taken by EPSO at the request of its inter-institutional Management Board, after a careful analysis taking into consideration a number of accumulated difficulties surrounding the first phase of selection, in particular as regards the implementation of remotely proctored tests, including technical dysfunctions and data protection concerns.

The detailed operational and legal analysis underpinning the cancellation decision, including an assessment of other possible courses of action, as well as the reasoning of EPSO's stakeholder institutions represented in its Management Board, have been documented in writing. EPSO believes that the most efficient and transparent way to provide the Ombudsman with the clarifications she has requested is by sharing this documentation, which consists of the following:

¹ Assistants (AST3) in the fields of finance, accounting and communication.

² Ref. Ares(2023)4147242.

- (1) Note for the attention of the members of the EPSO/EUSA Management Board - EPSO/AST/154/22: next steps - Ref. Ares(2023)2075783 – 22/03/2023;
- (2) EPSO/AST/154/22 - Legal risk assessment - Ref. Ares(2023)2075877 - 22/03/2023;
- (3) EPSO/AST/154/22 - Operational assessment - Ref. Ares(2023)2075911 - 22/03/2023;
- (4) Cancellation of competition EPSO/AST/154/22 (AST3) - Factsheet - Ref. Ares(2023)2402570 - 03/04/2023;
- (5) Minutes of the EPSO/EUSA Management Board meeting of 21 February 2023 - Ref. Ares(2023)2391570 - 03/04/2023;
- (6) Minutes of the EPSO/EUSA extraordinary Management Board meeting of 31 January 2023 - Ref. Ares(2023)1615233 - 06/03/2023;
- (7) Cancellation of competition EPSO/AST/154/22 (AST3) - EPSO answers your questions - Ref. Ares(2023)2395773 - 03/04/2023;
- (8) Minutes of the EPSO/EUSA extraordinary Management Board meeting of 29 March 2023 - Ref. Ares(2023)4879060 - 13/07/2023.

The documents referenced under (1) - (7) above have been released into the public domain pursuant to Regulation (EC) 1049/2001 - the documents referenced under (1), (2), (3), (4), and (7) in full, and the documents referenced under (5) and (6) in a partially redacted version. In the interest of full transparency, EPSO therefore encourages the Ombudsman to share the public versions of these documents with the complainants. The document under (8) has not been released into the public domain as of the time of writing, however EPSO has no objections for the Ombudsman to share the main conclusions reflected in this document with the complainants.

The documents listed above do not cover one of the alternative solutions specifically mentioned in the Ombudsman's inquiry letter, namely the possibility for the candidates who had passed the pre-selection tests to keep their points for a new selection procedure. The reason for not including this option is that it has been deemed as legally non-viable based on an earlier analysis performed in a different factual context.

Specifically, EPSO has assessed the possibility for candidates who successfully passed some tests in one competition to retain their results and re-use them in subsequent competitions in the context of elaborating its new competition model. The Commission's Legal Service (LS) has also been consulted on this matter. Following a careful analysis, EPSO and the LS have come to the shared conclusion that such a solution would not be compatible with the legal framework applicable to EPSO competitions, for the following reasons.

Pursuant to Article 1(2) of Annex III of the Staff Regulations, within the framework of each competition all the tests must be organised after the publication of the notice of competition. Moreover, according to case law³, a Selection Board must be set up specifically for each competition. Selection Boards act independently and no Board is bound by decisions taken by Selection Boards of other competitions, even if they concern the same candidate and the same test or competition stage⁴. In a scenario where candidates could keep their results from an earlier competition and transfer them to a subsequently published one, the above legal constraints would be infringed.

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³ F-35/08, *Pachitis v Commission*, point 68.

⁴ 143/82, *Lipman/Commission*, point 10; T-167/99, *Giulietti e.a./Commission*, point 75.

EPSO trusts that it has provided the Ombudsman with all the relevant information concerning this inquiry and remains at her entire disposal for any further clarifications.

I would like to reassure you of EPSO's commitment to continue its drive to modernise the EU selection process making it shorter, more agile and fit-for-purpose.

Annexes:

1. Note for the attention of the members of the EPSO/EUSA Management Board - EPSO/AST/154/22: next steps - Ref. Ares(2023)2075783 - 22/03/2023;
2. EPSO/AST/154/22 - Legal risk assessment - Ref. Ares(2023)2075877 - 22/03/2023;
3. EPSO/AST/154/22 - Operational assessment - Ref. Ares(2023)2075911 - 22/03/2023;
4. Cancellation of competition EPSO/AST/154/22 (AST3) - Factsheet - Ref. Ares(2023)2402570 - 03/04/2023;
- 5.a Minutes of the EPSO/EUSA Management Board meeting of 21 February 2023 - Ref. Ares(2023)2391570 - 03/04/2023 - Original version;
- 5.b Minutes of the EPSO/EUSA Management Board meeting of 21 February 2023 - Ref. Ares(2023)2391570 - 03/04/2023 - Public (redacted) version;
- 6.a Minutes of the EPSO/EUSA extraordinary Management Board meeting of 31 January 2023 - Ref. Ares(2023)1615233 - 06/03/2023 - Original version;
- 6.a Minutes of the EPSO/EUSA extraordinary Management Board meeting of 31 January 2023 - Ref. Ares(2023)1615233 - 06/03/2023 - Public (redacted) version;
7. Cancellation of competition EPSO/AST/154/22 (AST3) - EPSO answers your questions - Ref. Ares(2023)2395773 - 03/04/2023;
8. Minutes of the EPSO/EUSA extraordinary Management Board meeting of 29 March 2023 - Ref. Ares(2023)4879060 - 13/07/2023.

**NOTE FOR THE ATTENTION OF THE MEMBERS OF THE
EPSO/EUSA MANAGEMENT BOARD**

EPSO/AST/154/22: next steps

1. BACKGROUND

The candidates' experience with remotely proctored testing in open competition EPSO/AST/154/22 was discussed at the last two meetings of the Management Board. This Note follows up on the conclusions of the meeting of 21.02.2023 at which it was decided that EPSO should explore the possibility of full or partial retesting in this competition and assess the operational and legal risks of doing so. The Board also agreed to have a strategic reflection on the right balance between antichecking measures and protection of personal data/privacy in one of its upcoming meetings. **An initial paper on data protection aspects of the remotely proctored tests delivered by EPSO's contractor will be submitted to the Board prior to the meeting of 29.03.2023.**

As can be seen from the two enclosed background documents, we have analysed the options from both legal¹ and operational² angles. As a result of these considerations, this Note presents three different scenarios and lists the improvement actions planned and taken.

