

Decision of the European Ombudsman on complaint 2123/2003/(ADB)MF against the European Personnel Selection Office

Decision

Case 2123/2003/(ADB)MF - Opened on 28/11/2003 - Decision on 23/01/2006

Strasbourg, 23 January 2006

Dear Mr X.,

On 24 October 2003, you made a complaint to the European Ombudsman against the European Selection Personnel Office ("EPSO") concerning Open competition COM/A/11/01.

On 28 November 2003, I forwarded the complaint to EPSO. The European Commission sent its opinion, on behalf of EPSO, on 1 March 2004. On 11 March 2004, I forwarded it to you with an invitation to make observations, which you sent on 26 April 2004.

On 11 November 2004, I asked EPSO for further information in relation to your complaint. The Commission sent its reply on behalf of EPSO on 15 December 2004. This reply was forwarded to you, with an invitation to make observations, which you sent on 22 February 2005.

On 17 March 2005, you sent me further documents relating to your complaint.

On 19 September 2005, I asked EPSO for further information in relation to your complaint. The Commission sent its reply on behalf of EPSO on 17 October 2005. The Commission's reply was forwarded to you, with an invitation to make observations. On 10 November 2005, you sent me an e-mail related to your complaint, to which I replied on 15 November 2005. On 23 November 2005, you sent my services a further e-mail related to your complaint. On 24 November 2005, you sent me your observations on the Commission's reply to my request for further information.

I am writing now to let you know the results of the inquiries that have been made.

I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

According to the complainant, the relevant facts are as follows:



The complainant participated in Open competition COM/A/11/01 organised by the European Commission to constitute a reserve list of principal administrators in the field of justice and home affairs.

Point VI B of the notice of competition stated that the 50 candidates with the highest marks in written test e) were to be admitted to the oral test.

On 16 December 2002, the Commission informed the complainant that he had not been admitted to the oral test because he had not been among the 50 candidates with the highest marks. The Commission further informed the complainant that he had only obtained 22 points out of 40 in written test e) and that the 50 candidates invited to the oral tests had obtained at least 23 points out of 40. In this test, the candidates had been asked to " *draft a note for a Commissioner, taking into consideration the green paper of the Commission on alternative dispute resolution in civil and commercial law (COM/2002/0196 final), which sets out proposals for a follow-up in this field and suggestions on the content of an eventual directive or other measures to be eventually taken* ". Among other elements, the candidates had been asked to mention the legal basis for this possible legislative tool.

In a letter dated 15 January 2003, the complainant asked the Commission for a copy of his written test e) and the evaluation sheet, which were sent to him on 29 January 2003. The evaluation sheet contained an appraisal of the complainant's written test, namely the comment " *article 65 pas cité* ". The complainant considered that this statement was wrong because he had quoted the text of this article. He further considered that this statement constituted an erroneous requirement since, according to him, the legal basis which should have been mentioned in the test was Article 67 of the EC Treaty, which he had mentioned in the test paper.

On 24 February 2003, the complainant lodged an appeal with the Commission pursuant to Article 90 of the Staff Regulations. In his appeal, the complainant asked to be given the criteria adopted by the Selection Board for the purpose of marking the tests. On 24 July 2003, the Director of EPSO rejected the complainant's appeal. In his reply, the Director of EPSO stated that, in accordance with Article 6 of Annex III of the Staff Regulations, the proceedings of the Board were secret.

On 24 October 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that the only objective appraisal mentioned on the evaluation sheet had been erroneous and that the Selection Board's decision had therefore been vitiated by a manifest error.

The complainant claimed that the Selection Board should consider that he had adequately responded to the question relating to the legal basis of the legislative act concerned. He further claimed that the Board should reconsider the marks which had been awarded to him, as well as its decision regarding his exclusion from the competition.

THE INQUIRY



The Commission's opinion

The European Commission replied on behalf of EPSO. The opinion of the Commission on the complaint was, in summary, as follows:

Point VI B of the notice of competition stated that the 50 candidates with the highest marks in written test e) in each of the fields could be admitted to the oral tests.

In order to ensure an equal treatment for all candidates, the Selection Board had beforehand established common correction criteria which had been applied to all the candidates.

