



## Decision in case 1708/2019/NH on the EU Publications Office refusing to publish a notice for tender in the Official Journal of the European Union

Decision

**Case 1708/2019/NH - Opened on 07/10/2019 - Decision on 08/05/2020 - Institutions concerned** Publications Office of the European Union ( No maladministration found ) | Publications Office of the European Union ( Settled by the institution ) |

The case concerned the refusal by the EU Publications Office to publish a contract notice in the Official Journal of the EU because it contained text in more than one language. The complainant, who works for a Belgian cultural foundation, contended that the Publications Office had failed to give the legal basis for its refusal.

In the course of the Ombudsman inquiry, the Publications Office gave the legal basis for refusing to publish the complainant's notice. It also explained how it handles issues of this kind.

The Ombudsman closed the inquiry with the finding that the Publications Office had settled the aspect of the complaint that concerned the legal basis for the refusal to publish the contract notice. The Ombudsman further found that the Office's explanations as to how it handles issues of this nature do not reveal any maladministration. The Ombudsman made a suggestion for improvement to ensure that language requirements are clearly explained on the Publication Office's website.

Background to the complaint

- 1.** The complainant works for a Belgian private foundation in charge of extensive renovation and building works for a museum. As part of the foundation's activities, the complainant launched a call for tenders to award a contract for the purchase of services and supplies.
- 2.** Under EU rules on public tendering, contract notices of a higher value have to be published in the Official Journal of the EU. [1]
- 3.** The complainant submitted a contract notice to the Publications Office of the EU (hereafter: 'the Publications Office') [2] for publication in the Official Journal of the EU in September 2019. The complainant submitted his notice in Dutch, with the exception of one sentence that was inadvertently in French. The Publications Office refused to publish the complainant's contract notice in the Official Journal because the notice contained two languages (Dutch and French).



4. The complainant questioned the Publications Office's refusal to publish the contract notice. He argued that the refusal would force him to cancel the publication of the same notice in the Belgian Official Journal and to restart the whole procedure.
5. In its reply, the Publications Office confirmed its decision not to publish the notice in the Official Journal. It informed the complainant that he would need to re-submit a notice for publication. It insisted that a notice should be drafted in one language only.
6. The complainant asked the Publications Office to give him the **legal ground** for the refusal to publish his notice. The Publications Office replied that it had followed the Official Journal's production rules, which aim to ensure language conformity.
7. Dissatisfied with the explanations provided by the Publications Office, the complainant turned to the European Ombudsman in September 2019.  
The inquiry
8. The Ombudsman opened an inquiry into the complainant's concern that the Publications Office had failed to give valid reasons for its decision not to publish the contract notice in the Official Journal of the European Union.
9. In the course of the inquiry, the Ombudsman asked the Publications Office to clarify the legal basis for refusing to publish the complainant's notice; what information it provides to the public regarding language requirements for notices; and the possibilities offered to correct notices in case of obvious clerical errors.
10. The Publications Office explained that the legal basis for refusing to publish the contract notice because it contained a mix of languages was Article 51(3) of Directive 2014/24/EU on public procurement. [3] The Publications Office acknowledged that its decision refusing publication did not refer to that provision. However, EU case-law does not require EU institutions and bodies to reason their decisions with reference to a specific legal basis. It is enough for the decision to give sufficient details to allow the person concerned to ascertain whether the decision is well-founded and to make it possible to challenge it before a court. [4] In this case, the complainant had received tailored reasoning, describing which specific sections in the contract notice contained a different language. This allowed him to correct the mistake rapidly.
11. The Publications Office further said that there are no guidelines on its website regarding language requirements for contract notices. However, the requirements are clearly set out in the relevant legislation (Directive 2014/24/EU) which is referred to on the website. In addition, the website [5] offers a step-by-step tool to fill in the form, and there is a helpdesk available by e-mail and by phone to reply to any questions.
12. According to the Publications Office, contract notices cannot be corrected or modified once submitted to the Publications Office. The only possibility is either to submit an official corrigendum, which will be annexed to the notice, or to re-submit a corrected version of the notice. The Publications Office stressed that it is in general quick to handle newly submitted notices, usually in less than 48 hours.