Related recent developments worth bringing to the attention of the Board are (i) Data Protection Audit at EPSO announced by the European Data Protection Supervisor (EDPS)³ and (ii) owninitiative inquiry opened by the European Ombudsman on how EPSO carried out pre-selection tests in competition EPSO/AST/154/22.⁴

2. SCENARIOS FOR A WAY FORWARD

Scenario 1 – Continue with the competition with the normal procedure

<i>Strengths</i>	<i>Weaknesses</i>
The competition will deliver laureates roughly according to the initial planning thereby meeting the identified recruitment needs of the institutions	Relatively high number of Article 90 (Staff Regulations) complaints expected and possible subsequent Court cases
<i>Opportunities</i>	<i>Threats</i>
Learning the lessons from the exposed vulnerabilities of the current contractor and improve significantly for the first competition organised under the new model	Reputational damage Discredit of remote testing as a general principle of running competitions
Conclusion: Operationally the best solution for timely delivery of laureates. Legally we can defend the procedural approach taken. Further candidates might need to be readmitted as a consequence of Article 90 complaints, but this is not exceptional.	

¹ See background paper 1

² See background paper 2

³ Letter of 13.03.2023 to the Director of EPSO

⁴ Letter of 15.03.2023 to the Director of EPSO

Scenario 2 – Retesting: full or partial

<i>Strengths</i>	<i>Weaknesses</i>
Would give a perception to certain candidates that they have been heard; possibility (although not certainty) of giving a better candidate experience in the next round	Favourable treatment to complaints by internal candidates of the institutions; would create a precedent of retesting possibility even if rules are not followed; unclear how to determine who to retest and who not
<i>Opportunities</i>	<i>Threats</i>
Legitimately dissatisfied candidates would get another chance to sit the exams	Perception of unequal treatment between internal and external candidates, and between those who have already passed the reasoning tests and advanced to the next phase and might drop out because of retesters altering the threshold
Conclusion: EPSO Director, as the Appointing Authority, does not consider that she can take this kind of decision on political grounds. The only possible way would be to offer retesting to all and ensure that nobody who made it in the first rounds is eliminated because of retesting. This can happen by increasing the number of laureates accordingly by amending the Notice of Competition. Operational implications are significant as to the workload and timing. Also, the testing circumstances cannot and are not going to be radically different, although slightly improved.	

Scenario 3 – Cancel the competition and launch a new one under the new competition model

<i>Strengths</i>	<i>Weaknesses</i>
If the testing protocol has been discredited due to observed irregularities and the competition results cannot be considered acceptable, a clearer-cut solution than retesting	Significant delay in delivery of laureates Dissatisfaction of the candidates who made it through in the former competition
<i>Opportunities</i>	<i>Threats</i>
The competition could be run under the new model benefitting from its advantages Adaptation of the language regime which has been challenged	Gives the impression that competitions can be cancelled by dissatisfaction of (mainly internal) candidates and ensuing political pressure
Conclusion: Legally-speaking, there exists precedent for such action by the Appointing Authority. However, it will lead to frustration on the part of the candidates who have advanced to the next phase. Furthermore, restarting the competition from scratch would entail further delays in meeting the (urgent) recruitment needs of the institutions in the 6 fields.	

3. LESSONS LEARNED AND IMPROVEMENT ACTIONS

With a view to **continuous improvement**, EPSO, together with the contractor, has identified a number of actions for improvement, some of which have already been implemented⁵. These actions revolve around the following themes:

- Continue working closely with the contractor to ensure it has adequate capacity to handle large volumes of candidates offering an optimal testing experience;
- Accelerate the move to machine proctoring as a solution to eliminate the frictions between proctors and candidates;
- Design more user-friendly instructions and enhance communication to the candidates before the competition with the aim to improve the future candidate experience with remotely proctored tests.

4. WAY FORWARD

Based on the above considerations and the supporting documents, the Board is invited to take a strategic decision and to advise EPSO on its preferred way forward in this competition.

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Annex 1: improvement actions – already taken and planned

EPSO and the contractor have organised dedicated lessons learned meetings. The following actions have already been or are being implemented.

On readiness agents/proctors

- Detailed feedback was provided to the currently globally-based readiness agents as well as proctors and their coordinators. This included the importance of only assigning proctors with sufficient mastery of the language; proper behaviour; sensitivity to candidates and testing accommodations granted; knowledge of ID-card related rules for EU 27; the importance of ensuring candidates are not interrupted during the exam and of compiling an accurate incident report for any complaint by the candidates to ensure appropriate follow-up, etc.
- The Client Practice document framing the proctor's tasks was updated with further guidance on the issues explained above as well as with specific scenarios e.g.: no automatic termination for reasons of any accidental walk-ins if content is not exposed and/or if candidate quickly asks 3rd party to leave
- A 5-minute video tutorial which readiness agents/proctors should watch before the launch of an EPSO exam will remind them of all the main attention points
- EPSO is exploring the potential of Prometric's automatic proctoring solution for use in mass-scale events in the longer run.
- Prometric is currently establishing a pool of EU-based readiness agents and proctors
- EPSO's Security Architect will be analysing Prometric's Security and Proctoring protocols. He will be able to experience the exam as a candidate to give professional feedback to EPSO

⁵ The improvement actions are described in Annex 2



on further improvements that should be put in place.

On testing slots

- EPSO receives detailed info on the exact number of testing slots available per hour/per day in advance of the candidates' booking window, for monitoring purposes.

On booking

- Adjustments have been made to Prometric's booking site. Prior to booking (on the entry screen) candidates are notified that they need to be careful when choosing an AM or PM slot. The booking confirmation received also clearly identifies whether the slot is AM or PM. EPSO has also improved its instructions in this respect. Moreover, for exams spanning multiple days, candidates have the right to reschedule up to 24 hours before their exam, for any reason, including if they made a mistake in the choice of testing time.

