



**P. Nikiforos Diamandouros**  
European Ombudsman

Ramón Marimón Sunyol  
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ITALIE

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Strasbourg, 25 -03- 2011

Complaint 2378/2010/AN

Dear Mr Marimón,

Please find enclosed the opinion that I received from the European Commission concerning your above complaint.

If you wish to make any observations on the opinion, please send them to me before 30 April 2011.

Please note that, if I do not receive any observations from you, I may close the case with a decision, based on the information you have already provided and the Commission's opinion.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure:

- Copy of the opinion submitted by the Commission on 23 March 2011

MÁIRE GEOGHEGAN-QUINN  
MEMBER OF THE EUROPEAN COMMISSION

Brussels, 23 MARS 2011

**Subject:** *Complaint by Mr Ramón Marimón, ref. 2378/2010/AN – request for information*

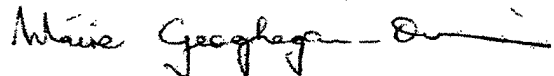
*Dear Mr Diamandouros,*

*Thank you for your letter of 14 December 2010 to President BARROSO about this case.*

*I am pleased to transmit to you the enclosed comments of the Commission concerning the above-mentioned complaint.*

*Naturally, the Commission remains at your disposal for any further information you may require.*

*Yours sincerely,*



*Máire Geoghegan-Quinn*

*Enclosures*

*Mr Nikiforos DIAMANDOUROS  
European Ombudsman  
1, avenue du Président Robert Schuman  
B.P. 403  
F-67001 STRASBOURG Cedex*

**Comments of the Commission on a request for information from the European Ombudsman**

**- Complaint by Mr Ramón MARIMÓN, ref. 2378/2010/AN**

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**I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

On 4 December 2009 the Commission published in the Official Journal a vacancy notice (COM/2009/10222)<sup>1</sup> for the post of Principal Adviser (Grade AD 14) Director Designate of the European Research Council Executive Agency (ERCEA).

A total of 116 applications were received. As a result of the application of the selection criteria the pre-selection panel decided that 10 candidates should be interviewed. Following the interviews, the pre-selection panel shortlisted three candidates and proposed them to the Commission's Consultative Committee on Appointments (CCA).

Mr Marimón was invited by letter of 3 September 2010 of the Directorate-General Human Resources and Security for an interview by the CCA.

Two of the shortlisted candidates withdrew from the procedure before their interviews with the CCA were due to take place.

On 15 September 2010, Mr Marimón was informed by the Directorate-General Human Resources and Security (DG HR) by email that the interview on 16 September 2010 for the selection procedure for the post of Principal Adviser - Director Designate of the ERCEA was cancelled.

Mr Marimón addressed a letter to the Director General of the Directorate-General of Research (DG RTD) on 20 September 2010 and a letter to the Commissioner in charge of Research and Innovation on 19 October 2010.

At its 1934<sup>th</sup> meeting<sup>2</sup> on 27 October 2010, the Commission decided to close the procedure for the selection of the ERCEA Director without appointment. DG HR notified Mr Marimón of this decision on 29 October 2010.

Mr Marimón lodged a complaint with the European Ombudsman on 5 November 2010.

On 12 November 2010 a reply from the Director General of DG RTD was sent to Mr Marimón (Ref. Ares(2010)805342) (Annex I) in response to the letters sent by him on 20 September 2010 and 19 October 2010, and to which he replied on 15 November 2010 (Annex II).

On 07 January 2011 a reply from the Director General of DG RTD was sent to Mr Marimón (Ref. Ares(2011)17564) in response to his letter of 15 November 2010 (Annex III).

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<sup>1</sup> OJ C295 A/01 of 4.12.2009.