**13.** In the course of the inquiry, the complainant informed the Ombudsman that he had submitted a new corrected version of the contract notice to the Publications Office, which was later published. He had also published a corrigendum to the contract notice in the Belgian official journal instead of having to restart the procedure, as he initially believed he would have to do.

The Ombudsman's assessment

**14.** The Ombudsman is satisfied that the Publications Office has now provided the legal basis for refusing to publish the complainant's contract notice, which is Article 51(3) of Directive 2014/24/EU. According to that article, "[n]otices (...) shall be published in full in the official language(s) of the institutions of the Union chosen by the contracting authority". While the use of brackets in the word "language(s)" may leave the provision open to some interpretation, the Publications Office's interpretation is reasonable, that is, that contract notices may be published in many languages, but that each full notice must be in one language only. As it is part of the Publications Office's role to verify "linguistic presentation requirements" [6], the Publications Office was entitled to refuse to publish the contract notice because it contained a mix of languages.

**15.** The responsibility for the entire content of the contract notice must lie with the contracting authority. The Ombudsman therefore finds it reasonable that the Publications Office does not allow a contracting authority to make corrections to a contract notice that does not fulfil the language requirement in Article 51(3) of Directive 2014/24/EU, but that it instead requires the contracting authority to resubmit the corrected notice in full. The fact that the Publications Office seems to be able to handle re-submitted notices quickly, usually in less than 48 hours, adequately compensates for any potential inconvenience for the contracting authority. In addition, the Ombudsman considers that the detailed feedback given by the Publications Office to the complainant in this case, pinpointing the language errors, is good administration.

**16.** Since the Publications Office has now provided the legal basis for refusing to publish the complainant's notice, this aspect of the complaint is settled. The Publications Office's explanations as to how it handles issues of this nature do not reveal any maladministration.

**17.** The Ombudsman sees room for improvement in the information provided on language requirements when using the Publications Office's website to submit contract notices. The Ombudsman will make a suggestion for improvement in that regard.

Conclusions

Based on the inquiry, the Ombudsman closes this case with the following conclusions:

**The Publications Office has settled the aspect of this complaint that concerned the legal basis for its decision not to publish the contract notice in the Official Journal of the European Union.**

**The Publications Office's explanations as to how it handles issues of this nature do not reveal any maladministration.**



The complainant and the Publications Office will be informed of this decision .

Suggestion for improvement

**The Publications Office should consider making it clear on its website that contract notices will not be published if they contain a mix of languages . Such information could for example be included in the “Frequently Asked Questions” sections of the SIMAP and the eNotices websites, and in the step-by-step form filling tool. The Publications Office could also consider providing such information to official TED eSenders.**

Emily O'Reilly

European Ombudsman

Strasbourg, 08/05/2020

[1] Directive 2014/24/EU on public procurement lays down that tenders for public contracts above a certain threshold (currently EUR 139 000) must be published in the online version of the Supplement to the Official Journal of the European Union - the Tenders Electronic Daily (TED) portal.

[2] The Publications Office of the EU is an interinstitutional office tasked with publishing the publications of the institutions of the European Union. It is responsible, among other things, for publishing the Official Journal of the European Union.

[3] This article lays down that “ *Notices referred to in Articles 48, 49 and 50 shall be published in full in the official language(s) of the institutions of the Union chosen by the contracting authority.*”

[4] See judgment of the Court of Justice of 26 November 1981, *Bernard Michel v European Parliament* , Case 195/80, paragraph 22.

[5] The Publications Office operates three websites related to contract notices: SIMAP (the information system for European public procurement), available at <https://simap.ted.europa.eu/> , TED eNotices (an on-line tool for preparing public procurement notices), available at <https://enotices.ted.europa.eu> and TED eTendering (a platform allowing free electronic access to call for tenders), available at <https://etendering.ted.europa.eu> .

[6] Decision 2009/496/EC on the organisation and operation of the Publications Office lays down, in Article 5, that the “ *tasks performed by the Office shall include (...) page make-up and verification of the texts (...) in compliance with the typographical and linguistic presentation requirements;* (emphasis added)” as well as “ *acceptance as regards quality*”. See



<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1425380943945&uri=CELEX:32009D0496>