**APPEAL**

**Introduced on the basis of**

**Article 90 § 2 of the Staff Regulations**

**To the Appointing Authority of the European Personnel Selection Office (EPSO),**

**First Name, Name**

Candidate for (EPSO/), competition, candidate number: …………

**Hereafter referred to as the Appellant,**

**Subject of the Appeal**

The present appeal refers to the decision of the competition panel (EPSO/ ) by which the appellant was informed that the number of points which had been attributed to him/her in the pre-selection tests (so-called « Talent Screener) were insufficient to allow him/her to go forward to the next stages of the competition referred to.

**THE FACTS**

By a judgement of 16th September 2013, (joint cases F-23/12 et F-30/12, Glantenay against/Commission), the Civil Service Tribunal (CST) declared the so-called "Talent Screener" selection tests to be illegal. In this judgement, the CST ruled that:

***« 71      (…) it is noted that the means of selection on the basis of qualifications used by the Appointing Authority in the competition notice during the first stage consisted of asking the appellants, by means of a questionnaire, if they believed that they met a series of conditions relating to their training and professional experience. Then, on the basis of the replies from all the candidates, the Appointing Authority established a threshold below which candidates that did not obtain a sufficient number of positive replies after weighing these, were eliminated. Conceived in this way, the Court considers that such a method is contrary to the provisions of the Staff Regulations as well as to the general principles governing competitions.***

***72      In effect, it emerges from Article 5, sub-sections 1 and 3 of Annex III of the Staff Regulations, that in the case of a selection on the basis of qualifications, the panel is responsible for checking if the diplomas and experience of the candidates meet the conditions laid down by the competition notice (see, in this sense, the verdicts of the European Court of Justice of14th December 2011, Commission/Pachtitis, T‑361/10 P, point 43, and Commission/Vicente Carbajosa e.a., T‑6/11 P, point 58). The selection means governing the first stage attributes only to the panel the task of the weight to be attached to each question, then of counting the number of points obtained by each candidate and finally, the role of determining, on the basis of the number of people competing in this first stage as well as the number of points they have obtained, the threshold of points required to be admitted to the second stage of the selection procedure on the basis of qualifications.***

***73      On the other hand, this selection method does not provide for any control by the panel as to the relevance of titles and professional qualifications held by applicants. Such a method necessarily implies that those candidates are not selected based on the relevance of their qualifications or professional experience, but on the self-evaluation of candidates, which is not a sufficiently objective criterion for selecting the best candidates, or even to ensure the coherence of the selection made.***

74 In addition, it should be noted that according to the selection method used in this case by EPSO, the number of points that a candidate needed to obtain in order for his/her candidature to be examined at the second stage depended on the points of the other candidates. As a result, a candidate could be eliminated simply because other candidates had responded positively to questions following an excessively favourable reading of the criteria laid down, a misinterpretation of the questions or an incorrect assessment of the value of their diplomas or professional experiences. Each question required a very delicate assessment by the candidate on the relevance of his or her diplomas and professional experience (see, in particular, with regard to delicate assessments which are sometimes necessary to assess the relevance of a degree or a professional experience, judgment of 24 April 2013, CB/Commission, F 73/11, paragraphs 50 to 52). In this sense, ***it must also be noted that this method does not guarantee sufficient objectivity and consistency of marking***.

75 On this point, it should be noted that the selection method used in this case by EPSO differs from those used during other competitions which were brought to court and which have not been cancelled. Indeed, although in some competitions, applications are discarded before the first tests for reasons related to the relevance of academic and professional experience communicated, it is nevertheless the case that in such competitions, decisions to exclude certain candidates are adopted by the jury after it has actually examined the relevance of qualifications and work experience communicated. Even if in such competitions, where the veracity of the information communicated by candidates is only checked at the end of the competition, certain candidates may also be admitted to the first tests on the basis of false statements, it must be stressed that in these competitions, the number of candidates to be admitted to the first tests is not limited so that the error or fraud of these candidates can only have a minimal impact on other candidates, unlike the competition in question.

76 Consequently, it must be noted ***that by foreseeing the elimination of some candidates on the grounds that their diplomas and professional experience would not be relevant enough without this relevance being actually considered by the panel, the provisions of the competition notice relating to the first stage of the selection procedure on qualifications, unduly restrict the prerogatives of that panel and that, as a consequence, they must be considered as being illegal***."

In this case, it is also the talent screener evaluation method employed during the first phase of selection that led to exclude the application of the appellant.

This decision is based, as is apparent from the case-law cited above, on a subjective assessment of degrees, diplomas and professional experience required to be eligible to compete by the candidates themselves. In the absence of an assessment by the jury of degrees, diplomas and professional experience of all candidates, the selection procedure disregards the statutory provisions.