<sup>2</sup> <http://ec.europa.eu/transparency/regdoc/rep/10061/2010/EN/10061-2010-1934-EN-F-0.Pdf>

## **II. THE COMPLAINT**

The complaint contains the following allegations and claims:

### **Allegations:**

*"1. The Commission handled recruitment procedure COM/2009/10222 in a non-transparent way.*

*In support of this allegation, the complainant argues that the Commission departed from the policy set out in its Communication to the Council and the European Parliament COM(2009)552, and from the content of the call for competition.*

*2. The Commission failed to reply to the complainant's arguments contained in his letters dated 20 September and 19 October 2010".*

### **Claims:**

- 1. "The Commission should apologise to the complainant for its actions;*
- 2. The Commission should reply to the complainant's arguments contained in his letters dated 20 September and 19 October 2010;*
- 3. The Commission should explain its reasons for closing the recruitment procedure COM/2009/10222 without appointing a candidate, and state whether this was due to a change of policy".*

## **III. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS**

- 1. Concerning the recruitment procedure being handled in a non transparent way and the Commission departing from the policy set out in its Communication to the Council and the European Parliament COM(2009)552**

The selection process has been described in section I above. It results from what is specified therein, that the procedure has been carried out in compliance with the European Commission's standard selection procedures applicable.

The procedure was also in compliance with the vacancy notice COM/2009/10222, that amongst others states that:

*"With close involvement of the ERC Scientific Council, the Commission will select and appoint the successful applicant, in accordance with its selection and recruitment procedures. A shortlist of candidates will be drawn up, and candidates included on the list will be invited to an interview by the Commission's Committee on Appointments and held in an assessment centre run by external recruitment consultants" (section "Appointment and conditions of employment").*

It should also be noted that, according to Article 5 of Commission Decision 2008/37/CE establishing the ERC and to Article 10 of Council Regulation 58/2003<sup>3</sup>, the Director of the Executive agency shall be appointed by the Commission taking into account the opinion of the Scientific Council.

Moreover, applicants do not receive an offer and there is no formal commitment for recruitment as long as the Commission, taking into account the opinion of the Scientific Council, has not yet taken a decision.

The Commission sympathises with and understands the disappointment of the complainant. Nevertheless, for the reasons above, the Commission is of the opinion that the selection and recruitment procedure was followed in a regular and in a transparent manner.

As regards the allegation that the Commission departed from the policy set out in its Communication to the Council and the European Parliament COM(2009)552, and from the content of the call for competition, the complainant does not specify precisely which policy or which part set out in the communication and in the call for competition the Commission departed from. The Commission therefore assumes that the policy referred to by the complainant was that which is stated in COM(2009)552 regarding the short term actions for the recruitment of the ERCEA Director:

"(i) Immediate and short term actions":

- "a. Establish the post of the ERCEA Director with the profile of a distinguished scientist with robust administrative and managerial experience. The Scientific Council will be involved in the subsequent selection process as foreseen in the legal and regulatory ERC framework and the Guidelines for Appointing Directors of Executive Agencies<sup>4</sup>. Timescale: Q2/2010*
- b. Following 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, taking into account the term of the incumbent. Timescale: Q2/2011".*

While the recruitment process was ongoing in conformity with the provisions of the legal base of the specific programme "Ideas" and the published vacancy notice, the Commission had also started the preparation of the next Framework Programme for Research and Innovation. In that context, the initiatives launched under the 7<sup>th</sup> Framework Programme for Research, such as the setting-up of the executive agencies in the research area, namely the Research Executive Agency and the Executive Agency of the European Research Council, are subject to an overall assessment. As part of this assessment, a specific ERC Task Force has been set up by common agreement between the Commission and the ERC Scientific Council in order to produce options for a lasting legal and organisational structure of the ERC for the next Framework Programme and beyond.

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<sup>3</sup> Laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes OJ L 11/16.1.2003

<sup>4</sup> SEC(2009)27.

These developments led the ERC Scientific Council to ask the Commission in two letters dated 30 July and 9 September 2010<sup>5</sup> to review the overall architecture of the ERC and 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. In the circumstances, these actions were considered premature, and the Commission therefore took its Decision of 27 October 2010 to close the recruitment procedure without appointing a Director for the ERCEA<sup>6</sup>.

