

Decision of the European Ombudsman closing his inquiry into complaint 3224/2006/(SAB)/TS against the European Personnel Selection Office (EPSO)

Decision

Case 3224/2006/(SAB)TS - Opened on 30/01/2007 - Decision on 21/11/2008

THE BACKGROUND TO THE COMPLAINT

1. The complainant, who holds an electronic engineering diploma from the "*Ecole Nationale Supérieure d'Ingénieur Electricien*" in Grenoble, participated in the pre-selection tests and written test in Open Competition EPSO/AD/27/05. The purpose of the competition was to draw up a reserve list in the field of audit.

2. By letter of 29 June 2006, EPSO informed the complainant that, upon examining his application, the Selection Board had concluded that he could not be admitted to the subsequent phases of the competition, nor could his written test be corrected, because his qualifications and diplomas were not of the type required in point A.II.1 of the Notice of Competition [1]. Therefore, he did not comply with the conditions laid down in the competition notice.

3. The complainant requested the Selection Board to re-examine its decision not to admit him to the competition. By letter of 14 July 2006, EPSO reiterated that the Selection Board had based its decision on the Notice of Competition, which required candidates to have completed a university course of at least three years' duration in a relevant field, attested to by a degree in a relevant subject. If an applicant did not have such a diploma, he/she had to have a professional qualification of equivalent level in a relevant field. In this regard, the Notice of Competition did not foresee that professional experience in a relevant field could substitute the required diploma.

4. On 25 July 2006, the complainant repeated his request for EPSO to re-examine its decision. In its reply of 21 September 2006, EPSO stated that the Selection Board had re-examined his file, but had not found any new elements which would allow it to consider the complainant's electronic engineering diploma to be in a relevant field. The decision of the Selection Board of 29 June 2006 was therefore upheld. The complainant turned to the Ombudsman on 15 October 2006.



THE SUBJECT MATTER OF THE INQUIRY

5. The Ombudsman opened his inquiry into the complainant's following allegation and claim:

Allegation :

EPSO and the Selection Board failed to deal properly with the complainant's requests for re-examination of the decision to refuse his application in Open Competition EPSO/AD/27/05 (Audit).

Claim :

The decision of the Selection Board should be re-examined and his written test in Open Competition EPSO/AD/27/05 (Audit) corrected.

THE INQUIRY

6. The complaint was forwarded to the Director of EPSO. On 11 April 2007, EPSO provided its opinion, which was forwarded to the complainant with an invitation to make observations. He presented his observations on 28 May 2007 and, on 2 November 2007, he sent further comments. On 23 June 2008, following a request of the Ombudsman, EPSO submitted copies of the complainant's application for Open Competition EPSO/AD/27/05 (Audit).

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation that EPSO and the Selection Board failed to deal properly with the complainant's requests for re-examination of the decision to refuse his application in Open Competition EPSO/AD/27/05 (Audit)

Arguments presented to the Ombudsman

7. In his complaint, the complainant argued that EPSO and the Selection Board did not address the following arguments put forward in his requests of 30 June and 25 July 2006:

- The definition of the diplomas in point A.II.1 of the Notice of Competition is vague and allows the Selection Board randomly to eliminate the candidates. The Selection Board also avoided specifying which French educational establishments awarded a diploma of three years duration " *in a relevant field* ".
- The biggest audit firms in France recruit their auditors from national schools of higher education in engineering. Students attending such schools are selected through a competition and subsequently complete five years of post- *baccalauréat* study.



- The tasks set out in the relevant part of the Notice of Competition can be carried out by an engineering graduate since the necessary competencies can be acquired through professional experience.

8. In its opinion, EPSO confirmed its position to refuse the complainant's application for Open Competition EPSO/AD/27/05 (Audit). It argued that, in light of the Notice of Competition's formulation, as well as the jurisprudence of the Community courts, the Selection Board had duly exercised its discretionary powers to reject the complainant's application. It went on to argue that no error of assessment had taken place.