As established by Community case-law, in assessing the results of tests, the Selection Boards enjoy wide discretion. This power, however, is not unlimited. It can be reviewed to ascertain whether its exercise, which must be based on objective criteria, is vitiated by a manifest error or by a misuse of powers, or whether the Board has manifestly exceeded the limits of its discretion. In the present case, contrary to the complainant's view, the alleged confusion as to what the legal basis referred to in the test concerned should have been (that is to say, Article 67 or Article 65 of the EC Treaty) could not have constituted a manifest error which would have vitiated the assessment of the complainant's test. The evaluation sheet gave further information which should have been interpreted in relation to the criteria adopted by the Board in marking the tests.

The Selection Board had not considered that the complainant had failed to give a correct answer to the question, but it had considered that the complainant had failed to give a complete answer.

According to established Community case-law, the communication of the marks obtained in the different tests is a sufficient reasoning of the Selection Board's decisions.

The complainant's observations

In his observations dated 26 April 2004, the complainant maintained his complaint and made in summary the following further comments.

The Commission had refused to give him the criteria adopted by the Selection Board in marking tests.

There was only one correct answer to the question asked to the candidates in written test e). This answer was an objective one, namely Article 67 of the EC Treaty. The Commission's reasoning contradicted the "*Joint Practical Guide for Persons involved in the drafting of legislation within the Community Institutions*" (the "Joint Practical Guide") which, in the complainant's view, provided information on the legal basis of a legislative act.

Contrary to the Commission's statement, he had quoted the text of Article 65 of the EC Treaty, in inverted commas.

Further inquiries *The Ombudsman's request for information from EPSO*

After careful consideration of the Commission's opinion made on behalf of EPSO and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman



therefore asked EPSO to provide him with information on the following points:

- According to the evaluation sheet, the complainant had failed to cite Article 65 of the EC Treaty ("*Article 65 pas cité*"). It thus appeared that the Selection Board expected candidates to cite this article and that a failure to do so negatively affected the mark to be given. However, in its opinion, the Commission stated that the question whether the legal basis of the legislative act concerned was Article 65 or Article 67 of the EC Treaty was not relevant, given that "*Article 65 refers precisely to 'the measures to be taken pursuant to Article 67 of the EC Treaty'*". The Commission thus seemed to assume that candidates did not need to refer to Article 65. The Ombudsman asked EPSO (or the Commission) to explain this discrepancy.
- The complainant submitted that he had quoted Article 65 of the EC Treaty in his test and that the relevant comment made by the Selection Board on the evaluation sheet was thus clearly mistaken. The relevant passage of the complainant's test reads as follows: "*L'article 67 TCE semble pouvoir être utilisé dans la mesure où il constitue la base juridique pour les mesures qui 'dans les matières civiles et commerciales qui ont une incidence transfrontière' sont prises 'dans la mesure nécessaire au bon fonctionnement du marché intérieur'. La question de savoir si ces mesures relèvent ou non de la 'coopération judiciaire' pourrait être soulevée*". The Ombudsman asked EPSO (or the Commission) to comment on this argument.
- In his observations, the complainant alleged that the Commission had failed to give him the criteria adopted by the Selection Board in marking the tests. He claimed that he should be given these criteria. In view of this new allegation and claim, the Ombudsman considered it appropriate to ask EPSO for an opinion on this allegation and claim.

The Commission's reply

In its reply on behalf of EPSO, the Commission made, in summary, the following statements.

No discrepancy existed in the Commission's opinion concerning the question of the legal basis of the legislative act. The question as to whether the legal basis of the legislative act concerned was Article 65 or Article 67 of the EC Treaty was not relevant, given that "*Article 65 refers precisely to the measures to be taken pursuant to Article 67 of the EC Treaty*". Actually, Article 65 of the EC Treaty dealt with the measures to be taken and their aims. Article 67 of the EC Treaty dealt with the procedural rules to be followed. The Selection Board had decided, and had been entitled to do so, that candidates had to mention Article 65 of the EC Treaty as the legal basis, which the complainant had failed to do. When stating in the evaluation sheet that the complainant had failed to quote Article 65 of the EC Treaty ("*Article 65 pas cité*"), the Board meant that he had failed to give detailed explanations as regards the measures to be adopted pursuant to Article 65. In any case, the reference to Article 65 of the EC Treaty had constituted only one of the elements on which the Board had based its final assessment. There was no evidence to suggest that the Board had infringed rules binding upon it in the performance of its work. It further had to be pointed that, when assessing the candidates, the Board had had no obligation to take into account rules set out in the Joint Practical Guide.

