

Decision of the European Ombudsman on complaint 575/2005/BB against the European Personnel Selection Office

Decision

Case 575/2005/BB - Opened on 15/03/2005 - Decision on 16/07/2007

Strasbourg, 16 July 2007

Dear Mr X,

On 10 February 2005, you submitted a complaint to the European Ombudsman concerning the response of the European Personnel Selection Office ("EPSO") to your correspondence concerning the written test in accountancy in Open Competition EPSO/A/11/03 organised to constitute a reserve pool from which to recruit assistant administrators (career bracket A 8) in the field of auditing (1) .

On 15 March 2005, I forwarded the complaint to the Director of EPSO. EPSO sent its opinion on 30 May 2005. I forwarded it to you with an invitation to make observations, which you sent on 18 July 2005.

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 complete my inquiries into your complaint.

THE COMPLAINT

The complainant participated in Open Competition EPSO/A/11/03, organised by the European Personnel Selection Office ("EPSO") with an eye to constituting a reserve pool from which to recruit assistant administrators (A 8) in the field of auditing.

Following the complainant's success in the preselection tests and an examination of his full application, the Selection Board marked his written test (d). In accordance with point B.2 of the Notice of Competition, written test (d) took the form of an essay designed to test the candidates' knowledge in the field of the competition.

On 25 October 2004, EPSO informed the complainant that the mark for his written test (d) was 13.25 points and that he had thus failed to attain the pass mark of 15 out of 30 (point B.2 of the



Notice of Competition).

On 30 October 2004, the complainant wrote to the Selection Board requesting review of his written test (d), which the complainant referred to as the "test in accountancy/accountancy test", and a copy of his exam paper with the model answer to the accountancy test. He raised a number of detailed questions (2) as regards the following parts of the accountancy test: (i) "The inventories of used ice cream machines"; (ii) "Blue notebook with cash transactions"; (iii) "Equipment"; and (iv) "Rent". The complainant explained in his letter that he had doubts about his mark because the test questions were "*ambiguous and subject to interpretation where more than one solution is possible.*" He pointed out that there are different accounting practices from one country to another or even one company to another within the same country and all of them could be acceptable. He stated therefore that there was a lack of clear instructions on how to deal with the accountancy exercise in such a situation.

On 13 December 2004, the Selection Board replied that (i) the complainant's written test had been reviewed and (ii) informed him that his results were confirmed. The Board enclosed a copy of the complainant's answers to the written test as well as a copy of the final evaluation sheet, which contained the Board's comments relating to its evaluation of his answers. The Board had ticked the box "*insufficient*" under Subject 1: Accountancy - Knowledge of the specific field and made the following comments on the evaluation sheet: "*[t]he candidate failed to demonstrate sufficient knowledge of the chosen subject. The candidate did not answer adequately all the questions asked or only answered part of the questions.*"

On 17 December 2004, the complainant wrote again to the Selection Board claiming that the Board had only partially responded to the questions set out in his letter of 30 October 2004. The complainant reiterated his request to obtain a copy of the model answer and, if possible, answers to the specific questions he had raised. Moreover, the complainant requested that the Board send him "*the paper that shows how the marks were distributed among the different parts of the exercise.*"

On 31 January 2005, the Selection Board replied that

"*[i]n order to ensure greater transparency in its selection procedures, EPSO undertook to send candidates who so request a copy of their test (unmarked) and the form completed by the Selection Board. We posted you this on 13th [D]ecember 2004. Nevertheless, the principle of transparency must be reconciled with the confidential nature of the Selection Board's work and its power of discretion. The Selection Board's working documents and other decisions regarding comparisons of candidates' merits must therefore remain confidential and may not be divulged to you.*"

In his complaint to the Ombudsman, the complainant alleged that EPSO's replies (3) to the questions in his letters of 30 October 2004 and 17 December 2004 were incomplete and inadequate.

The complainant claimed that EPSO should:



- answer all the questions in the complainant's letters of 30 October and 17 December 2004;
- provide a copy of the model answer to the written test in accountancy;
- provide information on how the marks were distributed among the different parts of the written test in accountancy; and
- review his written test in accountancy.