On the mock exam

- EPSO included in the instructions for upcoming events, print screens of how to access the mock exam; the landing page once they are in; and the page showing that the enhanced

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system readiness check and mock exam was successfully completed (in the run-up to the exam and on the day of the exam).

On investigations (quicker feedback)

- In full transparency, EPSO now has self-service access to all candidates' results files, log files and incident reports 24 hours following the candidate's exam.
- EPSO can request and receive within 24 hours, DVR footage of the exam, full transcripts of chats with Help Desk Support and proctors.
- EPSO has an open direct channel with Prometric Candidate Cares to reschedule MCQ candidates (giving candidates two days warning) in justified circumstances. This ensures all candidates are tested within (or as close as possible to) the testing window and competition deadlines can be maintained.
- Statistics on waiting times for candidates (for readiness agents, proctors, Help-desk support) will now routinely be provided by Prometric, during and following all testing events, for monitoring purposes.

On reasonable accommodation

- Candidates granted reasonable accommodation will now be grouped into separate virtual testing rooms from the rest of the testing population, to ensure readiness agent/proctor sensitivity, adaptation of checks etc.

Candidate satisfaction survey

- EPSO will now receive all free text drafted by candidates as feedback during the exam immediately following the testing event, to ensure suggestions for improvements and feedback



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can be followed up per competition, and in a timely manner.

Legal Affairs

Brussels, EPSO.001/RK

EPSO/AST/154/22 – LEGAL RISK ASSESSMENT

1. Legal implications of a possible decision to retest (fully or partially)

1.1 *Factual and operational context*

When considering the possibility of full or partial retest, the following factual and operational considerations need to be borne in mind:

- Due to objective constraints, retesting any number of candidates will necessarily need to happen under the same operational conditions as those in the original tests: remote testing only, human proctors, same technical requirements.
- The percentage of registered incidents in competition EPSO/AST/154/22 was standard / average for any computer-based testing event with a similarly sized candidate population, whether delivered remotely or in test centres. Therefore, it is reasonable to expect that a similar percentage of incidents would also occur in any retest scenario.
- In the case of a retest, due to the limited size of the pool of test questions and the need to use an identical difficulty matrix, the retesters will have a high likelihood of getting several of the same questions they have already received in their original test.

1.2 *Possible full or partial retesting scenarios*

Option A - Maintaining the status quo

The status quo is that only the candidates who complained in compliance with the procedure set by EPSO, and who were found unable to test properly due to no fault of their own, were offered a retest.

Option B - Partial retesting of various additional candidate populations

- (1) Retesting all candidates who complained according to set procedures, but whose issues during testing were the result of them not following instructions on how to test
- (2) Retesting all candidates who complained, irrespective of whether or not they respected the instructions for reporting their complaint
- (3) Retesting all candidates who failed or did not test for any reason, no matter if they complained or not
- (4) Offering all candidates in the competition the choice to retest or keep their current results, and retesting all those who choose to do so

Option C - Cancelling and re-organising the computer-based tests for the entire population of candidates in EPSO/AST/154/22

This option would imply a mandatory cancellation of all candidates' results and a repetition of the test for all of them.

Option D - Cancelling competition EPSO/AST/154/22

(5) Legal risk analysis

Option A - Maintain the status quo

In this scenario, there is a realistic risk of large numbers of administrative complaints and of litigation (including the possibility of class actions) by unsuccessful candidates.

At the same time, EPSO's follow-up on complaints provides a solid basis for defending against such challenges. EPSO has thoroughly investigated all complaints submitted in compliance with the legally binding instructions in the Notice of Competition and has applied corrective measures (retest) to remedy the situation of those candidates whose complaints were found justified.

Complaints that were not investigated were those where the candidates did not report their complaint in compliance with the instructions given in the Notice of Competition and in the invitation letter. In these cases, due to candidates' failure to comply with reporting requirements, EPSO was not in a position to ascertain whether the complaints were justified or not.

Complaints that were investigated but did not receive a favourable reply were cases where the candidates' issues during the test were caused by the candidates' failure to comply with the instructions given in the Notice of Competition and in the invitation letter on how to perform the test.

This approach can be defended legally as it was based on the binding text of the Notice of Competition and was coherent with the principle of equal treatment. (Candidates in the same legal and factual situations were treated equally. Distinctions were made based on candidates' differing behaviour with regard to their obligation to follow clearly announced binding instructions).

Option B - Partial retesting of various additional candidate populations

As stated above, in competition EPSO/AST/154/22 the percentage of incidents was within average range for this type of testing event, all complaints were duly handled, and corrective measures (i.e. retest) were applied where appropriate. Therefore, retesting any additional populations of candidates appears difficult to justify on legal grounds, as a corrective measure necessary to guarantee the regularity of the competition procedure.

Without a legally acceptable reason to retest, this approach appears to be incompatible with the

principle of equal treatment, as each of the four sub-scenarios would imply identical treatment (i.e. retesting) of groups of candidates in quite different factual and legal situations:

- those who experienced issues with testing through no fault of their own
- those whose issues resulted from their own failure to follow instructions
- those who managed to test without any incidents (the large majority)
- those who did not participate in the tests at all for any reason.

Moreover, in the case of a retest, due to the limited size of the pool of test questions and the need to use an identical difficulty matrix, the retesters will have a high likelihood of getting several of the same questions they have already received in the original test. This would amount to a procedural irregularity and a breach of equal treatment in favour of the retesters receiving already seen questions¹.

Retesting any of the above additional populations and inviting the successful retesters to the next stage of the competition could also lead to potentially successful complaints from those candidates who have already been invited to that stage based on the original tests, and were not offered the option / chose not to retest. These candidates could claim that their chances of succeeding in the competition will have been diminished by illegally increasing the population of competing candidates through the addition of the retesters.²

Furthermore, retesting candidates whose issues resulted from their own failure to follow instructions would be incompatible with the legal principle of '*nemo auditor turpitudinem suam allegans*' (no one may claim a remedy for damages suffered due to the illegality of their own actions).

In addition, due to the necessarily identical retesting conditions and the fact that all testing events generate a certain percentage of technical incidents and complaints, in the case of a retest EPSO could expect, a similar percentage of incidents and resulting complaints as in the status quo situation.