9. In relation to the complainant's above arguments, EPSO emphasised that the text of the competition notice contained several conditions of admissibility, including the following:

Point A.II.1

- a level of education corresponding to a full university course of at least three years' duration attested by a degree in a relevant subject or a professional qualification of equivalent level in a relevant field;

- if the degree is not in a field relevant to the duties concerned, the candidate must have an additional qualification which is relevant. "

10. In this respect, EPSO also recalled the wording of Point A.1 of the Notice of Competition:

" Duties: Audit work is carried out in a variety of contexts of which the main audit activities are:

- external audits, including both financial audits and analyses of sound financial management;

- internal audits, carried out by either a centralised or a decentralised audit service;

- checks on public or private bodies managing or using Community funds (...) "

11. Additionally, EPSO pointed out that the competition notice outlined that the work of a successful candidate may entail controlling the administration of Community funds, examining the legality and correctness of budgetary operations and evaluating whether the results are consistent with the goals. The complainant's electronic engineering diploma, even if it consisted of three years of study, did not relate to the above-cited duties. Therefore, he was obliged to provide evidence that he was in possession of either (a) a professional qualification in a relevant field and of a level equivalent to three years of university studies, or (b) of an additional, relevant qualification. The complainant did not, however, do this.

12. As regards the complainant's above argument (1), EPSO stated that its practice of not providing a definitive list of diplomas and experience required, but, instead, making reference to a level of diploma or experience required, is in accordance with the jurisprudence of the Community courts [2] . Moreover, the Community jurisprudence [3] has established, in



particular in the field of audit, that where a competition notice does not require a candidate to possess a diploma or professional qualification relevant to the field concerned, this does not mean that the diploma or professional qualification does not have to be relevant to the said field. Even if the said competition notice did not specify the content of the " *relevance* ", it was clear that the Selection Board could require, in light of the tasks described in Point A.I of the above-mentioned competition notice, that the relevance was sufficient [4] . As the competition notice concerned specifically foresaw that the studies attested to by a degree had to be relevant to the field of audit, the Selection Board had to use its discretionary powers within these margins. EPSO stated that the title of the complainant's diploma (" *Diplôme d'Ingenieur* ") did not, in itself, establish a relation between the studies completed and the said field.

13. As regards the complainant's argument that the Selection Board avoided specifying which French educational establishment awarded a diploma of three years duration " *in a relevant field* " because it did not indicate which French diplomas belonged to the field of audit, EPSO stated that, when drawing up a list of admissible candidates in terms of their qualifications, the Selection Board had observed the principles of equal of treatment and given reasons for its decisions. Furthermore, EPSO stated that the Selection Board had duly observed the above-cited conditions included in Point A.II.1 of the competition notice in cases (such as the complainant's) where the university diploma was not relevant to the field of competition. EPSO concluded that no error of appreciation had taken place.

14. With regard to the complainant's above argument (2), EPSO outlined that, in accordance with the Community jurisprudence [5] , the evaluation of diplomas/qualifications can validly be based on an *ad hoc* evaluation made by each selection board, taking into account the particularities and conditions of each competition;

15. In relation to the complainant's above argument (3), EPSO stated that professional experience was not among the admissibility conditions of the competition notice. Furthermore and notwithstanding the Selection Board's powers to evaluate, on a case-by-case basis, whether the diplomas provided or the professional experience presented by each candidate corresponded with the level required by the Staff Regulations and the competition notice, the discretionary power of the Selection Board is, according to the established jurisprudence, limited by the published competition notice [6] . Therefore, contrary to the complainant's argument, the Selection Board could not take into account his professional experience, without violating Article 5, paragraph 1 of Annex III of the Staff Regulations.

16. In his observations, the complainant argued that EPSO's reply did not provide him with new, convincing explanations as to the non-admissibility of his application for the competition concerned. He was, in particular, critical of EPSO's argument that the title of the complainant's diploma (" *Diplôme d'Ingenieur* ") did not, in itself, establish a relation between the studies completed and the field of audit.

The Ombudsman's assessment

17. The complainant challenges the validity and adequacy of the Selection Board's decision to



reject his application, on the grounds that the Selection Board exceeded the margin of its discretion in making that decision. Always according to the complainant, the Selection Board also did not present adequate reasons for that decision in its correspondence with him. In this respect, the complainant argued that EPSO and the Selection Board did not address his arguments numbered (1) to (3), which were presented in his aforementioned correspondence.

