

Draft recommendation to the European Personnel Selection Office concerning own-initiative inquiry OI/5/2005/PB on transparency in EU recruitment procedures

Recommendation

Case OI/5/2005/PB - Opened on 10/10/2005 - Recommendation on 03/07/2007 - Decision on 16/12/2008

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1))

SUMMARY

In 2005, the European Ombudsman opened an own initiative inquiry into issues concerning the transparency of EU recruitment procedures organised by the European Personnel Selection Office ('EPSO') (2) .

This is the second own initiative inquiry which the Ombudsman conducts on the issue of transparency in EU recruitment. The first one was undertaken in 1997-1999 (3) , and led the European Commission to introduce a number of concrete practices enhancing the transparency of EU recruitment. It also resulted in a special report by the Ombudsman to the European Parliament (1999) (4) .

In its response to the first own initiative inquiry, the Commission shared the view that, since recruitment procedures are the first and, for many applicants, the only direct contact with the Community administration, it is important that this contact be positive. That consideration was also voiced by Parliament in its subsequent resolution on the Ombudsman's special report in 2000 (5) . In that resolution, Parliament recorded its appreciation of the Ombudsman's special report, "*in particular with regard to improving the impression which citizens, as candidates in recruitment procedures, have of the European Institutions*", and pointed out that "*the principle of transparency must apply throughout the selection procedure*". Parliament suggested, amongst other things, that "*candidates should automatically be notified, promptly and in an appropriate form, of the evaluation criteria*".

When EPSO began its work in 2003, it maintained the measures already introduced by the Commission with an eye to enhancing transparency in recruitment. However, the Ombudsman has also continued to receive complaints from applicants about an alleged lack of transparency in the recruitment procedures. Two related issues have been recurring: First , evaluation criteria



formulated by selection boards for the purpose of assessing candidates remain secret. Second , the manner by which selection boards arrive at a final mark for candidate's examination is not clear to many candidates, especially since the marks for the separate parts of their tests are, also, kept secret.

The Ombudsman holds the view that these secrecy practices are based on what appears to be an approach to dealing with citizens that either pre-dates or simply ignores the European Union's current commitment to a public administration that fully respects the principles of transparency, accountability and good administration. The Ombudsman has therefore made several attempts, during the present own initiative inquiry as well, to persuade EPSO that its secrecy practices referred to here are not compatible with the above principles and hence constitute maladministration under Article 195 EC Treaty. The main correspondence between the Ombudsman and EPSO concerning this issue is available on the Ombudsman's website and can be accessed at <http://www.ombudsman.europa.eu/initiatives/en/default.htm> [Link].

The following text constitutes, in part, a summary of that correspondence.

THE OMBUDSMAN'S CONSIDERATIONS LEADING TO HIS DRAFT RECOMMENDATION

The object of the inquiry - access to information in EU recruitment

1.1 The present inquiry concerns, first , candidates' right of access to the evaluation criteria formulated by selection boards for the purpose of assessing written and oral tests; and second , the disclosure of information on *how* selection boards arrive at the final mark for tests, notably through the provision of information on the marks awarded for the separate parts of the tests.

1.2 With regard to 'evaluation criteria', these have been defined as follows in the present inquiry (6) :

(A) general criteria, underlying the conditions laid down by the notice of competition, regarding the purpose and/or the content of the test;

(B) criteria for the allocation of marks, such as the weighting of questions;

(C) criteria in the form of instructions for marking the written tests.

EPSO's position

1.3 EPSO has informed the Ombudsman that the general criteria referred to in (A) above are not covered by the need for secrecy and must be communicated to candidates, with an eye to making them aware of all the factors on which the selection board bases its assessment and to enabling them to challenge that assessment, if necessary.

1.4 With regard to the criteria subsumed under (B) and (C), EPSO has essentially put forward two types of arguments for not allowing disclosure:

First , EPSO has held that the criteria under (B) and (C) referred to above have always been



considered by the case law to involve the comparative assessments of candidates' respective merits carried out by selection boards, and, hence, to be covered by the secrecy of the boards' proceedings (7) .

Second , EPSO has referred to a number of practical or administrative considerations and concerns, notably (i) the fact that criteria (B) and (C) may be changed by the selection board before the relevant mark is arrived at, (ii) that information given to candidates about evaluation criteria (B) and (C) might be misleading and not be correctly understood by them, and (iii) that the provision of additional information could result in an increase in the number of complaints submitted by candidates.

The Ombudsman's findings

1.5 With regard to the first argument, the Ombudsman has informed EPSO of his conclusion that the Office is legally free to disclose, in principle and unless very special circumstances prevent it, the final versions of criteria (B) and (C) to candidates who request them following receipt of the mark obtained (8) . This conclusion was based on a thorough analysis of the relevant legal and administrative rules as currently applied and understood in practice.

1.6 With regard to the second set of arguments, the Ombudsman concluded that they were not convincing. The Ombudsman's detailed comments are set out in point 1 of his above-mentioned letter of further inquiry dated 3 July 2007 to EPSO (9) . Here only two points shall be recalled. First, the Ombudsman advocates disclosure of the *final* evaluation criteria adopted by the selection boards, not of the board's deliberations leading to the adoption of those criteria. Second, the right of access to information and documents does not depend on the Administration's assessment as to whether the recipient concerned might or might not 'correctly understand' the information concerned.