For this reason, partial retesting would not in practice diminish the legal risk compared to the status quo situation, on the contrary, it would likely increase it.

Option C - Cancelling and re-organising the computer-based tests for the entire population of candidates in EPSO/AST/154/22

In principle, the Appointing Authority and/or the Selection Board may conclude that a testing event was affected by irregularities to an extent where its results cannot be considered valid, and the only sound corrective measure is to cancel and repeat the whole event / competition stage³. Such an approach has already been used by EPSO in past competitions, without legal

¹ Cf. T-100/04, *Giannini v Commission*, paragraph 133.

² Cf. case F-93/11, *Taghani et al. v Commission*

³ T-49/03, *Schumann v Commission*, ECLI:EU:T:2004:314, paragraphs 53-55; see also T-189/99, *Gerochristos v Commission*, ECLI:EU:T:2001:12, paragraph 25, and T-174/99, *Giulietti and others v Commission*, ECLI:EU:T:2001:126, paragraph 58, and by analogy, T-207/02, *Falcone v Commission*, paragraph 39; F-36/10, *Rapone v Commission*, paragraph 50.

challenges going beyond what could be considered standard / average.

That being said, in the case of EPSO/AST/154/22 this approach would not be consistent with the principle of proportionality. This principle requires the application of the least onerous measure capable of achieving the desired objective. In the case at hand, the percentage of incidents was within average range for this type of testing event, all complaints were duly handled, and corrective measures (i.e. retest) were applied where appropriate. These measures appears sufficient to remedy the impact of the incidents, without the need to call into question the results of the vast majority of candidates who tested without incident.

Moreover, in the case of a retest, due to the limited size of the pool of test questions and the need to use an identical difficulty matrix, the retesters will have a high likelihood of getting several of the same questions they have already received in the original test. This would amount to a procedural irregularity and a breach of equal treatment in favour of the retesters receiving already seen questions⁴.

In addition, due to the necessarily identical retesting conditions and the fact that all testing events generate a certain percentage of technical incidents and complaints, in the case of a retest EPSO could expect, by-and-large, the same percentage of incidents and resulting complaints as in the status quo situation.

For this reason, retesting the full candidate population would not in practice diminish the legal risk compared to the status quo situation, and therefore it appears pointless.

Option D - *Cancelling competition EPSO/AST/154/22*

The Appointing Authority has no legal obligation to complete a competition procedure that it has launched; on the contrary, it is allowed to cancel an ongoing competition if such a decision is more aligned with the interest of the service.

It is, however, debatable whether in the case of competition EPSO/AST/154/22 cancellation would be coherent with the interest of the service, as it would not allow for delivering a reserve list of successful candidates within the originally foreseen timeframe.

The risk of successful challenges to such a decision by (former) candidates of the cancelled competitions is low to nil.

The legal risks of discontinuing a competition have been assessed in detail by the Legal Service of the Commission in the note Ares(2014)893332 of 24 March 2014 (in attachment).

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Based on the above, and considering in particular the interest of the service and the degree of legal risk involved in the various options, my recommendation for the course of action to

⁴ Cf. T-100/04, *Giannini v Commission*, paragraph 133.

follow, in descending order from most to least preferred option, would be the following:

Option A - Maintaining the status quo

Option D - Cancelling the competition EPSO/AST/154/22

Option C - Cancelling and re-organising the computer-based tests for the entire population of candidates in EPSO/AST/154/22

Option B - Partial retest of various additional candidate populations

2. Alleged elimination of candidates by proctors

The claims that candidates were eliminated from the competition by proctors, and the resulting question of the Management Board whether this was legal or not, appears to be based on a misunderstanding.

In reality proctors cannot, and do not, eliminate candidates from a competition. Proctors can only terminate an exam session, however this in no way implies the exclusion of the candidate concerned from the competition. Cases where a proctor decided to terminate an exam before its scheduled end time are reviewed by EPSO and/or the Selection Board, and where the premature termination is found unjustified, the candidate is convened for a retest.

This approach was also followed in competition EPSO/AST/154/22: all candidates whose exam was unduly terminated by the proctor have been retested.

Brussels, EPSO.03/

EPSO/AST/154/22 – OPERATIONAL ASSESSMENT**1. BACKGROUND**

The Selection Board validated the results of the reasoning tests in competition EPSO/AST/154/22 and they were communicated to candidates on 16.01.2023. The competition is now at eligibility stage: the Board had planned to start checking the eligibility of candidates who passed the reasoning tests but has now been told to put this activity on hold, pending the outcome of further discussions at Management Board level.

2. RETESTING – OPERATIONAL IMPLICATIONS IN GENERAL (ALL SCENARIOS)**2.1 Testing conditions**

Retesting any number of candidates will happen under the same conditions: remote testing only, human proctors¹ and same technical requirements. Specifically:

- Proctors could still give erroneous instructions or wrongly terminate a test and/or be rude. It is much less likely after the improvements EPSO introduced but there is no vouching for the behavior of external staff. There may still be incidents.
- Some proctors may still be based outside the EU;
- Candidates will still not be able to use corporate laptops;
- Candidates whose equipment did not meet technical requirements will still be unable to test;
- Some candidates will experience issues (technical or other), which will have to be investigated in a context of intense scrutiny, including by the media.

2.2 The Selection Board

Retesting after results have been validated and communicated to candidates will require to overrule the Board. The Board discussed retesting, with some members in favour but more against (it did not come to a vote). On the request of the Chair, EPSO sent the Board a written communication stating it was taking responsibility for decisions on the complaints of candidates who experienced technical or organisational issues.

2.3 Results management

The competition is at a stage where the Board will check the eligibility of candidates who obtained pass marks on the reasoning test. Candidates have been ranked according to their score: the Board will start with the top-scoring candidates and work down the ranking until it has accepted as eligible 3 times the number of candidates foreseen to be placed on the reserve list.

¹ Automated proctoring to eliminate the risk associated with human proctors is not an option for the moment: it would be reckless to use a new and untried method for retesting in this competition.

Any number of retested candidates who obtain pass marks will trigger a recalculating of results and a new ranking. Retested candidates who score sufficiently high will push down candidates who are currently ranked high enough to have a reasonable chance to end up on the reserve list.