Concerning the correction criteria, the Community case-law had, in several cases, confirmed the independence of the Selection Board. The principle of the secrecy of the Board's deliberations was established in order to guarantee this independence and the objectivity of the Board's work and to protect it from any risk of external pressure and interference. The examination of the respective merits of the candidates and the correction criteria adopted before the competition



were covered by the principle of the secrecy of the Board's deliberations. Corrections were not made directly on the test papers but on separate evaluation sheets that were filled in by the individual independent evaluators. They formed part of the preparatory documents that served as a basis for the Board's internal deliberations. To make these evaluation sheets public would have infringed the principle of secrecy of the Board's deliberations.

The complainant's further observations

In his further observations, the complainant maintained his allegation. He made the following additional comments.

The Commission and other European institutions had established the Joint Practical Guide. Given that the rules set out in this guide were public and had been published by OPOCE, the Selection Board should have taken them into account when assessing candidates' tests. Neither the text of the test nor the notice of competition had mentioned that the Board was not bound by the rules set out in the Joint Practical Guide. In view of this, the Board should have informed the candidates that these rules were not binding upon it. The failure to do so had infringed the candidates' legitimate expectations and had misled them. Pursuant to the rules set out in the Joint Practical Guide, namely point 9 (6), Article 67 of the EC Treaty should have been mentioned by the candidates as the legal basis.

The text of the test had not required the candidates to give detailed explanations as regards the measures to be adopted pursuant to the relevant legal basis. The complainant's legitimate expectations had therefore been infringed and he had been misled, given that the Selection Board had assessed the candidates on the basis of an element which did not appear in the text of the test.

Concerning the correction criteria, the complainant noted that he was aware that no access was given to them for the moment.

The further document sent by the complainant

On 17 March 2005, the complainant sent the Ombudsman a further document related to his complaint, namely the proposal for a Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters. The complainant pointed out that the legal basis of this proposal was Article 67 of the EC Treaty and that this proposal for a Directive followed the green paper of the Commission on alternative dispute resolution in civil and commercial law that had to be taken into consideration by candidates in the open competition which was the object of the present complaint. In the complainant's view, this document showed that the legal basis to be quoted in the written test had been Article 67 of the EC Treaty.

The Ombudsman's second request for information

After careful consideration of the Commission's second opinion made on behalf of EPSO and the complainant's further observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked EPSO to provide him with information on the following point and enclosed to his letter the complainant's further document sent to him on 17 March 2005:

" In its first opinion, the Commission stated that the question whether the legal basis of the legislative act concerned was Article 65 or Article 67 of the EC Treaty was not relevant. However,



in its reply on behalf of EPSO to the request for further information from the Ombudsman, the Commission stated that the Selection Board had decided, and had been entitled to do so, that candidates had to mention Article 65 as the legal basis, which the complainant had failed to do. Could EPSO (or the Commission) please explain how these two statements are to be reconciled ?"
The Commission's reply

In its reply on behalf of EPSO, the Commission made, in summary, the following comments.

The Selection Board had noticed that the complainant's test paper did not mention the reference of Article 65 of the EC Treaty and had subsequently indicated this fact on the complainant's evaluation sheet. However, the Board had not mentioned in the complainant's evaluation sheet that the latter had wrongly chosen the legal basis. When indicating, in the evaluation sheet, "Article 65 non cité", the Board had meant that the complainant had failed to carry out a full analysis of the legal basis which defined the aims of the measures to be taken in the field of the judicial cooperation, such measures being set out in Article 65 of the EC Treaty. The Board had considered that the test paper of the complainant had not been detailed enough and had mentioned this on the complainant's evaluation sheet.

The complainant's further observations

In his further observations, the complainant maintained his allegation that the Selection Board's decision not to admit him to the oral test had been vitiated by a manifest error. In the complainant's view, the quotation of the content of Article 65 of the EC Treaty constituted a correct and more accurate answer to the question of the test than a mere reference to this Article.

THE DECISION

1 The scope of the Ombudsman's inquiry

1.1 The complainant applied to take part in Open competition COM/A/11/01 organised by the European Commission to constitute a reserve list of principal administrators in the field of "Justice and Home Affairs". Point VI B of the notice of competition stated that the 50 candidates with the highest marks in written test e) were to be admitted to the oral test. On 16 December 2002, the Commission informed the complainant that he had not been admitted to the oral test because he had not been among the 50 candidates with the highest marks. The Commission further informed the complainant that he had only obtained 22 points out of 40 in test e) and that the 50 candidates invited to the oral test had obtained at least 23 points out of 40.