THE INQUIRY

EPSO's opinion

On 30 October 2004, after being informed that he failed to obtain the pass mark in written test (d) of Open Competition EPSO/A/11/03, the complainant sent a letter requesting that his test paper be reviewed. Furthermore, he requested a copy of his test paper and a model answer. The complainant took the view that the questions were such that there could be several possible solutions-answers depending on a candidate's interpretation of the data provided in the test.

By letter of 13 December 2004, the Selection Board informed the complainant that it had reviewed his test paper, but that it upheld its decision regarding the results communicated previously. The Board also sent the complainant a copy of his written test and the evaluation sheet with the Board's comments.

On 17 December 2004, the complainant wrote to the Chairman of the Selection Board again, pointing out that it had given only a partial reply to his request of 30 October 2004 and repeating his request for a copy of the model answer to the accountancy exercise. He also asked to know how the marks were distributed between the various parts of the exercise.

The Chairman of the Selection Board replied to him on 31 January 2005, explaining that, in order to ensure greater transparency in competitions, the decision had been made to send candidates so requesting a copy of their test paper and the evaluation sheet filled in by the Board. The Chairman went to say that the candidate had been sent these documents by letter of 13 December 2004. He also added that the principle of transparency had to be reconciled with the confidential nature of the work of the Board and its discretionary power. He ended the letter by explaining that the Board's working documents and decisions regarding the comparison of the merits of candidates had to remain confidential and could not be sent to the complainant.

Among the requests made by letters of 30 October and 17 December 2004 that had remained unanswered was the complainant's request that the Selection Board send him the model answer and if possible answers to the questions he had raised.

As regards the complainant's request to be provided with the model answer to the test (d), EPSO clarified in its opinion that there was no one single answer to the test. In support of this assertion, it mentioned that the Fourth Directive (4) on accounting takes into consideration different ways of presenting accounts, all of which are acceptable, and which may legitimately lead to differing results. Relatedly, and with relevance to the complainant's request for instructions on how to deal with the test, given that the applicable accounting practices allow for



different solutions, the Selection Board clarified that it was aware of possible differences in accounting cultures within the European Union and took this into consideration by marking test papers accordingly, provided that the candidate had presented a clear approach and had explained his/her choices or assumptions in an acceptable manner.

EPSO referred to the questions made by the complainant in his letter of 30 October 2004, concerning the specific parts of the test. EPSO stated therefore that it is neither the purpose of a competition nor the task of the Selection Boards to enter into discussions with candidates about the questions or subjects of tests or the validity of decisions made by a Board. In accordance with the relevant case-law (5), the Board, when giving reasons for a failure in a test is not required in any way to specify which of the candidate's answers were regarded as inadequate or to explain why these answers were regarded as inadequate. The case-law provides that the mark given by a Board constitutes a statement of the reasons for the decision and the final evaluation sheet gives an additional explanation of this (6). EPSO stressed that, according to the case-law, "*difficulties encountered by candidates in understanding certain aspects of additional explanatory items supplied voluntarily by the Commission do not render inadequate the statement of reasons already adequately given by notifying a candidate of their marks.*" (7)

Regarding the complainant's question on how marks were allocated within the written test (d), EPSO referred to the broad powers of assessment of the Selection Boards regarding the way tests are carried out. EPSO explained that, prior to the test, the Board drew up guidelines concerning the working method to be used when marking papers, and the criteria to be employed for the evaluation and for allocation of marks up to the maximum set by the Notice of Competition. The documents setting out the method for marking tests therefore form part of the preparatory work of the Selection Board and are used in its deliberations. Their release would therefore be a breach of Article 6 of Annex III to the Staff Regulations.

In response to the complainant's request for his test to be reviewed, EPSO put forward that the complainant's test had already been reviewed by the Selection Board on one occasion, and his results were sent to him on 13 December 2004, accompanied by an evaluation sheet listing the reasons for the marks given. The fact that the candidates may ask for the review of a decision, such as for example the setting of a test result, does not place the Selection Board under an 'automatic' obligation to re-mark a paper or to change a decision taken previously. In the present case, the Board has taken note of the candidate's arguments and has reviewed his test paper. However, it did not consider it appropriate to re-mark the paper. The decision to re-mark a paper is for the Board alone to take as part of its discretionary powers recognised by the case-law of the Community Courts.