2.4 Item exposure

If candidates are retested, the test will be based on the same Board-approved matrix² used in the initial test. Questions will be randomly drawn from the same pools and candidates who saw the questions in the first test will likely have some of the same questions when they retest.

Candidates who regularly participate in open competitions are confronted with questions they have seen before. The risk is mitigated by the relatively long intervals between competitions and the fact matrices vary from one competition to the next. In the case of a retest in this competition however, the interval will be short and the matrix identical.

2.5 Timing

The time required to organise a retest depends to a large extent on the number of candidates involved. Without guidance on numbers, it is not possible to make more than an educated guess: it would certainly not be possible to retest within a timespan shorter than 4-6 weeks after a decision has been made, but it could be several months if EPSO is to retest thousands.

3. RETESTING SCENARIOS

3.1 Partial retesting

This scenario requires identifying candidates to invite to take the test again. It will be difficult to find the right candidates among those who contacted EPSO. Indeed, there is no common denominator to be found in the messages sent to EPSO: some describe issues and ask for remedial action; some raise issues unrelated to testing; others express dissatisfaction (with remote testing for example) without claiming they were unable to test. If the purpose is to retest candidates who experienced issues or complained, EPSO will have to go through a wide variety of messages - written in free form – to isolate those which fit the purpose. This will be a subjective process and staff will need precise guidance that it may not always be possible to give.

Exposure of test questions: a significant portion of the candidates who contacted EPSO were able to test successfully in the end or were offered a retest. Retesting would give them an advantage: they were exposed to the questions and there is a risk (see above) they will have some of the exact same questions. In conclusion, it is doubtful the exercise could be done objectively. It will be difficult to explain the criteria used and respond to accusations

² The matrix defines the number of questions drawn from each pool corresponding to a desired difficulty level : x% of questions of difficulty 1, Y % of difficulty 2, etc.

of favouring candidates who were already exposed to test questions.

The only clearly identified group for the purposes of partial retesting would be the 90 candidates whose complaints were investigated and for which EPSO concluded they did not follow instructions, did not meet technical requirements, etc. Retesting this group however would create a precedent that would make it very difficult for EPSO to follow its current approach³ in future competitions.

3.2 Full retesting

In this scenario, all candidates⁴ would be offered a retest, including those who already passed the test and know their score. EPSO would then invite all candidates who decide to take the test again. The resulting population would be broader than candidates who experienced issues or complained: it would include candidates who failed to book or show up the first time, candidates who took the test but did not obtain pass marks and candidates who hope to improve their scores.

Exposure of test questions would be a significant risk as many candidates who did not manage to obtain pass marks the first time would opt to take the test again. They will be advantaged: not only would they repeat the test but there is a strong probability they will have some of the same questions they got the first time around.

As explained above, with potentially hundreds receiving new test results, there will be a significant impact on the chances of candidates who currently have obtained pass scores to end up on the reserve list.

As for timing, the competition would be delayed significantly: testing windows are planned months in advance and EPSO would need to find room to test a large number of candidates.

3.3 Cancel the current competition and start over

This scenario has few operational implications. There is no heightened risk of exposure of questions, as a new matrix will be used and sufficient time will have elapsed to mitigate the risk.

The main impact will be a long delay in producing a reserve list as the new Notice of Competition (test portfolio, language regime, etc) will have to be agreed by institutions and published. The Board and EPSO will have to redo the work done so far with a new set of candidates. It is likely one year will have passed before the new competition reaches the state EPSO/AST/154/22 has now reached (eligibility). One positive aspect is that the new competition will be able to follow the new competition model and benefit from the

³ (i) Investigate cases where candidates claim they were unable to test despite meeting requirements and following instructions and (ii) offer a retest where the investigation shows the candidate was indeed unable to test through no fault of their own.

⁴ Either the 6,300 who were invited for the initial test or the 5,693 who booked that test.

advantages it offers.

Cancelling the competition and not redoing it is not considered here: such action does not entail any operational constraints.

Cancellation of competition EPSO/AST/154/22 (AST3)

FACTSHEET

- EPSO published a 6-field open **competition EPSO/AST/154/22 – ASSISTANTS (AST 3) Finance, Accounting and Communication** on 22.09.2022. 6300 applications were received by the deadline – 25.10.2022. The testing window was 22.11 – 02.12.2022 with contingency testing until 09.12.2022, to test candidates who for justified reasons were not able to sit the test. 5693 candidates booked the online reasoning tests. **4636 candidates took the test** (81% of bookings). This was the first EPSO competition of such large scale with remotely proctored testing, entailing multiple-choice questions (MCQ), done exclusively online.
- EPSO's Candidate Contact Service (CCS) **received 967 queries and complaints** concerning the testing session via the website contact form. The deadline for complaints was 05.12.2022 (3 days after the last test day).
- **EPSO investigated all complaints** about legitimate issues – it did not investigate complaints that fell outside the framework of the Notice of Competition, did not comply with EPSO's instructions or were focused on the principle of remote testing. A total of 197 candidates logged complaints on legitimate technical or organisational issues (4,2% of tested candidates).
- An opportunity to **retest online** was offered to 107 candidates (54% of legitimate complaints) where it could be verified that they were unable to complete the test for reasons outside their control (inability to launch the test, faulty actions by the contractor, disconnections, excessive waiting times, etc). 90 candidates who complained were not offered a retest (1,9% of tested candidates).

Rejected claims were either unsubstantiated or due to the candidate not following instructions.
- Candidates received the **results** on 16.01.2023 from the reasoning tests. 3515

candidates were informed that they could go on to the next phase of the competition.