On 24 October 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that the only objective appraisal mentioned on the evaluation sheet ("article 65 non cité") had been erroneous and that the Selection Board's decision had therefore been vitiated by a manifest error.

1.2 In its opinion on behalf of EPSO, the Commission stated that, contrary to the complainant's position, the choice of Article 65 of the EC Treaty instead of Article 67 of the EC Treaty as the legal basis could not have constituted a manifest error in the assessment of the complainant's test. The evaluation sheet had given further information which had to be interpreted in relation to the criteria adopted by the Selection Board in marking the tests.



1.3 In his observations, dated 24 March 2004, the complainant pointed out that the Commission had failed to give him the criteria adopted by the Selection Board in marking the tests. The complainant thus appeared to make a new allegation.

1.4 In November 2004, the Ombudsman asked EPSO to submit an additional opinion regarding the complainant's new allegation.

1.5 In its further opinion, the Commission stated that the examination of the respective merits of the candidates and the correction criteria adopted before the competition were covered by the principle of the secrecy of the Selection Board's deliberations.

1.6 In his further observations, the complainant pointed out that he was aware that no access was given to the selection criteria for the moment.

1.7 In view of the above, the Ombudsman considers that there are no grounds to continue his inquiry into this aspect of the present complaint. The Ombudsman would however like to point out that he has decided to launch an own-initiative inquiry into the issue of granting candidates access to the selection criteria established by Selection Boards. The outcome of the Ombudsman's own-initiative inquiry will be published on the Ombudsman's website (1) .

1.8 In his further observations, the complainant argued that the text of the test had not required the candidates to give detailed explanations as regards the measures to be adopted pursuant to the relevant legal basis. In the complainant's view, his legitimate expectations had therefore been infringed and he had been misled, given that the Selection Board had assessed the candidates on the basis of an element which did not appear in the text of the test.

1.9 The Ombudsman notes that this allegation was not included in the original complaint. He takes the view that, in order not to delay the course of the present inquiry, it is not appropriate to extend the scope of the present inquiry so as to include the new allegation presented in the complainant's further observations on the Commission's opinion. The complainant is free to address his new allegation to the Commission and to lodge a new complaint with the Ombudsman if he should not receive a satisfactory reply from the Commission.

2 The allegation that the only objective appraisal mentioned on the evaluation sheet was erroneous

2.1 The complainant alleged that the only objective appraisal mentioned on the evaluation sheet had been erroneous and that the Selection Board's decision had therefore been vitiated by a manifest error.

2.2 The Commission, on behalf of EPSO, stated that, contrary to the complainant's position, the choice of Article 65 of the EC Treaty instead of Article 67 of the EC Treaty as the legal basis could not have constituted a manifest error in the assessment of the complainant's test. The evaluation sheet had given further information which had to be interpreted in relation to the criteria adopted by the Selection Board in marking the tests.



2.3 In November 2004, the Ombudsman asked EPSO to submit further information on this issue.

2.4 In its reply, the Commission stated that the Selection Board had decided, and had been entitled to do so, that candidates had to mention Article 65 of the EC Treaty as the legal basis, which the complainant had failed to do. When stating in the evaluation sheet that the complainant had failed to quote Article 65 of the EC Treaty ("*article 65 non cité*"), the Board had meant to indicate that he had failed to give detailed explanations as regards the measures to be adopted pursuant to Article 65.

2.5 In his further observations, the complainant pointed out that, pursuant to the rules set out in the "*Joint Practical Guide for Persons involved in the drafting of legislation within the Community Institutions*" (the "*Joint Practical Guide*"), Article 67 of the EC Treaty should have been mentioned by the candidates as the legal basis.

2.6 On 19 September 2005, the Ombudsman asked EPSO to submit further information with regard to two different statements in the Commission's first and second opinion on behalf of EPSO concerning the need to mention Article 65 of the EC Treaty.