## **2. Concerning the failure to reply to the complainant's arguments contained in his letters dated 20 September and 19 October 2010**

On 12 November 2010 a reply from the Director General of DG RTD was sent to Mr Marimón (Ref. Ares(2010)805342) (Annex I) in response to the letters sent by him on 20 September 2010 and 19 October 2010.

In this letter it was indicated that the consolidation of the ERC will be part of the preparation of the next Research Framework Programme. Bearing in mind the observations above, the Commission agrees that this reply could have been further detailed as regards the policy orientations for the future of the ERC which is therefore provided in the present document.

The Commission also regrets that this letter was not sent to the complainant within the deadline set out in the Code of good administrative behaviour for staff of the European Commission in their relations with the public<sup>7</sup>, namely 15 working days from the receipt of the letters of the complainant.

## **IV. THE CLAIMS**

### **1. "The Commission should apologise to the complainant for its actions"**

As already stated above the Commission understands the complainant's disappointment and sympathises with him. The Commission regrets any personal inconvenience that the complainant might have incurred in the course of this procedure.

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<sup>5</sup> These letters are internal documents. The Ombudsman is invited to consult them at Commission premises.

<sup>6</sup> It should be noted that Annex I to the Council decision of 19 December 2006 concerning the specific programme "Ideas" implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)<sup>6</sup> - under the heading of the Commission' role - provides that the appointment of the Director and the Senior Staff of the dedicated implementation structure, namely the ERCEA, shall take into account the views of the Scientific Council. In conformity with this, the Scientific Council has been duly associated to the various steps of the selection and recruitment procedure in compliance with the Communication COM(2009)552 and as indicated in the vacancy notice COM/2009/10222.

As stated in the Scientific Council Statement of 16 November 2010, the ERC Scientific Council had requested the suspension of some of the short term adjustments previously foreseen. Specifically, the Scientific Council requested to maintain the status quo of the current organisational arrangements until the above-mentioned ERC Task Force delivered its results.

<sup>7</sup> OJ L264 of 20.10.2000. p.63.

**2. "The Commission should reply to the complainant's arguments contained in his letters dated 20 September and 19 October 2010"**

The answers have already been set out above in point III.

In his letters referred to above, the complainant indicates that he had been contacted by the Chair of the Scientific Council, of the ERC who had asked him to withdraw his candidacy. The complainant's argument relates to the Chair of the Scientific Council. The Chair has explained that while it is true that contacts were made to explain the change of position of the ERC Scientific Council, no undue pressure was put on the candidate to withdraw his application.

**3. "The Commission should explain its reasons for closing the recruitment procedure COM/2009/10222 without appointing a candidate, and state whether this was due to a change of policy"**

The reasons for closing the recruitment procedure have been given under section III, above. These were due to a change in policy after the publication of the vacancy notice which was necessary in order to allow the decision makers to review the entire structure of the ERC and improve its functioning.

#### **IV. CONCLUSIONS**

Taking into consideration the facts described above, the Commission can draw the following conclusions:

- The Commission was fully transparent as regards the selection and recruitment procedure.
- As regards the communication COM(2009)552 and the cancellation of the selection and recruitment procedure due to the policy reorientation for the future of the ERC, the Commission agrees that further explanations could have been provided to the complainant. The Commission apologises to the complainant for this omission.

#### List of enclosures

- Annex I: Reply of 12 November 2010 from the Director General of DG RTD to Mr Marimón in response to his letters of 20 September 2010 and 19 October 2010 (Ref. Ares(2010)805342)
- Annex II: Letter of 15 November 2010 of Mr Marimón to the Director General of DG RTD
- Annex III: Reply of 07 January 2011 from the Director General of DG RTD to Mr Marimón (Ref. Ares(2011)17564).