- On 29.03.2023, in the interest of the service and with the support of EPSO's governing body, the interinstitutional Management Board, EPSO's Director decided to **cancel** this competition. An official cancellation notice will be published in due course in the Official Journal of the EU. The cancellation means that no further selection procedures will be carried out under this competition. No other competitions being run currently by EPSO will be affected by this cancellation.
- The decision to cancel the competition was reached after a careful analysis, taking into consideration a number of accumulated difficulties surrounding the first phase of selection, in particular as regards the implementation of remotely proctored tests, including technical dysfunctions and data protection concerns. These difficulties compromised the **expected overall standard of quality** and the principle of equal treatment of the competition. Some of these issues can be explained by the fact that this was the first large-scale competition with remotely proctored testing being done exclusively online. Others are attributable to the sub-optimal performance of EPSO's external contractor, or to candidates not following EPSO's instructions.
- Candidates who passed the first phase of the competition were formally informed by **letter** of the decision by EPSO on 31.03.2023. EPSO also published a [press release](#) on the same day on its website and social media accounts.
- EPSO has already announced that it plans to publish a **new competition** covering similar fields. The objective will be to offer a much better candidate experience taking into account the lessons-learned from competition EPSO/AST/154/22.

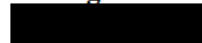
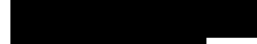
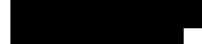
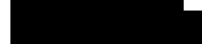
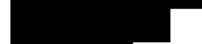
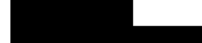
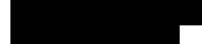
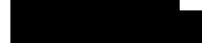
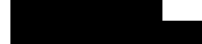
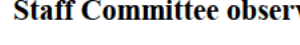
EPSO/EUSA MANAGEMENT BOARD MEETING

21 February 2023, 10:00 to 12:00

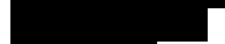
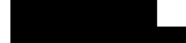
The One building (L-107), VIP room, 22nd floor and Webex

Minutes

Management Board

	European Commission (EC)	Chair
	European Parliament (EP)	Member
	European Parliament (EP)	Alternate
	Council of the EU	Member
	Council of the EU	Alternate
	European Commission (EC)	Member
	Court of Justice of the EU (CJEU)	Member
	Court of Justice of the EU (CJEU)	Alternate
	European Court of Auditors (ECA)	Member
	European Ombudsman (EO)	Alternate
	Economic and Social Committee (EESC)	Member
	Committee of the Regions (CoR)	Member
	European External Action Service (EEAS)	Observer
	European Data Protection Supervisor (EDPS)	Observer

Staff Committee observers

	European Parliament
	European Commission Committee of the Regions Council of the EU
	European Personnel Selection Office (EPSO)



Meeting also followed online by EPSO Head of Units & other authorised persons

1. Adoption of the Agenda

2. Approval of Minutes of the Management Board meeting of 18 October 2023

3. Report on remote testing in competition EPSO/AST/154/22

The EPSO **Director** set out her position based around the following considerations:

- Work closely with the contractor to improve the candidates' online testing experience from a technical and customer relations point of view;
- Be clearer in the Notice of Competition that candidates need to prepare and to follow carefully the instructions in order to have an as smooth as possible testing session;
- Communicate in a targeted manner avoiding a defensive approach;
- An improvement is already observed with far smaller number of technical and proctor related incidents in the subsequent competition EPSO/AST/155/22, where testing was conducted fully online as well;
- Do not resort to massive retesting – in order not to create a precedent that a lot of noise will be a channel to retesting – but instead to concentrate on investigating verified claims and offering appropriate remedies on that basis;
- In the long-term: obtain significant upgrade of EPSO's IT via the HRT programme; start preparing a new tender; speed up work on replacing human with machine proctoring.

The Chair invited the Board members to give their reactions.

The **Board** members:

- Recalled that there have been a number of complaints and comments from Staff Committees and individual candidates regarding their negative experience with various aspect of the online testing platform – in particular proctor behaviour and checks perceived as intrusive, as well as technical complications; (**EP, EC, Staff Committees, CJEU, Council**)
- Took note of EPSO's explanations and clarifications and the fact that every single complaint received has been investigated but remarked that there is a 'perception' vs 'facts issue'; (**Council, EC, CoR**)
- Pointed out that there is urgency and pressure which necessitate the taking of timely and meaningful action; regretted the possible impact of these complaints to the acceptability of remote testing; (**EP**)
- Gave examples of discomforting situations reported by certain (internal) candidates and regretted the excessive security protocol applied by the contractor; (**EP**)
- Acknowledged that the Management Board has never had a strategic discussion on the balance to be reached between anti-cheating measures and privacy issues; suggested to have this reflection at one of the next Board meetings; (**Council, EC, EESC**)
- Emphasised the importance of ensuring equal treatment (including access to the

necessary technical equipment) and fairness in all parts of the competition; (**Staff Committees, EO**)

- Expressed concerns about the way candidates personal data is being handled and potentially shared and stored outside the EU by an American company, which uses proctors based all over the world; (**EP, EDPS¹, CJEU**)
- Reported that problems of similar nature to those encountered in competition EPSO/AST/154/22 have arisen in competition EPSO/AST/155/22; (**EP**)
- Stressed that remotely proctored testing should be considerably upgraded if online testing is universalised in EPSO competitions; (**EP, CJEU**)
- Welcomed EPSO's intention to publish a new tender potentially leading to the selection of a new contractor for the delivery of online tests; (**Chair**)
- Advised against adopting an overly defensive attitude and also not minimising the problems encountered; (**EP**)
- Stressed that the decision to exclude a certain candidate from the competition must be taken by the Selection Board and not by individual proctors nor EPSO; (**EP**)
- Did not exclude the option of redoing the competition from scratch or retesting part of the population; (**all institutions**)
- Were informed that in case of retesting, for the time being, EPSO cannot offer an alternative solution to the existing one; retesting will also be carried out by the same contractor;
- Suggested to have an Extraordinary Management Board meeting on this point; (**EP**)

Summarising the discussion, the **Chair** proposed that EPSO:

- Explore the possibility of retesting candidates (the entire population or some of them) and assess the operational and legal risks of doing so in a new assessment (in consultation with the EC Legal Service);
- Provide clarity and reassurances about the handling, storing and protection of candidates' personal data and be alert about potential breaches;
- Revise the live proctoring protocol eliminating its intrusive aspects while maintaining basic anti-cheating measures;
- Discuss at strategic level the approach to the risk of cheating, so as to find the right balance between control and privacy;
- Acknowledge the teething problems that had arisen in the communication narrative.

Update from the EPSO Director

[REDACTED]

[REDACTED]

[REDACTED]

¹ EDPS' representative specified that he is intervening in his capacity as Head of administration and is not giving formal position of the EDPS on matters related to data protection.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Information points

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A.O.B.