The complainant's observations

In summary, the complainant stated that he was perfectly aware of the Fourth Directive (8) and the International Accounting Standards (9). In this regard, he referred to the title of the dissertation he wrote as part of his Master's degree in Accounting and Finance at his University for which he was awarded a distinction. For his dissertation, the complainant had studied the accounting policies of more than 200 companies in the (15) Member States of the EU and, therefore, he knew perfectly what is acceptable in accounting. The complainant maintained that,



on the basis of the Fourth Directive and the International Accounting Standards, it was not acceptable to assume the purchase dates in order to calculate depreciation, as was implicitly requested by EPSO's test in accounting.

The complainant's argued that his answer to the accounting test was in full compliance with the Fourth Directive and International Accounting Standards. For this reason and as no solution or set of acceptable solutions had been provided by EPSO, he cannot accept that his test was assessed properly.

The complainant was not convinced that the secrecy relating to how the marks were allocated within the written test safeguarded transparency.

The complainant doubted whether EPSO has taken his arguments "on board" and subsequently reviewed his test. The complainant considered that EPSO's short answers to his letters support this view.

THE DECISION

1 Preliminary remark

1.1 The Ombudsman notes, that in his observations, the complainant expresses his concerns as regards the assessment of his test (d) by EPSO.

He appears to allege that his test (d) was not assessed properly.

1.2 The Ombudsman points out, however, that the complainant's original allegation concerns the quality of replies given by EPSO to the specific queries he had submitted in his communications to EPSO.

The Ombudsman considers that broadening the scope of his inquiry to include the new issue raised by the complainant in his observations would unduly delay a decision on the original complaint. The Ombudsman confines therefore his decision to the complainant's original allegations. The complainant retains however the possibility to make a new complaint to the Ombudsman if he considers it useful to do so, and after having approached EPSO about the new allegations.

2 Alleged failure to answer the complainant's questions and related claims

2.1 The complainant took part in Open competition EPSO/A/11/03 organised to constitute a reserve pool from which to recruit Assistant Administrators (career bracket A8) in the field of auditing but was not successful in the written test (d).

On 30 October 2004, he sent the Selection Board a request for (i) the review of his written test (d); (ii) a copy of his exam paper; and (iii) the model answer to the specific questions of the test (d). He also (iv) put some questions to the Board as regards specific parts of the test (d). Finally, he pointed out that " *there are different accounting practices from one country to another or even one company to another within the same country and all of them could be acceptable* ". In this context, he stated that (v) there was a lack of clear instructions on how to deal with the



accountancy exercise in such a situation.

In addition, on 17 December 2004, the complainant asked the Selection Board (vi) for information on how the marks were distributed among the different parts of test (d).

On 13 December 2004, the Chairman of the Selection Board replied to the complainant's first letter. He stated that " *the Selection Board has re-examined your written test and confirmed your results* " and enclosed " *a copy of your answers to the written test as well as a copy of the final evaluation sheet, which contains the Selection Board's comments relating to its assessment of your test.* "

In his second reply of 31 January 2005 the Chairman of the Board underlined that " *[t]he Selection Board's working documents and other decisions regarding comparisons of candidates' merits must remain confidential and may not be divulged to [the complainant].*"

2.2 In his complaint to the Ombudsman, the complainant alleged that the replies provided by the European Personnel Selection Office ("EPSO") to the questions posed in his letters of 30 October 2004 and 17 December 2004 were incomplete and inadequate (10) .

He claimed that EPSO should (i) answer all the questions posed in his letters of 30 October and 17 December 2004; (ii) provide a copy of the model answer to the written test in accountancy; (iii) provide information on how the marks were distributed among the different parts of the written test; and (iv) review his written test in accountancy.

2.3 As regards the complainant's allegation, the Ombudsman notes that, in its reply of 13 December 2004, the Selection Board answered positively to one of the requests contained in the complainant's letters, and sent him a copy of his examination papers together with an evaluation sheet.

2.4 However, in its above reply and in its reply of 31 January 2005, the Board did not refer to the complainant's queries concerning the specific questions of the tests and the model answer to them, nor did it address the complainant's concerns as regards the different possible solutions following different accountancy practices and the lack of clear instructions on how to deal with test (d) in such a situation.

The Ombudsman finds these omissions regrettable.

The Ombudsman also takes the view that the reference to the complainant's query on the review of his test contained in the Board's letter of 13 December 2004, and the reference to the complainant's query on the distribution of the marks among the different parts of test (d) appearing in the Board's letter of 31 January 2005, was excessively brief.

