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MAX WEBER PROGRAMME FOR POST-DOCTORAL STUDIES

San Domenico di Fiesole, April 27, 2011

Mr. P. Nikiforos Diamadourous
European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403, FR-67001 Strasbourg Cedex
France

**Subject: The Opinion of the European Commission concerning my complaint,
ref. 2378/2010/AN**

Dear Mr. Diamadourous,

I would like first to thank you for following up my complaint and for your letter of 25 March 2011 with the Opinion of the European Commission. I also appreciate the detailed explanations and apologies by the European Commission and I thank Commissioner Maire Georghegan-Quinn for forwarding you their Opinion. Nevertheless, to me, the Opinion raises some questions that I would like to pass on to you, as my observations.

The questions refer to: **the transparency, the change of policy regarding the new post of the ERCEA Director, and the involvement of the ERC Scientific Council in the process.** In other words, my observations refer to the difficulty that I have in making the two conclusions of the Opinion mutually consistent.

As far as I can tell, the Opinion of the European Commission regarding my complaint is their first 'public' recognition that there has been a change of policy with respect to the policy set in its Communication to the Council and the European Parliament COM(2009)552. That communication was a follow up to the 27/03/2009 recommendations of the independent "Review of the ERC's structures and mechanisms". While it is normal that further overall assessments of the legal and organizational structure of the ERC are being performed, it seems to me a different matter to call 'premature' the final adoption of already agreed measures, when they are in their implementation stage (as was the case with the post of "Principal Adviser in Directorate-General Research, Director Designate of the European Research Council Executive Agency (ERCEA) in Brussels" - COM/2009/2390 and COM/2009/10222).

The communication COM(2009)552 made very clear a 'two-fold strategy': "[T]o take immediate and short term actions to implement the recommendations of the Review" and to "[A]ddress, in a medium term perspective, concerns associated with the underlying rules and regulations". In contrast, the Opinion of the European Commission seems to justify not adopting a key short term action on the need "to produce options for a lasting legal and organizational structure of the ERC for the next Framework Programme and beyond," as if the 'two-fold strategy' was now being perceived as being self-contradictory, or as if the recommendations of the Review Panel were only valid for Framework Programme Seven.

1. Should this change of policy, regarding COM(2009)552, not have been made public?

The Opinion explains at length how, as part of the established procedures, the Scientific Council had been involved in the selection process (as it indeed was, up to the selection following the June 2010 interviews; but it was not supposed to participate in the final September 15 2010 interview with the Consultative Committee on Appointments). It also quotes COM(2009)552: "**F**ollowing the successful appointment of the Director with such a profile, and with the prior agreement of the Scientific Council, it is anticipated that the post of the ERC Secretary General would not be maintained" (boldface is mine). However, it also recognizes that the involvement of the ERC Scientific Council in the process had a different character: "to ask the Commission in two letters dated 30 July and 9 September 2010 (...) to reconsider its position on the recruitment of the Director of the ERCEA and the subsequent merge of the ERC Secretary General and the ERCEA Director functions." Which is precisely what happened.

Even if as a scientist I may sympathize with the power of the ERC Scientific Council vis a vis the Commission, ultimately I think that "these letters (which) are internal documents," and the subsequent endorsement by the European Commission, seem to reflect a worrisome confusion of roles and rules.

2. The roles played by different actors and the reconsideration of rules, or positions: have they been consistent with the existing COM(2009)552 policy?

{Notice that I do not refer here to the undue pressures by the Chair of the Scientific Council of the ERC, which may have been a personal initiative}.

Furthermore, 30 July 2010 was before my one-day assessment tests took place and before the final interview with the CCA was confirmed (both 3 September 2010). It was also before the 30 August 2010 resignation of Andreu Mas-Colell as ERC Secretary General (he is currently Minister for Public Finances and Research of the Catalan Government).

3. Would it not have been more transparent (and less costly) to abort the appointment process in the summer instead of letting it agonize until the end?



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In summary, the Opinion of the European Commission clarifies most of the issues that I raised in my complaint of 5 November 2010, but I can not say that it answers the basic question I had raised: *"have proper administrative procedures been followed?"* Obviously by 'proper' I do not just mean 'within EU administrative law,' but the proper practices which avoid unnecessary costs and are based on the trust and transparency that I understand you want to see followed in all the institutions and bodies of the European Union".

Sincerely,

Ramon Marimon
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of the Spanish Government