2.7 In its reply, the Commission argued that the Selection Board had noticed that the test paper of the complainant did not mention Article 65 of the EC Treaty and had indicated this fact on the complainant's evaluation sheet. However, the Board had not mentioned in the complainant's evaluation sheet that the latter had wrongly chosen the legal basis. When stating, in the evaluation sheet, that Article 65 of the EC Treaty was not mentioned, the Board had meant that the complainant had failed to carry out a full analysis of the legal basis which defined the aims of the measures to be taken in the field of the judicial cooperation, such measures being set out in Article 65 of the EC Treaty. The Board had considered that the test paper of the complainant had not been detailed enough and had mentioned it on the evaluation sheet of the latter.

2.8 In his further observations, the complainant maintained his allegation that the Selection Board's decision not to admit him to the oral test had been vitiated by a manifest error.

2.9 The Ombudsman notes that, according to the established case-law of the Community courts, the assessments that a Selection Board makes in a competition, when it evaluates the knowledge and abilities of candidates, constitute the expression of a value judgment. They fall within the wide discretion enjoyed by the Board and are amenable to review by the Community courts only where there has been a flagrant breach of the rules governing the Board's work (2). The Ombudsman shall thus verify whether, in the present case, a flagrant breach of these rules by the Selection Board has been demonstrated.

2.10 The Ombudsman notes that point VI A of the notice of competition stated that written test e) aimed at testing the candidates' knowledge, comprehension skills and ability to analyse, draft and summarise in relation to the duties concerned. More particularly, as regards written test e), candidates were asked to "*draft a note for a Commissioner, taking into consideration the green paper of the Commission on alternative dispute resolution in civil and commercial law, which*



sets out proposals for a follow-up in this field and suggestions on the content of an eventual directive or other measures to be eventually taken ". The Ombudsman further notes that the guidelines of the written test stated that *" [t]his note should cover, in any case, the following points, setting out the pros and cons of the options submitted: (...) the legal basis of an eventual legal instrument and, where appropriate, its connection with Article 10 of the framework decision of 15 March 2001 (...) "*.

2.11 As regards the complainant's performance, the Ombudsman notes that the evaluation sheet of the complainant's written test contained several comments in its part entitled *" knowledge, comprehension skills and ability to analyse "*, namely: *" analyse souvent superficielle, peu d'argumentation, options insuffisamment détaillées, article 65 pas cité, bonne connaissance du contexte du droit civil "* (3) . The Ombudsman notes that the comment *" article 65 pas cité "* was only one among the elements mentioned in the evaluation sheet, but that the complainant did not contest the other elements of the evaluation sheet. The Ombudsman shall thus verify whether a flagrant breach of the rules governing the Selection Board's work was demonstrated only with regard to the comment *"article 65 pas cité"* .

2.12 The Ombudsman finds it useful, in the framework of the present inquiry, to quote the text of Articles 65 and 67 of the EC Treaty.

Article 65 of the EC Treaty states that *"[m]easures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include (...).*

Article 67 (1) of the EC Treaty states that *"[d]uring a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament."*

2.13 The Ombudsman notes that the complainant, in his test paper, referred to Article 67 of the EC Treaty as the relevant legal basis, quoting however in that framework excerpts of Article 65, without mentioning this Article explicitly. More particularly, the relevant passage of the complainant's test reads as follows: *" L'article 67 TCE semble pouvoir être utilisé dans la mesure où il constitue la base juridique pour les mesures qui " dans les matières civiles et commerciales qui ont une incidence transfrontière " sont prises " dans la mesure nécessaire au bon fonctionnement du marché intérieur ". La question de savoir si ces mesures relèvent ou non de la " coopération judiciaire " pourrait être soulevée "*.

2.14 As regards the question what the Selection Board's comment *"article 65 non cité"* meant, the Ombudsman notes that in its reply to his first request for further information, the Commission stated that the Selection Board had decided, and had been entitled to do so, that candidates had to mention Article 65 of the EC Treaty as the legal basis. In its reply to the Ombudsman's second request for further information, the Commission stated that the Selection Board had noticed that the complainant's test paper did not mention Article 65 of the EC Treaty and had subsequently indicated this fact on the complainant's evaluation sheet. According to



the Commission, however, the Board had not mentioned in the complainant's evaluation sheet that the latter had wrongly chosen the legal basis. In the Ombudsman's view, it appears difficult to reconcile these statements with each other. The Ombudsman notes, however, that what is decisive in the present case is the position adopted by the Selection Board, not the view (or views) that the Commission has put forward during the present inquiry.