2.5 However, the Ombudsman notes that, in its opinion on the complaint, EPSO referred to the complainant's questions as contained in his letters of 30 October and 17 December 2004.



As regards (a) the substance of the replies given by EPSO in its opinion on the complaint and (b) to dealing with the complainant's claims, the Ombudsman will examine below, in this part of the decision, how EPSO has dealt with each of the issues raised by the complainant in his letters of 30 October 2004 and 17 December 2004.

The complainant's request for information concerning the specific parts of the test

2.6 In his letters of 30 October and 17 December 2004, the complainant sent some queries to the Selection Board concerning specific parts of test (d), namely, (i) "The inventories of used ice cream machines"; (ii) "Blue notebook with cash transactions"; (iii) "Equipment"; and (iv) "Rent". The Selection Board did not reply to these queries in its letters to the complainant.

As regards these queries, EPSO stated in its opinion that it is neither the purpose of a competition nor the task of the Selection Boards to enter into discussions with candidates about the questions or subjects of tests.

2.7 The Ombudsman examined the complainant's queries. He takes the view that their nature indicates that the complainant appeared to contest the accuracy of certain questions contained in test (d).

2.8 The Ombudsman notes therefore that, as consistently held by the Community Courts, the Selection Board has considerable discretion as regards the arrangements for and the detailed content of the tests provided for in the framework of a competition (11). The detailed content of a test is not open to review, unless it exceeds the limits laid down in the Notice of Competition or conflicts with the purposes of the test or of the competition (12).

Furthermore, the Ombudsman notes that the Notice of Competition EPSO/A/11/03 provided that the purpose of written test (d) was "to test [candidates] knowledge in the field of the competition. [Candidates] will have to write on two out of the following six subjects: auditing, accountancy, public finances, law, organisation/management, economics. These subjects will be related to the duties described at A(1)" (13).

The Ombudsman examined the questions of the accountancy test. He notes that they were indeed technical in nature (14) and clearly designed to test the candidates' knowledge in the field of accountancy.

On the basis of the available information it appears that the content of test (d) did not exceed the limits laid down in the Notice of Competition or conflict with the purposes of the test or of the competition.

It cannot therefore be concluded that the Selection Board stepped outside the limits of its legal authority.

2.9 Nevertheless, in the Ombudsman's view, even if, in its opinion on the complaint, EPSO referred somehow to the specific queries of the complainant, it did not address to what appear to be the doubts raised by the complainant about the accuracy of some parts of the basic information provided to candidates on how to present their paper. Moreover, in its letters sent to



the complainant, the Board did not answer these questions either.

2.10 Principles of good administration provide that officials shall try to be as helpful as possible and reply as completely and accurately as possible to questions which are put to them (15) .

The Ombudsman fails to see why EPSO was not able to offer the complainant more detailed information neither in its initial replies to his queries concerning specific questions nor in its opinion submitted to the Ombudsman in the context of his inquiry.

By failing to provide a complete and accurate answer to the complainant's questions on specific parts of the test, EPSO committed an instance of maladministration and a critical remark will be made below.

The complainant's request for information concerning the model answer to specific questions of the test (d) and the complainant's point as regards the lack of instructions taking into account the different solutions which, according to different accounting practices, were possible

2.11 In its initial answers to the complainant, the Selection Board did not answer the complainant's request for information concerning the model answer to the specific questions of the test (d) and the complainant's point as regards the lack of instructions taking into account the different solutions possible according to different accounting practices.

However, in its own opinion, EPSO stated that there was no one model answer to the questions of this test and referred to different ways of presenting accounts, all of which are acceptable in light of the Fourth Directive (16) , and which may legitimately lead to differing results.

Relatedly, and with relevance to the complainant's request for instructions on how to deal with the test, given that the applicable accounting practices allow for different solutions, the Selection Board clarified that it was aware of possible differences in accounting cultures within the European Union and took this into consideration by marking test papers accordingly, provided that the candidate had presented a clear approach and had explained his/her choices-assumptions in an acceptable manner.

2.12 The Ombudsman notes that, in view of the wide margin of discretion that the Selection Board enjoys when it evaluates the performance of candidates in their oral and written tests, the Board is in principle, under no obligation, as a matter of law (17) , to indicate which answers would have been appropriate.