18. It follows from the established jurisprudence of the Community courts that Selection Boards have a wide margin of discretion [7] when exercising their obligation to assess, on a case-by-case basis, whether candidates' diplomas or professional experience correspond to the level required by the Staff Regulations and by competition notices [8] . The discretionary powers of a particular Selection Board must be exercised within the limits outlined in the corresponding, published competition notice [9] . Furthermore, the evaluation of the Selection Board must concern the content of the diploma. In so doing, it can also take into account the specialisation and the courses taken by the applicant, as well as his or her professional qualifications [10] .

19. In Case F-12/05 *Tas v. Commission* [11] , the competition notice foresaw that the studies attested to by the degree had to be relevant to the field of audit. In that case, the Court stated that, even if the competition notice did not require that the diploma or professional qualification had to have been acquired specifically in the field of audit, the diploma or professional qualification had to at least be relevant to the said field. The Court also considered that, even if the competition notice did not specify the degree of the relevance required, it was clear that the Selection Board could require, in light of the tasks mentioned in the competition notice, that the relevance be sufficient.

20. The Ombudsman recalls the relevant wording of the competition notice EPSO/AD/27/05/Audit. According to Point A.I entitled " *Duties* ":

" Audit work is carried out in a variety of contexts of which the main audit activities are:

- external audits, including both financial audits and analyses of sound financial management,*
- internal audits, carried out by either a centralised or a decentralised audit service,*
- checks on public or private bodies managing or using Community funds " [12] .*

21. Furthermore, according to point A II.1. of the competition notice, entitled 'Eligibility (profile sought)':

" You must have a level of education corresponding to a full university course of a least three years' duration attested by a degree in a relevant subject or have obtained a professional qualification of equivalent level in a relevant field.

If your degree is not in a field relevant to the duties concerned, you must have an additional qualification which is relevant. "



Moreover, point C 4. of the competition notice mentions that:

" Documents to enclose with the application form (...) Your application must give full details of your (...) studies. "

22. EPSO argued that, in light of the formulation of the published competition notice and the jurisprudence of the Community courts, it considered that the Selection Board had duly exercised its discretionary powers and that no error of assessment had taken place in its decision to reject the complainant's application. In support of this argument, EPSO put forward that the competition notice concerned foresaw that the studies (attested to by a degree) had to be relevant for the field of audit. The Selection Board had to use its discretionary powers within these margins. The title of the complainant's diploma ("*Diplôme d'Ingenieur*") did not, in itself, establish a relation between the studies completed and the field of audit. The complainant appeared to challenge EPSO's above argument concerning the relevance of studies, particularly criticising EPSO's argument that the title of the complainant's diploma ("*Diplôme d'Ingenieur*") did not, in itself, establish a relation between the studies completed and the field of audit.

23. In course of the correspondence that preceded the complaint, EPSO provided the complainant with the following reasons for its decision to reject his eligibility to the competition:

" (...) contrairement aux dispositions de l'avis de concours, vos titres ou diplômes ne remplissent pas les conditions requises au point A.II.1 de l'avis de concours, n'étant pas du type requis. "
(EPSO's initial decision of 29 June 2006)

" Le Jury a basé sa décision sur l'avis de concours qui exige un cycle complet d'études universitaires de trois années au moins, sanctionné par un diplôme en rapport avec le domaine ou, à défaut d'un tel diplôme, un titre supplémentaire en rapport avec le domaine. L'avis de concours n'indique pas qu'une expérience professionnelle dans le domaine puisse se substituer au diplôme exigé. " (EPSO's letter of 14 July 2006)

" Le jury a réexaminé votre dossier et n'a pas trouvé d'éléments nouveaux permettant de considérer que votre diplôme d'ingénieur civil ait un rapport avec le domaine de l'audit. "
(EPSO's letter of 21 September 2006)

24. In the Ombudsman's view, the above replies did not clearly inform the complainant that the Selection Board's re-assessment had been based on elements other than the title of his diploma. They could therefore legitimately give rise to the impression that the above-mentioned standards, established in the case-law (see point 18. above), had not been complied with.