1.7 With regard to the argument that the number of complaints might increase if candidates were to receive more information on the assessment of their test, the Ombudsman takes the view that it is not compatible with the Rule of Law to withhold information from individuals participating in an administrative procedure in order to prevent or discourage them from exercising their right to complain against the outcome of such a procedure. Furthermore, the Ombudsman has already informed EPSO of the fact that he only opens inquiries " *for which he finds grounds* " (Article 195(1), second paragraph, of the EC Treaty). The more information new complaints contain, the better able the Ombudsman will be to assess whether there are, in fact, grounds for opening an inquiry. Conversely, lack of information, resulting from current secrecy practices, will normally have the effect of leading to the opening of an inquiry, if only to allow the Ombudsman fairly to assess the matter (10) . Even if EPSO's argument as regards the number of complaints is correct, therefore, better information to candidates would probably lead to fewer inquiries by the Ombudsman. Such inquiries involve a great deal of staff time for both EPSO and the Ombudsman. Concern for the efficient use of Community budgetary resources should thus lead EPSO to seek to minimise the number of such inquiries, by providing more and better information to candidates.

The requirement for disclosure and its underpinnings

1.8 In addition to the above, the Ombudsman has emphasised to EPSO that the needs for greater openness in recruitment procedures are much more wide-ranging than a general



openness agenda, however important the latter may be. Such needs include important specific concerns regarding legal protection, equality, proportionality and the Community's interest in recruiting officials of the highest standard of ability, efficiency and integrity (11) . In his analysis, the Ombudsman has, in particular, pointed out what, in his view, is a discrepancy between the *purpose* of the relevant secrecy provision contained in the Staff Regulations and the secrecy practices currently maintained by EPSO.

1.9 The secrecy provision in the Staff Regulations provides that " *[t]he proceedings of the Selection Board shall be secret* ". The case-law has confirmed that this secrecy provision was introduced with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings (12) .

1.10 It goes without saying that the Ombudsman fully and unhesitatingly shares EPSO's view that these important aims be achieved. However, the Ombudsman has not received any convincing arguments demonstrating how the boards' 'independence' or 'objectivity of proceedings' would be adversely affected by the disclosure, to applicants, of the final evaluation criteria adopted by the boards, or of information on the detailed breakdown of marks. Such disclosure would neither enable candidates to exercise an influence on the work of the boards, nor would it prevent them from working in an objective manner.

The current EPSO reform

1.11 Within a reform process that it has entitled " *EPSO Development Programme* ", EPSO is currently studying and implementing important measures to improve the EU recruitment procedures. As EPSO itself has pointed out, several of the measures to be adopted under this programme are intended to, and should in fact, enhance the transparency of recruitment procedures. These include the more detailed information to be included in the notices of competition, as well as greater standardisation and professionalism in the work of selection boards.

1.12 The Ombudsman wishes to welcome and strongly to support this reform process, which will not only produce concrete benefits for candidates but will also reinforce EPSO's position as the central and primary institutional decision maker in EU recruitment.

1.13 The Ombudsman would further like to point out that, in fact, the current reform process provides an excellent opportunity for eliminating the secrecy practices examined in the present own-initiative inquiry. Doing so would not only demonstrate in the clearest possible way the genuine commitment that EPSO now has to enhancing the transparency of EU recruitment procedures. For selection boards, who would know that their adopted criteria could be disclosed upon request, the removal of these secrecy practices would also constitute an important incentive to fully implement the professional working methods that EPSO is now defining and whose adoption it wishes to promote.

THE DRAFT RECOMMENDATION

EPSO should disclose to candidates, at their request, the evaluation criteria, if any, adopted by



the selection boards for written or oral tests, and should furthermore disclose to candidates, at their request, the detailed breakdown of marks, if any, awarded to them for their performance.

In accordance with Article 3(6) of the Statute of the Ombudsman, EPSO shall send a detailed opinion by 31 October 2008. The detailed opinion could consist of the acceptance of the Ombudsman's draft recommendation and a description of the measures taken to implement the draft recommendation.

Strasbourg, 22 July 2008

P. Nikiforos DIAMANDOUROS

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties (OJ 1994 L 113, p. 15), as amended by its decision of 14 March 2002 deleting Articles 12 and 16 (OJ 2002 L 92, p. 13).

(2) The Ombudsman's Homepage contains the main correspondence in this inquiry, in the section "Own-initiative inquiries (2005-)" on <http://www.ombudsman.europa.eu/initiatives/en/default.htm> [Link], including the opening letter (dated 10/10/2005).

(3) See the Ombudsman's Homepage:
<http://www.ombudsman.europa.eu/recommen/en/971004.htm> [Link]

(4) See the Ombudsman's Homepage:
<http://www.ombudsman.europa.eu/special/pdf/en/971004.pdf> [Link]

(5) European Parliament resolution on the special report from the European Ombudsman to the European Parliament following the own-initiative inquiry into the secrecy which forms part of the Commission's recruitment procedures (C5-0082/2000 - 2000/2048 (COS)).

(6) The detailed description of these evaluation criteria is set out in the Ombudsman's letter of further inquiry to EPSO dated 3 July 2007 (<http://www.ombudsman.europa.eu/initiatives/en/default.htm> [Link]).

(7) EPSO essentially refers to Case C-254/95 P *Parliament v Innamorati* [1996] ECR I-03423.

(8) The Ombudsman's full analysis is set out in point 2 of his letter of further inquiry to EPSO of 3 July 2007 (<http://www.ombudsman.europa.eu/initiatives/en/default.htm> [Link]).

(9) <http://www.ombudsman.europa.eu/initiatives/en/default.htm> [Link].



(10) It goes without saying that an inspection of the file by the Ombudsman can only exceptionally remedy this information deficiency, since the information concerned will have to be examined in light of the specific allegations and arguments submitted by the complainant.

(11) See point 3 in the Ombudsman's letter of further inquiry to EPSO of 3 July 2007 (<http://www.ombudsman.europa.eu/initiatives/en/default.htm> [Link]).

(12) Case C-254/95 P *Parliament v Innamorati* [1996] ECR I-03423, paragraph 24.