Nevertheless, it appears that, given the nature of the questions and the existence of different accounting practices making it possible for all of these practices to be acceptable, one single good answer to the specific questions of the tests, referred to by the complainant in his letters to EPSO, was not possible.

2.13 The Ombudsman also notes that EPSO did not refer precisely to the complainant's point concerning lack of instructions, which, in the complainant's view, should have been provided, given the different possible solutions which accorded with different accounting practices, but stated instead that when marking the test papers, the Selection Board took the above different



accounting practices into account.

It appears therefore, reasonable that such instructions were not deemed to be necessary.

2.14 In light of the above, the Ombudsman finds that no further inquiries are necessary as regards this part of the complaint.

The complainant's request for information on how the marks were allocated to the various parts of test (d)

2.15 EPSO stated that, prior to the tests, the Selection Board drew up guidelines concerning (a) the working methods to be used when marking papers, and (b) the criteria for evaluation and for allocation of marks up to the maximum set by the Notice of Competition. However, EPSO maintained that the documents setting out the method for marking tests form part of the preparatory work of the Board and are used in its deliberations. Their release would therefore be a breach of Article 6 of Annex III to the Staff Regulations.

2.16 The Ombudsman observes that Article 6 of Annex III to the Staff Regulations, adopted on the basis of Article 283 of the EC Treaty, and which specifically lays down the procedure for competitions, provides that "[t]he proceedings of the Selection Board shall be secret". This rule was introduced with a view to guaranteeing the independence of Boards and the objectivity of their proceedings, by protecting them from all external interference and pressures regardless of whether these come from the Community administration itself, the candidates concerned or third parties (18). EPSO interprets the case law of the Community Courts to mean that the observance of that secrecy does not permit the revelation of the factors relating to individual or comparative assessments of candidates (19). EPSO therefore only gave the candidate a copy of his test and an evaluation sheet with the Board's general evaluation of the candidate's performance.

2.17 The Ombudsman wishes to note that, in the present case, the evaluation sheet developed and used by the Selection Board in Open Competition EPSO/A/11/03 was indeed very general and belonged to the so-called "old generation" evaluation sheets which contain very little and generic information. Meanwhile, EPSO has revised its evaluation sheets to ensure that they contain more specific information regarding the candidates' performance. With regard to several complaints the Ombudsman has dealt with recently, the issue of evaluation criteria, including marking instructions, appears to be a serious concern for many unsuccessful candidates who have turned to him. In the Ombudsman's view, it is clear that this issue deserves special attention. On 10 October 2005, he therefore opened an own-initiative inquiry (OI/5/2005/PB) into the issue of access to the evaluation criteria established by the Boards. Information on the outcome of the Ombudsman's own-initiative inquiry will be published on the Ombudsman's website in due course.

In these circumstances the Ombudsman considers that no further inquiries are needed into this aspect of the complaint.

The complainant's request for re-examination

2.18 In its opinion, EPSO stated that the Board had already reviewed the complainant's test (d) and sent it to him along with an evaluation sheet listing the reasons for the marks given. EPSO



took the view that the complainant had received adequate information about the reasons for the marks awarded to him by the Board. EPSO argued that the right to ask for the review of a decision does not place the Board under an 'automatic' obligation to re-mark a paper or to change a decision taken previously.

2.19 On the basis of the explanation provided by EPSO, the Ombudsman understands that, following the complainant's request, the Board reviewed the complainant's test (d) and did not find any reasons to mark it again.

2.20 Furthermore, the Ombudsman points out that the relevant provision of the Notice of Competition provides that (20) the candidate can submit a request for review by sending a letter setting out the reasons for that request and that the Board will reply as soon as possible. Moreover, the Ombudsman notes that the above-mentioned provision of the Notice of Competition conferred on the candidates a procedural right (21), and created an obligation on the part of the Selection Board to reconsider a candidate's case, in order to properly reply to his or her reasoned request for review as to a particular decision. However, the Ombudsman is not aware of any rule or principle that would necessarily require that the Board give different marks to the complainant's test (d). Therefore, the Ombudsman does not find any instance of maladministration as regards this aspect of the complaint.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

Principles of good administration provide that officials shall try to be as helpful as possible and reply as completely and accurately as possible to questions which are put to them (22).