25. However, EPSO's opinion and the material submitted to the Ombudsman in the present case contain important additional information that explains more fully the Selection Board's decision. In reply to the complainant's argument (1) that "*[t]he definition of the diplomas in point A.II.1 of the Notice of Competition is vague and allows the Selection Board to randomly eliminate the candidates [and that] the Selection Board also avoided specifying which French*



educational establishments awarded a diploma of three years duration "in a relevant field", EPSO referred to its discretion and the legal limits for its discretion and specified the reasons for its decision not to admit the complainant to the competition.

26. As regards the specific reasons, EPSO essentially stated that the complainant's electrical engineering diploma did not relate to the specific duties described in the competition notice. It also stated that the mere title of the complainant's diploma did not establish, in an evident manner, a relation between the complainant's studies and the field of audit. It appears from the documentation contained in the file that the content of the complainant's diploma could, in this case, only be inferred by the Selection Board on the basis of the title of the diploma, because the diploma itself did not contain any indication of the studies followed in the relevant field. The file also does not show that the complainant submitted with his application any other supporting documentation detailing studies taken in the field of audit [13] .

27. According to the competition notice, candidates were clearly obliged to enclose full details of their studies along with their applications. However, it appears from the file that the complainant did not submit with his application any additional information capable of demonstrating that he possessed any additional professional qualifications. As previously mentioned, the Selection Board was entitled to carry out the case-by-case evaluation on the basis of the documentation submitted to it by each applicant. Since the complainant did not submit information on the content of his diploma, there is no evidence to show that the Selection Board did not properly assess his qualifications. In addition, the "*diplome d'ingénieur*" he submitted, did not necessarily show a relation with the field of audit. In light of the above, the Ombudsman considers, therefore, that the Board's assessment was reasonable.

28. With regard to the complainant's argument (2), according to which "*[t]he biggest audit firms in France recruit their auditors from national schools of superior education in engineering. Students attending such schools are selected through a competition and subsequently complete five years of post-baccalauréat study*", EPSO stated in its opinion that the evaluation of diplomas/qualifications submitted by applicants is based on an *ad hoc* evaluation by each Selection Board, which takes into account the particularities and conditions of each competition. This process was in accordance with the Community case-law. The Ombudsman considers that selection boards established for the purpose of EU recruitment are, in principle, not obliged to compare and defend their assessment methods on the basis of the various recruitment practices in the Member States. Nor are they obliged to establish lists of national educational establishments which issue diplomas in the relevant fields. Moreover, there are no exceptional circumstances in the present case that would have required such action by the Selection Board here concerned. The Ombudsman is therefore not convinced by this argument put forward by the complainant and considers that EPSO responded adequately to this part of the complaint.

29. Finally, as to the complainant's argument (3), according to which "*[t]he tasks set out in the relevant part of the Notice of Competition can be carried out by an engineering graduate since the necessary competencies can be acquired through professional experience*", EPSO stated in its opinion that professional experience was not among the admissibility conditions of the competition notice. Furthermore, it stated that selection boards do indeed have the power to



evaluate, on a case-by-case basis, whether diplomas provided, or professional experience presented, by each candidate correspond with the level required by the Staff Regulations and the competition notice. However, according to the established jurisprudence, the discretionary power of the Selection Board is limited by the published competition notice [14] . EPSO concluded that this principle prevents the Selection Board from grounding its decision on criteria other than those established by the competition notice. Therefore, contrary to what was argued by the complainant, the Selection Board could not take into account his professional experience, without violating Article 5, paragraph 1 of Annex III of the Staff Regulations. The Ombudsman considers that, with the above reply, EPSO sufficiently addressed the complainant's third argument.

30. In light of the foregoing, the Ombudsman considers that the Selection Board does not appear to have exceeded its margin of discretion when refusing the complainant's application in Open competition EPSO/AD/27/05 (Audit). As to the adequacy of the reasoning presented in EPSO's communications, the Ombudsman considers that, in light of his findings in points 24 and 25 above, no further inquiries are justified in relation to this aspect of the complaint. The Ombudsman considers it relevant, however, to make a further remark regarding this aspect of the case.

31. In light of this conclusion on the complainant's allegation, his claim cannot be sustained.

B. Conclusions

On the basis of the inquiry into this complaint, the Ombudsman finds (1) no maladministration in relation to the allegation that the Selection Board failed to deal adequately with the complainant's request for re-examination of his application in the relevant competition, and (2) that no further inquiries are justified into the adequacy of EPSO's communications with the complainant. Therefore the complainant's related claim cannot be sustained.

