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P. NIKIFOROS DIAMANDOUROS

Mr Nicholas David BEARFIELD  
Director  
European Personnel Selection Office  
80, avenue de Cortenbergh  
1049 Brussels  
BELGIQUE

Strasbourg, 13 -03- 2008

**Own initiative inquiry OI/5/05/PB relating to the European Personnel Selection Office**

**Letter of further inquiry**

Dear Mr Bearfield,

I would first like to thank you for your visit on 31 January 2008, during which we had the opportunity to exchange information and views relevant to, amongst other things, the above-mentioned own initiative inquiry.

The present letter concerns the scope of this own initiative inquiry, and contains a request for your views and possible concrete response to suggestions set out below.

To recall, the present own initiative inquiry was opened with a view to exploring the issue of candidates' access to the marking criteria established by the selection boards and applied to written examinations forming part of competitions organised by the EPSO. However, the results of the inquiry so far suggest that this issue is intrinsically connected with the degree and depth of information given to the candidates regarding the application of the relevant criteria. I have therefore decided to focus my inquiry on the latter question.

In concrete terms, this implies a focus on the so-called *final evaluation sheets*, which are usually provided by the selection boards to the candidates who so request. There are several reasons for this:

First, the final evaluation sheet - which currently appears mainly to synthesise the sheets filled in separately by different markers - potentially constitutes a key

instrument to ensure consistency, objectivity and administrative efficiency in the evaluation process.

Second, the final evaluation sheet should ideally, in my view, contain an exhaustive "package" of relevant information that is provided to candidates concerning the evaluation of their performance. An agreed format for the final evaluation sheet would thus embody a common understanding of what constitutes an adequate, reasonable and fair level of openness in recruitment procedures.

To tie this in with my substantive analyses previously communicated to EPSO<sup>1</sup>, the main question can now be seen to be the extent to which the final evaluation sheet should contain information as to how the overall mark was arrived at. Within this focus, the specific question of (public) access to the eventual documents, so far confidential, containing marking grids, instructions to the independent markers and so forth is of less relevance. At any rate, the Community legislator now has the opportunity to address the issue of *lex specialis* in the context of the reform of Regulation 1049/2001 regarding public access to Parliament, Council and Commission documents. Once that reform has been finalised, the Ombudsman could analyse the relevant implications, if any, for the right of access to the above-mentioned documents.

At this point, the main focus of my present inquiry therefore concerns a possible broadening and improvement of EPSO's existing practices, rather than any detailed and potentially circuitous questions of the precise extent to which the boards and/or EPSO are allowed, in light of very limited case-law dating back to 1995, to give candidates information about the rules or instructions formulated for the evaluation of tests.

You will be aware from my decisions and previous relevant communications that I fully appreciate, and indeed applaud, the important steps already taken by EPSO to increase the amount and depth of information on the final evaluation sheets provided to candidates<sup>2</sup>. Indeed, I consider, at the current stage, that only relatively obvious and straightforward improvements would have to be introduced to fulfil the main purposes of furnishing candidates with adequate information on the evaluation of their tests.

Let me recall two of these main purposes, namely, openness and fairness. EU recruitment procedures clearly cannot be exempt from the EU's now longstanding and firmly established policy in favour of more openness, a policy which has regularly been presented in the strongest terms possible<sup>3</sup>. It is my impression that EPSO does

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<sup>1</sup> See my letter to EPSO of 20 February 2006 and my letter of further inquiry of 3 July 2007.

<sup>2</sup> See decision on complaint 1172/2006/(GK)PB, point 2, and the above-mentioned letter of further inquiry of 3 July 2007, points 2.9 - 2.10.

<sup>3</sup> Cf. for instance the second recital of Regulation 1049/2001 regarding public access to Parliament, Council and Commission documents: "Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more

not, in principle, disagree with this view. As regards "fairness", it is essential to recall that this (like other principles of administrative law) involves considerations of *actual* fairness as well as considerations relating to the need for procedures to be *seen to be fair*. It should be obvious that the procedures must be fair in actual terms. With regard to the perception of fairness (or lack thereof), I have previously drawn a link between this and the Community's vital interest in recruiting officials of the highest standard of ability, efficiency and integrity<sup>4</sup>. It appears reasonable to presume that recruitment procedures that are seen to be fair will more easily attract suitable candidates.

In concrete terms, I consider that the following improvements would be useful:

- (a) All the specific knowledge, abilities, skills etc. evaluated could be mentioned on the final evaluation sheet, potentially through the incorporation of the relevant parts of the notice of competition, combined with further criteria, if any, adopted by the board, and
- (b), the marks, agreed upon by the selection board, for each of the separate categories mentioned above could be stated on the final evaluation sheet, in addition to the overall mark, which is already stated on the evaluation sheets currently used<sup>5</sup>.

The result of introducing these improvements would, in my view, only be positive. They would enable candidates to obtain both a global and, in all normal cases, a sufficiently detailed impression of why their test was evaluated as it was. Furthermore, in cases of candidates who question their marks, the completeness of the final evaluation sheet (and taking into account the wide discretion of the boards) would normally enable the board and/or EPSO to respond by mere reference to the content of that sheet. This, it should be noted, would be fully consistent with the rule that the openness requirement in this field must be observed "*...without, however, imposing an unreasonable administrative burden on Boards*" (the European Ombudsman's decision on complaint 674/2004/PB, point 1.8), or obliging them to provide candidates with a detailed opinion on *specific* errors or weaknesses in the candidates' performance.

I would like to recall in this connection that the European Ombudsman only opens inquiries "for which he finds grounds" (Article 195(1), second paragraph, of the EC Treaty). To date, a considerable proportion of complaints (against EPSO or other institutions or bodies) has been rejected because the Ombudsman found "no grounds" either in light of the facts of the case and/or because the reply already given to the complainant by the institution or body concerned seemed reasonable. A positive result obtained from the present inquiry would naturally be taken fully into account in considering whether there are sufficient grounds for opening inquiries into future complaints.

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effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union."

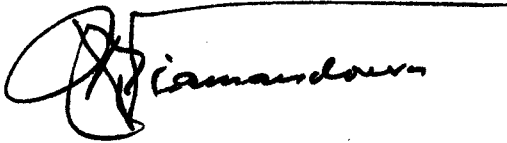
<sup>4</sup> Point 3.3 of my letter of further inquiry of 3 July 2007.

<sup>5</sup> In this respect, I would like to point out that, in principle, there is no reason why a final evaluation sheet could not be longer than the present ones, and possibly even including relevant annexes.

If EPSO is willing to accept the above-mentioned suggestions, it would be useful if you could also provide a time-table for their implementation.

I would be grateful to receive your reply by 30 April 2008.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Nikiforos DIAMANDOUROS', with a long horizontal line extending to the right.

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