As CST has stated in its judgment of 16 September 2013 cited above, such an approach disregards indeed Article 27 of the Staff Regulations, Article 5, paragraphs 1 and 3, of Annex III of the Staff Regulations and the general principles applicable to competitions recalled by the CST because its control falls outside the competition panel and because this method does not guarantee sufficient objectivity and consistency of marking.

In response to requests for review made on the basis of the arguments above, EPSO informed the candidates that, to comply with the case-law, the panel carried out a check of the files.

The panel, however, did not provide the slightest proof of this check for all candidates.

In this regard, it should be noted that, as the selection procedure had been initiated on illegal bases, decisions taken in such a framework are presumed to be illegal.

In addition, the effectiveness of the check, which is the responsibility of the panel, is fraught with practical difficulties when some candidates have agreed, at the time of their application that the analysis of the conditions for admission is made on the basis on their personal file. Assuming that the jury made the check by these means, this check should appear in the record of consultations of Sysper2, which the panel has been unable to show. In addition, the panel does not provide any explanation as to the methodology followed to ensure comparability of data provided by the candidates on paper and those which must be searched by the panel in the Sysper2 personal file of candidates who accepted such a check.

The appellant in particular does not know if the panel merely verified information contained in Sysper2 in case of doubt, if only certain information (how the relevant information was defined and identified) ...

What is more, for those who preferred to submit a paper version of the application, the appellant does not know if the panel has kept the proof that the consultation had been actually carried out.

In the particular context of this competition resulting from a judgment of the Civil Service Tribunal declaring the methodology of the panel set out in the competition notice which fixed the legal framework of the proceedings, to be illegal, it is for EPSO and the panel to demonstrate that the procedure is not tainted by any illegality, The irregularities referred to above may be presumed as the panel recognizes having to remedy to them after the facts without the competition notice being changed.

As for the method of selection used, the appellant notes that the weighting given to each selection criterion was not communicated immediately, but after the panel had received applications.

No justification for this way of proceeding was given by the Appointing Authority in the competition notice, or by the panel.

This method does not guarantee the objectivity of the selection even though there was no obstacle to communicating these criteria to candidates beforehand, in accordance with the objective of a competition which is, according to settled case-law, to inform candidates in the most complete way possible so they can weigh up the opportunity to apply and demonstrate, if necessary, the required profile.

The Court stated in particular in this respect, in its judgment of 13 March 2002 as follows:

***"35 In this respect, it is settled case-law that, notwithstanding its discretion regarding the terms and content of the tests in a competition, the panellist bound by the published text of the competition notice. Indeed, the essential role of the competition notice is to inform the persons concerned as accurately as possible, on the conditions of eligibility for the post, to enable them to judge for themselves whether they should apply for it, on the one hand, and, secondly, what supporting documents are important for the work of the panel and should therefore be added to the application (see judgement Zaur - Gora and Dubigh / Commission, paragraph 47 and case-law cited).***

***36 As regards more particularly a condition of admission regarding the professional experience such as that which is the subject of this case, it has certainly been held that the function of the competition notice, viz. to "give those interested the most accurate information possible" is not in conflict with the panel's responsibility to determine case by case whether the experience invoked by each candidate corresponds to the level required by the Staff Regulations and the competition notice (see, in particular, the Judgments of the Court of 12 July 1989, Belardinelli ea / Court of Justice, 225/87 , Rec . p. 2353, paragraph 13, and the Court of 21 November 2000, Carrasco Benítez / Commission , T-214/99 , ECR-SC . IA- 257 and II -1169, paragraph 69). However, the specific assessment of the level of professional experience must take place within the framework outlined by the text of the notice of competition and does not in any way authorise the panel to add to it a condition that is not listed in reality. "(CST, 13.3.2002, Bal / Commission, case T-139/00, ECR-SC. II- 139).***

The wording of some questions also lacked clarity and induced candidates to answer incorrectly. For example ............................

The alleged change in the method used by the jury to comply with the above CST judgment and the many difficulties encountered by the candidates to understand how to answer the ambiguously-posed questions requires the appointing authority to undertake a thorough review of all stages of the selection procedure,. All the more as the Staff Committee was not properly consulted for this competition, which it considered as not providing sufficient guarantees of objectivity.

In addition, the jury acknowledged that some questions were worded ambiguously without measures being taken to enable the candidate to answer reformulated questions or (I think this is what is meant by the FR sentence, but best to clarify with the lawyer) the panel having the possibility to request further information from the applicants, in accordance with the principle of sound administration and the duty of care.

The appellant therefore requests that the Appointing Authority send him/her any document describing what measures have been taken to ensure the objectivity of the selection process, with regard to the setting of weighting criteria after the receipt of applications, when the Staff Committee has criticised these competitions, which it did not considerate have presented the guarantees of objectivity, usually applied to "sensitive" selection procedures.

The contested decision is thus deeply flawed and is not supported by a reasoned statement of the requisite legal standard.

Under these conditions, it is necessary to withdraw it.

Brussels, 25 February 2014