The complainant and the Director of EPSO will be informed of this decision.

FURTHER REMARK

The Ombudsman notes that the communications from EPSO to the complainant could understandably have conveyed the impression that the Selection Board decided on the inadmissibility of the complainant's application solely in light of the title of the complainant's diploma, and did not carry out an examination of the full application file. EPSO is therefore invited to consider, in the future, providing applicants with more clear explanations regarding the thoroughness and completeness of the Board's re-examination of candidates' files.



P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 21 November 2008

[1] The following is provided in point A.II.1 ('Certificates and diplomas') of the Notice of Competition in question:

" You must have a level of education corresponding to a full university course of a least three years' duration attested by a degree in a relevant subject or have obtained a professional qualification of equivalent level in a relevant field.

If your degree is not in a field relevant to the duties concerned, you must have an additional qualification which is relevant. "

[2] Case 44/71 *Marcato* [1972] ECR 427.

[3] Case F-12/05 *David Tas v Commission* [2006] ECR FP-I-A-79, II-A-285.

[4] Case 44/71 *Marcato* [1972] ECR 427.

[5] Order of 5 May 1988 in Case 108/88 R *Cendoya v Commission* [1988] ECR 2585.

[6] Case 44/71 *Marcato v Commission* [1972] ECR 427; Case 225-87 *Belardinelli v Court of Justice* [1989] ECR 2353; and Case T-158-89 *Van Hecken* [1991] ECR II-1341.

[7] Case F-12/05 *Tas v. Commission* [2006] ECR FP-I-A-79, II-A-285; Case T-115/89 *González Holguera v Parlement* , [1990] ECR II-831; Case T-101/96 *Wolf v Commission* [1997], ECR-SC I-A-351 and II-949; Case T-244/97 *Mertens v Commission* , [1999] ECR-SC I-A-23 and II-91; and Case T-25/03 *Stefano v Commission* [2005] ECR-SC I-A-125 and II-573.

[8] Case F-12/05 *Tas v Commission* [2006] ECR FP-I-A-79, II-A-285; Case T-158/89 *Van Hecken v CES* [1991] ECR II-1341; Case T-214/99 *Carrasco Benítez v Commission* [2000] ECR-SC I-A-257 and II-1169; and Case T-332/01 *Pujals Gomis v Commission* [2002] ECR-SC I-A-233 and II-1155.

[9] Case F-12/05 *Tas v. Commission* [2006] ECR FP-I-A-79, II-A-285; order of 3 April 2001 in Cases T-95/00 et T-96/00 *Zaur-Gora et Dubigh v Commission* [2001] ECR-SC I-A-79 and II-379. See also Cases T-139/00 *Bal v Commission* [2002] ECR-SC I-A-33 and II-139; and joint Cases T-357/00, T-361/00, T-363/00 and T-364/00 *Martínez Alarcón and others v Commission* [2002] ECR-SC I-A-37 and II-161.

[10] Case F-12/ 05 *Tas v. Commission* [2006] ECR FP-I-A-79, II-A-285.

[11] *Ibid* .



[12] Furthermore, according to the competition notice,

" *This may entail:*

- *examining whether resources are being used efficiently and economically,*
- *checking operations to assess whether the results are consistent with the goals, and whether activities are carried out as planned,*
- *assessing and managing the risks associated with Community funds allocated to or collected by the various European institutions and bodies, their partners, intermediaries and the final beneficiaries or creditors,*
- *evaluating and testing the effectiveness of internal control systems within the institutions and bodies which manage or benefit from Community funding, or record and collect Community revenue,*
- *examining the reliability and integrity of information systems,*
- *examining the measures taken to safeguard assets,*
- *conducting the financial controls required to check on the relevance of declared expenditure and the sound financial management of Community assistance 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. "*

[13] On the Ombudsman's request, EPSO provided him with copies of the diplomas and certificates included in the complainant's application for competition EPSO/AD/ 27/05(Audit).

[14] Case 44/71 *Marcato v Commission* [1972] ECR 427; Case 225-87 *Belardinelli v Court of Justice* [1989] ECR 2353 and Case T-158/89 *Van Hecken* [1991] ECR II-1341.