[REDACTED]

² For details see Annex 5.b of the Agenda of the Board meeting.



EPSO/EUSA EXTRAORDINARY MANAGEMENT BOARD MEETING

31 January 2023, 14:00 to 16:30

The One building (L-107), VIP room, 22nd floor and Webex

Minutes

Management Board

[REDACTED]	European Commission (EC)	Chair
[REDACTED]	European Parliament (EP)	Member
[REDACTED]	European Parliament (EP)	Alternate
[REDACTED]	Council of the EU	Member
[REDACTED]	Council of the EU	Alternate
[REDACTED]	European Commission (EC)	Member
[REDACTED]	Court of Justice of the EU (CJEU)	Member
[REDACTED]	Court of Justice of the EU (CJEU)	Alternate
[REDACTED]	European Court of Auditors (ECA)	Member
[REDACTED]	European Ombudsman (EO)	Alternate
[REDACTED]	Economic and Social Committee (EESC)	Member
[REDACTED]	Committee of the Regions (CoR)	Member
[REDACTED]	European External Action Service (EEAS)	Observer
[REDACTED]	European Data Protection Supervisor (EDPS)	Observer
[REDACTED]	European Data Protection Supervisor (EDPS)	Observer

Staff Committee observers

[REDACTED]	European Parliament
[REDACTED]	European Commission
[REDACTED]	Committee of the Regions

Guest

[REDACTED]	European Commission (EC)
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European Personnel Selection Office (EPSO)

[REDACTED]

Meeting also followed online by EPSO Head of Units & other authorised persons

1. Adoption of the Agenda

[REDACTED]

2. Approval of Minutes of the Management Board meeting of 18 October 2023

[REDACTED]

Update from the EPSO Director

[REDACTED]

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Information points

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A.O.B.

4. Remote testing in competition EPSO/AST/154/22

[REDACTED] (EP) informed that he has received a number of complaints and comments from the EP Staff Committee and individual candidates concerning their negative experience with various aspect of the online testing platform – scheduling, proctors, functioning of the helpdesk, technical requirements, privacy issues, etc. He expressed his general support for universalised remote testing and took note of EPSO’s explanations but stressed that these problems need to be taken seriously and addressed appropriately. He asked EPSO to report back to the Management Board on lessons learned and on possible mitigation and improvement actions.

The EESC representative and two Staff Committee observers expressed similar concerns. EO informed that it has registered 14 admissible complaints in relation to competition EPSO/AST/154/22, which will lead to the opening of one or more enquiries. The Council representative emphasised that online exams need to remain accessible to everyone, including candidates with special needs.

EPSO provided the following explanations:

- The strict anti-cheating measures were dictated by industry standards for remote testing. Nevertheless, EPSO will look into the possibility of toning down the requirements;
- All complaints about legitimate issues have been duly investigated; all questions received have been answered via the dedicated contact form;

- There was a lot of misunderstanding about the booking of test slots, in part due to candidates not reading the instructions;
- A new opportunity to retest was offered to all candidates where this was justified. EPSO will look into the possibility of further rescheduling;
- Work is ongoing with the contractor to identify lessons-learned, several improvement actions have already been implemented;
- EPSO will continue its consultations on a way forward with the Selection Board for this competition;
- Candidates' data is stored on servers based in the EU.

Follow up actions:

- EPSO to present a Report to the Management Board on the issues encountered in this competition with improvement actions as requested.

5.

[REDACTED]

[REDACTED]

[REDACTED]

Cancellation of competition EPSO/AST/154/22 (AST3)

EPSO ANSWERS YOUR QUESTIONS

Introduction

Following the cancellation of competition **EPSO/AST/154/22 (AST3) – Finance, Accounting and Communication**, EPSO has received several queries from candidates, as well as from other stakeholders, about the decision. Some of those are the result of misunderstandings that EPSO considers necessary and useful to clarify. This note is aimed at providing answers to the most common queries received.

You will also find information on the cancellation of this competition in our **press release** of 31 March 2023: [Cancellation of Competition EPSO/AST/154/22 – Assistants \(AST3\) | EU Careers \(europa.eu\)](#)

If you do not find the information you are looking for in this note, you can always send your query to EPSO using the usual formal communication channels: [Contact us | EU Careers \(europa.eu\)](#)

YOUR QUESTIONS & OUR ANSWERS

Is EPSO planning to cancel other competitions every time people complain about it?

The decision to cancel a competition is a very exceptional measure. It is never taken lightly. EPSO's director made this decision, in her capacity as Appointing Authority, with the agreement of EPSO's governing body, the interinstitutional management board, after a very careful analysis of the situation.

Despite the fact that the majority of the candidates who booked a testing slot did not encounter difficulties to run the remotely proctored tests, EPSO and the recruiting services of the EU institutions concerned, felt that there was sufficient reason – due to an accumulation of issues and mounting pressure from different stakeholders – to cancel this specific competition and to start anew.

Why did EPSO cancel the competition instead of allowing people with problems during remotely proctored testing, to retest? How many were those?

EPSO received close to 200 such formal complaints, which were investigated carefully by our staff, together with the external contractor. More than half of those complaints were considered legitimate, and those candidates were given the opportunity to retest. It was not possible to find objective criteria to allow any further retesting, despite the mounting pressure from several candidates and other interested parties.

Some suggested retesting all those candidates who wished to do so. This was out of the question, since it would introduce significant biases in the competition's results. It would also compromise the basic principles and standards of testing.

Will EPSO reconsider its use of remotely proctored testing in future competitions?

Remotely proctored testing is here to stay. Large-scale testing providers, the ones EPSO must work with in view of the sheer number of candidates its competitions attract, are phasing out physical test centres. The latter will soon become 'a thing of the past' for large-scale selection procedures.

The COVID-19 pandemic accelerated this trend. Moreover, the benefits derived from remotely proctored testing are many: online testing is faster, more flexible, in line with today's digitalised world, 'greener' and more accessible to the vast majority of candidates, wherever they are.

EPSO understands that the move to remotely proctored testing is a novelty - for us, for our stakeholders, as well as for the candidates. We are working hard, in collaboration with our external contractor, to improve the candidate experience and the related communication about the new requirements. One concrete example is our [information note on core IT requirements](#).