The Ombudsman fails to see why EPSO was not able to offer the complainant more detailed information neither in the Selection Board's initial replies to the complainant's queries concerning specific questions nor in its opinion submitted to the Ombudsman in the context of his inquiry.

By failing to provide a complete and accurate answer to the complainant's questions on specific parts of the test, EPSO committed an instance of maladministration.

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS



(1) OJ 2003 C 180A, p.1.

(2) The complainant identified " *[s]ome of the unclear issues" in the accountancy test:*

- *Inventories of used ice-cream machines* [the Ombudsman notes that the English version of the accountancy test refers to " *stocks of second-hand ice cream machines* "]:

A small table was given indicating i) the cost of the inventory at the 31/12/2003 ii) the estimated additional cost of renovation and iii) the estimated price of sale. Neither of the columns was clear as to what these amounts were referring to. Regarding the 'estimated cost of renovation' column it is unclear if this was referring to a value that would be added to the machines in the future or to a value that had been already added to the machines. Since there were already salaries of personnel for renovation (31.700€), one could very easily assume that this cost had already been incurred and that this value was estimated on the basis of the time spent of the technician on each machine. On this basis and in accordance with the International Accounting Standard (IAS) nr.2 the cost of conversion incurred in bringing the inventories to their present location and condition should have been included in the costs of inventories. Was this the case?

Regarding the first column 'cost at 31/12/2003' it is also unclear what is meant. Should we have interpreted this as purchase cost in which case no date should have been indicated because the purchase cost is something historical that cannot change once it has happened or should we interpret this as the cost of the machine that has already accepted renovation?

As far as the column 'estimated selling price' is concerned one could either assume that it was put there to create confusion or that it was partially referring to the net realisable value of the stock. I would rather say< that the sales value is relevant since in accordance with IAS nr.2 'inventories should be measured at the lower of cost and net realisable value'. In any case even though we had the selling price we couldn't exactly determine the net realisable value since the latter one is 'the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale'. The cost of delivering goods could be consider as a cost necessary to make the sale but this information was only given for past sales (28.600€) and not for future ones. What were we exactly supposed to do with this column?'

- *Blue note book with cash transactions:*

A small table was given with some cash transactions totalling to 12.310€ but no clear information was given as to whether these transactions have been taken on board for the summary table 2003 bank transactions. One could assume that since these were cash transactions they never passed through the bank account. Even though the treatment of revenues and expenses was almost clear that should [sic] be taken on board in addition to the information already given, the treatment of cash residual was unclear. Was the amount of 250€ the amount left in his pocket/company's safe at the 31/12/2003? If yes why wasn't this mentioned? In accounting when we give amount of cash residual we always say to what day this



is referring.

- Equipment:

Regarding electrical and office equipment we were given the estimated useful life of equipment, the purchase price and the residual value. However, we have not been given the date of purchase which is a vital information in order to calculate depreciation. Should we assume that everything was bought on the very first day of 2003? Making such kind of assumptions is not a serious behaviour for an accountant (...) and the candidates should not have been requested to do so!

- Rent: Could you please confirm that 80 000€ were referring to the period from 1/1/03 to 30/9/03? I found it unusual to give a number that when divided by the three trimesters gave a number with decimals. In addition the 10.000€ treated as revenue from subrenting could create some confusion on how the rent had been treated. "

(3) Given that EPSO represents the Selection Boards in the contacts with the candidates, the complaint is directed against EPSO.

(4) The Ombudsman assumes that EPSO refers to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, OJ 1978 L 222, p. 11.

(5) See Cases C-89/79 *Bonu v Council* [1980] ECR I-553, paragraph 5; Case C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, paragraph 24.

(6) See Case T-291/94 *Pimley-Smith v Commission* [1995] ECR-SC I-A-209 and II-637, paragraphs 63 and 64.

(7) See Case T-33/00 *Páramo and others v Commission* [2003] ECR-SC I-A-105 and II-541.

(8) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, cited above, footnote 2.

(9) The International Accounting Standards are available on the Europe website (http://ec.europa.eu/internal_market/accounting/ias_en.htm [Link]).

(10) See footnote 2 above.