EUROPEAN COMMISSION  
RESEARCH DIRECTORATE-GENERAL

The Director-General

Annex I

Brussels, 12 NOV. 2010

Prof. R. Marimon  
European University Institute  
Villa La Fonte  
Via delle Fontanelle 10  
50014 San Domenico di Fiesole  
ITALIA

**Subject: The selection process for the post of "Principal Advisor in Directorate-General Research, Director Designate of the European Research Council Executive Agency (ERCEA) in Brussels" - COM/2009/2390 and COM/2009/10222**

**Ref.: 1. your letter of 20 September 2010  
2. your letter of 19 October 2010**

Dear Prof. Marimon,

Thank you for your letters in reference.

As you know, the Commission has decided to close the procedure mentioned here above without appointment.

I want to thank you for your personal interest in applying to this challenging position and, more broadly, for your lasting commitment to the development and success of European science in general and the European Research Council in particular. I am certain we share the goal of turning the ERC into a world class frontier research organization, something which is in sight, as the recent Nobel Prize attributed to one of the ERC Starting Grantee, Prof. Novoselov, tends to indicate.

However, much work remains to be done to further consolidate the ERC and establish it in a stable manner as an independent, properly funded and managed entity, to quote your own words. With the preparation of the next Framework programme now entering an active phase, I hope we shall continue to benefit from your support and constructive contribution to this endeavour, which is so important for European research and, beyond this, our future economic and social prosperity.

Yours sincerely,



Robert-Jan SMITS

cc: I. Souka, J. Bell, J. Nociar





San Domenico di Fiesole, November 15, 2010

Mr. Robert-Jan Smits  
 Director-General of  
 Directorate-General for Research  
 European Commission  
 Square de Meeus, 8  
 1050 - Brussels

**Subject: The selection process for 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**

**Ref: Your letter of 12 November 2010**

Dear Robert-Jan,

Thank you for your letter in reference, your acknowledgment that we share the same goal - that of turning the ERC into a world class frontier research organization - and for your request for my "support and constructive contribution to this endeavour".

With the closing of the post of Director Designate of the European Research Council without appointment, a unique opportunity to materialize 'my constructive contribution to this endeavour' has been lost. However, in my (12/09/2010) letter to you, I was not raising a personal issue (after all, any of the three final candidates could have been selected), but rather, serious concerns regarding the irregularities I had witnessed in the final stages of the selection process. In my (19/10/2010) letter to Commissioner Geoghegan-Quinn I also raised similar concerns and I added: "I could withdraw my candidacy if I were to see that by doing so I could help the process of consolidation of the ERC as an independent, properly funded and managed world-class research funding institution." I was expecting that your letter would clarify my concerns and provide an explanation of the European Commission's rationale for the failure of the selection procedure in question. I still hope such clarifications and explanations will be publicly provided, since I think they are important for the transparency and trust on which the EU organizations, and the ERC in particular, must be founded.

In spite of this experience, rest assured that my "lasting commitment to the development and success of European Science in general and the ERC in particular" remains intact and, therefore, whenever it is appropriate you can count on my collaboration.

Sincerely,

Ramon Marimon

Cc: Ms Irene Souka, Director-General for Human Resources and Security, Chair of the CCA  
 Mr John Bell, Head of Cabinet of Commissioner Máire Geoghegan-Quinn  
 Mr Juraj Nociar, Head of Cabinet of Vice-President Maros Šefčovič



EUROPEAN COMMISSION  
RESEARCH DIRECTORATE-GENERAL

The Director-General

Annex III

Brussels, 22 DEC. 2010  
RTD/DG/JM/ks

Dear Prof. Marimon,

Ref.: your letter of 15 November 2010

Thank you for your recent letter in reference and the reiterated commitment to the ERC and the future of European research in general. This is much welcome, as every effort must be made to secure the best conditions for the success of the European Research Area, despite the challenging economic conditions in which we have to operate.

Concerning the selection process for the Director of the ERC Executive Agency, I would like to assure you that the comments lodged in your complaint with the Ombudsman will be addressed by the Commission, within the established procedure. Accordingly, you will be informed in due time of its outcome.

Wishing you success in your activities at EUI, I remain,

Yours sincerely,



Robert-Jan SMITS