How is EPSO planning to deal with the dysfunctions it observed during this competition?

EPSO investigated thoroughly all the complaints, questions and remarks received via the formal communication channels placed at the disposal of candidates.

EPSO acknowledged that there were accumulated issues as regards the implementation of the remotely proctored testing for this specific competition: technical incidents; confusion about how and where to get help; long waiting times; and some of the proctors did not always behave in line with agreed protocols, among others. All of this is solvable. Improvements have already been made and will continue to be made.

This was not our first remotely proctored testing experience. We have already for some time conducted this type of testing on a smaller scale in a satisfactory way. Our experience, for instance, with competition **EPSO/AST/155/22 (AST3) – Operational & Technical Security, and Occupational Health & Safety**, has shown, concretely, that it is also possible to run a large-scale competition successfully with remotely proctored testing. In fact, this competition registered a lower number of complaints than the average for all EPSO competitions.

Does EPSO care about those candidates who passed the first phase of testing?

EPSO understands how disappointing this decision is for the more than 3500 candidates who passed the first phase of testing. We have expressed our sincere regret, while sharing the main reasons that led to the cancellation.

EPSO reached out to each candidate concerned to inform them about this decision, the reasons behind it, and to encourage them to participate in future EPSO competitions.

EPSO is planning to publish a similar competition in the coming months, [under the new competition model](#), i.e. without the assessment centre.

How can EPSO explain that news of the cancellation was first announced on social media by the trade unions representing EU staff?

EPSO is very committed to the principle of equal treatment between external and 'internal' candidates (i.e. people already working for the EU institutions).

The discussion on the cancellation of the competition took place on 29 March in the late afternoon, in the meeting of EPSO's management board.

EPSO communicated officially about the cancellation on 31 March, before noon,

using two channels: a [press release](#) published on its website and social media accounts, and a formal letter sent to all candidates having passed the first phase of the competition.

The decision by others to communicate the cancellation on social media before EPSO could do so is outside EPSO's control and we very much regret it.

EPSO, Outreach & External Relations, 3 April 2023

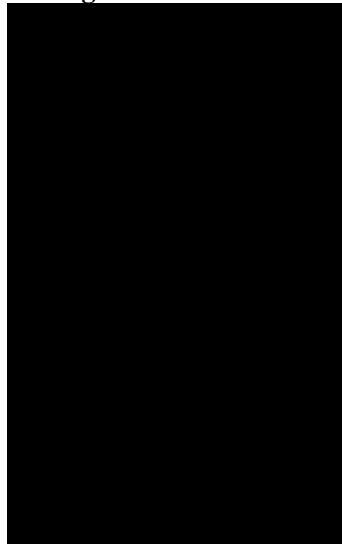
EPSO/EUSA EXTRAORDINARY MANAGEMENT BOARD MEETING

29 March 2023, 15:30 – 16:15

The One building (L-107), VIP room, 22nd floor and Webex

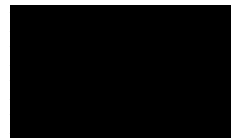
Minutes

Management Board



European Commission (EC)	Chair
European Parliament (EP)	Member
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Court of Justice of the EU (CJEU)	Member
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European Ombudsman (EO)	Alternate
Economic and Social Committee (EESC)	Member
Committee of the Regions (CoR)	Member
European External Action Service (EEAS)	Observer
European Data Protection Supervisor (EDPS)	Observer

Staff Committee observers



European Parliament
Committee of the Regions
Committee of the Regions Council of the EU
European Personnel Selection Office (EPSO)



Meeting also followed online by EPSO Head of Units & other authorised persons

1. Adoption of the Agenda

2. Approval of Minutes of the Management Board meeting of 21 February 2023

Update from the EPSO Director

3. Competition EPSO/AST/154/22¹

██████████ EPSO Director, recalled the documents sent in advance of the meeting for the attention of the Board: (i) Background Note with analysis and options and (ii) Note on data protection. She recalled that in accordance with the wish expressed by the Board, EPSO will facilitate a strategic discussion on the balance between anti-cheating measures applied in remote testing and the protection of candidates' privacy and data.

The Chair invited the Board members to give their opinion on a way forward. Several Board members intervened in support of cancelling the competition. In their statements they:

- Agreed that cancelling competition EPSO/AST/154/22 is not ideal but probably the best course of action under the circumstances;
- Highlighted the importance of repairing the damage to EPSO's reputation; advised to prepare a press release setting out the reasons behind the cancellation; insisted on the fact that remote testing is here to stay and is not a purely (post) pandemic-induced measure; suggested to look into the matter of facilitating access to computers and appropriate places to sit the test (**EP**);
- Explained the objectives of the upcoming audit by the EDPS at EPSO and gave recommendations for successful engagement with the audit team (**EDPS**);
- Requested the reorganisation of the competition as promptly as possible; enquired about the costs incurred so far in this competition (**EESC**);
- Did not oppose the cancellation by the Appointing Authority and asked EPSO to anticipate the likely questions and criticism about resorting to this measure (**CJEU**).

None of the Board members opposed the cancellation of the competition.

In her replies, the EPSO Director:

- Recalled that remotely proctored testing is not solely a pandemic-related phenomenon but a global industry trend;
- Welcomed EDPS audit as a strategic opportunity to raise awareness and upgrade EPSO's approach to data protection;
- Informed that EPSO will continue to work with the contractor to gradually transition to automated proctoring for all remote tests as a better alternative than live proctoring;
- Provided an estimation of the costs incurred so far in the organisation of this competition;

¹ AST3 competition in the fields of finance, accounting or communication

- Mentioned that EPSO would be ready to consider rescheduling this competition after the summer, provided that no new test development is required. The new competition would be aligned as close as possible to the new model;
- Pointed out that similar difficulties have not arisen in the delivery of the subsequent competition EPSO/AST/155/22 which was organised under an improved protocol. The complaints rate in this competition is below average.

The Chair concluded that the **Board supports the decision to cancel the competition EPSO/AST/154/22** due to the many issues encountered, which compromised the expected standard of delivery. EPSO was asked to proceed with the necessary procedural steps announcing the cancellation.

Information point