(11) See Case T-371/03 *Le Voci v Council* [2005] ECR-SC I-A-209 and II-957, paragraph 41 and the case-law cited, in particular, Joined Cases 64, 71 to 73 and 78/86 *Sergio and others v Commission* [1988] ECR 1399, paragraph 3; Case T-156/89 *Valverde Mordt v Court of Justice* [1991] ECR II-407, paragraph 121.

(12) See Case T-371/03 *Le Voci v Council*, cited above, paragraph 41 and Case T-156/89



Valverde Mordt v Court of Justice , cited above, paragraph 121.

- (13) According to the Notice of Competition EPSO/A/11/03 the duties "(...) *may entail*:
- *examining whether resources are being used efficiently and economically and achieving effective results,*
 - *examining operations to check whether the results are consistent with the goals and objectives, and that activities are carried out as planned,*
 - *assessing and managing risks associated with Community funds allocated to or collected by the various European institutions and bodies, their partners, intermediaries and the ultimate beneficiaries/debtors,*
 - *examining the reliability and integrity of information systems,*
 - *examining the measures taken to safeguard assets,*
 - *undertaking the financial checks necessary to ensure the probity of expenditure claims, and the sound financial management of Community grants and projects financed from Community funds,*
 - *examining the legality and correctness of budgetary and financial operations,*
 - *auditing financial statements for reliability,*
 - *assessing the systems by which organisations are directed and controlled. "*

(14) The Ombudsman observes that the accountancy test required candidates to convince a hard-headed businessman O'Sceptic with limited faith in accountants to change his mind with regard to trading and to start investing. The candidates were provided with information on equipment, debtors, creditors and stocks of second-hand ice cream machines, materials and parts as of 31 December 2003, as well as information on his Joint European Venture subsidy repayable from earned profits in 2008. Further information was provided in three tables: (1) summary of O'Sceptic's bank transactions for 2003; (2) stocks of second-hand ice cream machines and (3) table on blue note book cash transactions for 2003. The table on the existing stocks of second-hand ice cream machines was divided in three sections: cost at 31 December 2003, estimated further renovation costs and estimated sales value. The table on blue notebook cash transactions provided details on received and paid cash in 2003. The candidates were required: (a) to advise O'Sceptic briefly on the limitations of using a summary of bank, (b) to prepare a Profit and Loss Account for the year 2003, together with a Balance Sheet as of 31 December 2003 (showing the candidates' calculations) and (c) to indicate to O'Sceptic his gross profit percentage, and to advise him briefly, through the use of ratios, on the profitability of his business generally.

(15) Article 12 of the European Code of Good Administrative Behaviour.

(16) The Ombudsman assumes that EPSO refers to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, OJ 1978 L 222, p. 11.

(17) See Case T-291/94 *Pimley-Smith v Commission* , cited above, paragraph 64; Case T-19/03 *Konstantopoulou v Court of Justice* [2004] ECR-SC I-A-25 and II-107, paragraph 34; and Case T-375/02 *Cavallaro v Commission* [2005] ECR-SC I-A-151 and II-673, paragraph 85.



(18) See Case C-89/79 *Bonu v Council* [1980] ECR I-553, paragraph 5; Case C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, paragraph 24.

(19) Case C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, paragraph 24.

(20) The Annex to the Notice of Competition COM/A/11/03 contains a provision which refers to "requests for review" if a candidate considers that his or her interests have been prejudiced by a particular decision. According to this provision, a reasoned request for review may be submitted by letter within 20 calendar days of the date appearing on the letter notifying the decision concerned, following which " [t]he selection board will reply as soon as possible ". In his letter of 30 October 2004 addressed to the Secretary of the Selection Board, the complainant stated that he is " *not at all convinced by this low mark and [he] would like therefore to kindly request [EPSO] the following:*

1) Have [his] exams paper re-examined after taking into account all the unclear points indicated below and be informed of the results (...) The reason that made me doubting about the mark that [he] was given is because there was important information missing and this could lead to assumptions. According to how the candidate interpreted the data of the exercise there could be more than one solution. " In its reply of 13 December 2004, the Board stated that it " has re-examined [the complainant's] written test and confirmed [his] results. "

(21) See Order of the Court of First Instance in Joined Cases T-95/00 and T-96/00 *Zaur-Gora and Dubigh v Commission* [2001] ECR-SC I-A-79 and II-379, paragraph 26.

(22) Article 12 of the European Code of Good Administrative Behaviour.