2.15 The Ombudsman considers that the Selection Board's remark that the complainant had not cited Article 65 ("article 65 non cité") could be interpreted in three ways. First, the Board could have meant to indicate that the complainant had failed to cite the contents of Article 65 that were relevant for the legislative action that was to be covered by the note to be drafted in test e). Given that the complainant had quoted the relevant passages of Article 65 in his test paper and had marked these quotations by inverted commas, this first interpretation of the Selection Board's comment would appear to be a remote one. Second, the Board may have wished simply to indicate that the complainant had not mentioned Article 65 as such in his test paper. Given that the complainant had quoted the relevant text of this provision and only refrained from indicating that this text had been taken from Article 65, the Selection Board's approach would (if this second interpretation were correct) certainly have been a rather rigid one. However, the Ombudsman considers that whilst being strict, such an approach would not have constituted a manifest error. It should be noted that the complainant himself, in his test paper, quoted from Article 65 and thus showed that he considered this provision to be of relevance for the test. Third, the Selection Board's remark could be understood as meaning that the Board considered that Article 65 of the EC Treaty was the correct legal basis for any legislative proposal in this field and had to be mentioned as such by candidates. It appears that this is how the complainant has understood the Board's comment.

2.16 In support of his allegation that there was a manifest error in the Selection Board's appraisal, the complainant referred to the Joint Practical Guide, as well as to the proposal for a Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters which contained a reference to Article 67 of the EC Treaty and not to Article 65 of the EC Treaty.

2.17 It appears from the Joint Practical Guide (4) and from the explicit reference contained in the recitals of the said draft Directive that the Commission considers the appropriate legal basis for legislation in the field concerned to be Article 67 of the EC Treaty rather than Article 65 of the EC Treaty. Seen from that perspective, the Selection Board could indeed have committed an error if it had taken the view that Article 65 of the EC Treaty constituted the legal basis for the legislative action to be covered by the note. The Ombudsman considers, however, that it has not been shown that this was indeed the position of the Selection Board. If the Selection Board had considered that the complainant had incorrectly indicated the legal basis for a legislative act in the field concerned, one would have expected that it would have criticised the reference to Article 67 that the complainant had made. However, no such criticism was made. In the absence of any convincing evidence to the contrary it thus cannot be assumed that the Selection Board considered that Article 65 (and only this provision) was the correct legal basis. It is not excluded that the Board was of the view that both Article 65 and Article 67 of the EC Treaty had to be mentioned as regards the legal basis for legislation. The Ombudsman



considers that such a view would, particularly in view of the Joint Practical Guide and the above-mentioned Guide, not be beyond doubt. Even in that case, however, the Ombudsman considers that any error on the part of the Selection Board (if it existed) would not have been a manifest one.

2.18 In these circumstances, the Ombudsman concludes that the complainant has not established his allegation that the Selection Board's decision was vitiated by a manifest error. The Ombudsman therefore concludes that there appears to have been no maladministration by EPSO as regards the complainant's allegation.

3 The complainant's claims

3.1 The complainant claimed that the Selection Board should consider that he had adequately responded to the question relating to the legal basis of a legislative act. He further claimed that the Board should reconsider the marks which had been awarded to him as well as its decision regarding his exclusion from the competition.

3.2 In view of the conclusion in point 2.18 above, the Ombudsman considers that there is no need to pursue his inquiry into these claims.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by EPSO. The Ombudsman therefore closes the case.

The Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) See <http://www.ombudsman.europa.eu> [Link].

(2) See Case T-371/03 *Le Voci v Council*, judgment of 14 July 2004, paragraph 102 (not yet reported); Case T-102/98 *Papadeas v Committee of the Regions* [1999] ECR-SC I-A-211, II-1091, paragraph 54; Case T-95/98 *Gogos v Commission* [2000] ECR-SC I-A-51, II-219, paragraph 36; Case T-193/00 *Felix v Commission* [2002] ECR-SC I-A-23, II-101, paragraph 36.

(3) In French in the original text. Free translation by the Ombudsman's service: "*analysis often superficial, lack of argumentation, insufficiently detailed options, article 65 not mentioned, good knowledge of the context of civil law*".

(4) Article 9(6) of the "*Joint Practical Guide for Persons involved in the drafting of legislation within the Community Institutions*" states that the legal basis of the act has to be clearly distinguished from the provisions which set out the object, the conditions and the terms related to the content of the decisions to be taken.