



European Ombudsman

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European Ombudsman

Mr Nicholas David Bearfield
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European Personnel Selection Office
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Strasbourg, 17/06/2015

Own-initiative inquiry OI/10/2015/NF concerning EPSO's procedure for dealing with requests for review made by candidates in open competitions

Dear Mr Bearfield,

According to Article 228 of the Treaty on the Functioning of the European Union, the European Ombudsman is empowered to conduct inquiries on her own initiative. These inquiries are intended to be helpful to the institutions concerned by promoting good administrative practice.

I have decided to open an own-initiative inquiry concerning the European Personnel Selection Office's ('EPSO's') procedure for dealing with requests for review made by candidates in open competitions¹. This is a matter which has come to my attention through a number of complaints submitted to me in 2014 and the first half of 2015. These complaints suggest that EPSO is facing serious difficulties in handling requests for review within a reasonable amount of time. Those difficulties appear to result from potentially systemic problems in the request for review procedure. My inquiry thus seeks to assist EPSO in identifying and making possible systemic improvements in the request for review procedure and in its application, with a view to reducing the number of complaints and requests for information to EPSO and to the Ombudsman and, most importantly, to enhance the service to candidates.²

The inquiry covers **the design of EPSO's current request for review procedure as well as its application**. The following specific issues, grouped in three categories, are of concern to me:

¹ Point 3.4.3. 'Internal review procedure' of EPSO's general rules governing open competitions, OJ 2014 C 60 A, page 1.

² In the Annex to her 'Putting it Right?' report for 2013, the Ombudsman found, with regard to the follow-up to case 2518/2011/MHZ, that EPSO's request for review procedure, which was put in place in 2012, appeared to be well-designed to ensure that candidates who make a request for review receive a timely and well-reasoned response. The Ombudsman's assessment was based on the design of EPSO's request for review procedure at that point in time, with 2013 as the year of reference. The present own-initiative inquiry is based on factual and procedural developments, which appear to have come into existence in 2014.



1. The time aspect

a. *Delays in replying to requests for review*

There appear to be excessively long delays in EPSO providing replies to requests for review. In some cases, it took EPSO up to eight or nine months to provide candidates with replies. This contrasts with EPSO's statement, in the general rules, that the procedure "*may take several weeks*".

In January 2015, the Civil Service Tribunal held that a time span of more than four months for providing a reply to a request for review was such as to put the candidate in a state of considerable uncertainty.³

b. *Replies to requests for review after publication of reserve lists*

It has been brought to my attention that reserve lists of successful candidates have been published before EPSO provided replies to all requests for review relating to the open competitions concerned. It is unclear how EPSO would be able to reconcile this fact with its commitment, in case of a positive reply to a request for review, to reintegrate the candidate into the competition at the step where s/he has been excluded in order to safeguard the candidate's rights. In any event, candidates who have not yet, at the time of publication of the reserve lists, received a reply to their request for review are put in an even greater state of uncertainty than that acknowledged by the Civil Service Tribunal.

2. Information to candidates

a. *Information about the request for review procedure*

EPSO appears to be receiving many information requests from candidates who submitted requests for review and wish to inquire about the status of their requests. The relevant information on the requests for review procedure is set out in the general rules and is thus generally available to candidates. However, candidates who submit a request for review do not always seem to be aware of that information. With a view to freeing up EPSO's resources as much as possible for the actual handling of requests for review, it would appear useful, at first sight, for EPSO to include the information set out in the general rules, or a summary thereof with a link to the full information, also in the acknowledgment of receipt sent to candidates requesting a review.

b. *Content of holding replies*

³ Judgment of the Civil Service Tribunal of 22 January 2015 in Cases F-1/14 and F-48/14, *Kakol v Commission*, EU:F:2015:3, paragraph 86.



EPSO, in its holding replies concerning requests for review, frequently provides candidates with approximate timeframes within which candidates are told that they can expect a reply. However, these timeframes are often missed, sometimes by several weeks or even months. EPSO's failure to meet the indicated timeframes leads to further information requests from candidates and thus renders the application of the request for review procedure more cumbersome.

c. Information on appeals possibilities after review

EPSO does not explicitly set out the appeal possibilities in its replies to requests for review. However, Article 19 of the European Code of Good Administrative Behaviour requires that a decision which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision.

3. Rules and procedures

A full understanding of the above issues, which have been brought to my attention through complaints, cannot be gained without further information on the applicable rules and procedures. I understand that EPSO has made changes to its rules on the request for review procedure. In particular, I have been informed that EPSO has re-organised its workflow for the handling of requests for review. I would like to obtain further information about this new set of rules.

Moreover, I deem it useful to learn more about how selection boards carry out their tasks in the request for review procedure. Issues of an organisational nature concerning the manner in which selection boards work could possibly be a factor in EPSO's struggle to provide replies to requests for review in a timely manner.

On the basis of the above, and as a first step in the inquiry, **I invite EPSO to arrange for a meeting with my services**, in accordance with Article 3(2) of the Statute of the European Ombudsman, to allow them to carry out an **inspection** of the following documents:

- Current version of EPSO's internal rules on the handling of requests for review, including information on recent changes to those rules.
- The standard draft letters on which EPSO's replies to requests for review are based.
- New guide for selection boards.
- Information on, and documents possibly drawn up by, EPSO's 'working group on requests for review'.

Please be assured that, in accordance with Articles 5(2), 13(3) and 14(2) of the Implementing Provisions of the European Ombudsman, the



Ombudsman's inspection will not result in third parties or any other person obtaining access to any documents which EPSO identifies as confidential during the inspection, or to any information contained in such documents.

The meeting should also provide the opportunity to exchange views and provide clarifications at this early stage. Depending on EPSO's availability, I would envisage the meeting taking place in the first week of July.

I would be grateful if you could prepare the following information to be provided to my services at the meeting:

- The number of candidates who, having used the request for review procedure, decide to lodge an administrative complaint under Article 90(2) Staff Regulations on the same grounds; the number of such administrative complaints in 2014 and in the first quarter of 2015 as compared to 2013.⁴
- The time it has taken, on average, for EPSO to deal with requests for review in 2014 and in the first quarter of 2015.
- How many (and which) court cases were initiated against EPSO, in respect of its handling of requests for review in 2014 and in the first quarter of 2015, as compared to 2013.

I should be grateful if your services could contact Ms Nastasja Fuxa (tel. + 32 (0)2 283 07 84; [REDACTED]), responsible for this inquiry, in order to agree on a convenient date for the meeting.

I will determine my next step in the inquiry on the basis of the information and documents obtained at the meeting. I do not, therefore, at this stage, ask EPSO to provide an opinion on the matter.

Please be informed that I intend not to open any complaint-based inquiries into the issues addressed in the present own-initiative inquiry, as long as this inquiry is ongoing. I may decide to make exceptions to this approach in exceptional cases.

Yours sincerely,

Emily O'Reilly

⁴ EPSO provided relevant figures - for the year 2013 as compared to 2012 - in its follow-up to the Ombudsman's inquiry into case 2518/2011/MHZ.