



**P. Nikiforos Diamandouros**  
European Ombudsman

Mr Nicholas David Bearfield  
Director  
European Personnel Selection Office  
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Strasbourg, **11-04-2012**

Own-initiative inquiry OII/6/2012/MHZ concerning the information provided by EPSO in Calls for expressions of interest concerning the remedies available to candidates.

Dear Mr Bearfield,

I am writing to inform you that I have decided to open an own-initiative inquiry concerning the information provided by EPSO in Calls for expressions of interest concerning the remedies available to candidates. The reasons for the inquiry are as follows:

On 13 March 2012, I received a complaint (553/2012/MHZ) concerning selection procedure EPSO/CAST/S/1/2011. I decided to open a telephone procedure to ask for EPSO's position on this complaint. The present own-initiative inquiry is separate from the handling of that complaint and concerns a general issue.

When examining the documents relating to the complaint, a specific section of the Call (Chapter X, "*Review/Appeal procedure*") came to my attention.

I note that in the above section EPSO informs candidates that they must lodge an administrative complaint under Article 90(2) of the Staff Regulations before submitting either (i) a judicial appeal under Article 270 TFEU and Article 91 of the Staff Regulations, or (ii) a complaint to the European Ombudsman.

The above wording calls for the following observations:

First, according to the established case-law<sup>1</sup> candidates in EU competitions may submit a judicial appeal within the three month time limit laid down in the Staff Regulations without the person concerned having to

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<sup>1</sup> For instance, Case T-294/03 *Gibault v Commission* [2005] ECR-SC-I-A-141 and II-635 paragraph 22, among many others.



precede the action with an Article 90(2) complaint. This case-law applies whether or not the person concerned is an existing member of staff.

Second, in line with the above case-law, the Ombudsman's consistent view is that Article 2.8 of his Statute<sup>2</sup> does not apply to candidates in recruitment competitions. This provision expressly applies only in the case of a complaint *"that concerns work relationships between the [EU] institutions and bodies and their officials and other servants"*. A complaint about the conduct of a competition does not fulfil this condition. Given that Article 2.8 constitutes a restriction on the fundamental right of all European citizens to turn to the Ombudsman (Article 43 of the Charter), it should not be given a wide interpretation that goes beyond the clear words of the legislator.

In light of the above, I consider it useful to suggest, by means of an own-initiative inquiry, that EPSO revise the above wording in future Calls. I would appreciate it if you would kindly submit an opinion on the matter by 31 July 2012.

Should your services require any further information or clarifications concerning this own-initiative inquiry, please do not hesitate to contact Mrs Marta Hirsch-Ziembinska (+33 388 17 27 46), the legal officer responsible for the inquiry.

Yours sincerely,

P. Nikiforos Diamandouros

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<sup>2</sup> Article 2.8 of the Ombudsman's Statute provides: *"No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90(1) and (2) of the Staff Regulations, have been exhausted by the person concerned ..."*