

Decision on how the European Personnel Selection Office (EPSO) addressed concerns about language discrimination in a selection procedure for EU staff in the field of international cooperation (case 761/2021/PL)

Decision

Case 761/2021/PL - Opened on 13/07/2021 - Decision on 20/10/2022 - Institution concerned European Personnel Selection Office (No maladministration found) |

The case concerned the language requirements set by the European Personnel Selection Office (EPSO) in a selection procedure for recruiting EU staff in the field of international cooperation. The complainant considered that these requirements discriminated against candidates whose first language is English, French, Portuguese or Spanish.

The Ombudsman found the explanations given by EPSO reasonable as to why it had chosen the language requirements, in particular, its explicit intention to prevent discrimination on the basis of language knowledge. She therefore found no maladministration in how the language requirements were set.

However, the Ombudsman understood how the complainant perceived that the language requirements placed at a disadvantage candidates with specific knowledge of a certain set of the required languages. To avoid such a perception in future selection procedures with similar specific language requirements, she therefore made a suggestion to EPSO on how it presents in the competition notice the language requirements and the rationale for choosing such requirements.

Background to the complaint

1. The complaint concerned a selection procedure organised by the European Personnel Selection Office (EPSO) for recruiting EU administrators in international cooperation and managing aid to non-EU countries. [1] The competition notice [2] , which was published on 5 December 2019, required candidates to have knowledge of at least two official EU languages:

- language 1, to be chosen among any of the 24 official EU languages, and which would be used in the computer-based multiple choice tests;
- language 2, English or French, for the subsequent 'talent screener' and 'assessment centre' tests.



2. Candidates received additional points in the 'talent screener' [3] phase of the procedure, for proven knowledge of English, French, Portuguese, Spanish, Arabic, Mandarin or Russian, at minimum B2 level [4] , if they had not chosen these languages as either of their first two languages. [5]

3. In November 2020, the complainant, a candidate in the selection procedure, who had failed to pass the talent screener stage, asked EPSO to review how his application had been marked. As part of his request for review, he raised concerns about the language requirements of the selection procedure, which he claimed discriminated against candidates whose first language is English, French, Spanish or Portuguese.

4. In its reply, EPSO stated that the selection criteria are defined based on the direct input of the institutions that request the selection procedure and which intend to recruit the successful candidates. EPSO stated that one of the reasons for the language requirements was to select candidates with a knowledge of more than two languages, which would make them better suited to the role in question.

5. Dissatisfied with EPSO's reply, the complainant turned to the Ombudsman in April 2021.

The inquiry

6. The Ombudsman opened an inquiry into how EPSO addressed concerns about language discrimination in the selection procedure in question.

7. In the course of the inquiry, the Ombudsman met with EPSO, received the reply of EPSO on the complaint and, subsequently, the comments of the complainant in response to EPSO's reply.

Arguments presented to the Ombudsman

8. The complainant argued that the language requirements discriminated against candidates whose first language is English, French, Spanish or Portuguese, making it harder for them to obtain the additional points for languages than for non-native speakers. The complainant contested the reasons given by EPSO to justify the language requirements, arguing that candidates with weaker language skills (B2) in the relevant languages could obtain higher marks than native speakers.

9. EPSO argued that the appointing authority enjoys wide discretion in determining the rules and conditions under which a competition is organised, the criteria required for the posts and the 'interest of the service', which the selection procedure should serve.

10. EPSO considered that the language requirements, assessed in the talent screener, were



justified, as successful candidates could be posted in an EU delegation located in countries where specific languages are most widely spoken. Therefore, candidates who had knowledge of those languages at minimum B2 level obtained more points. The more of those languages a candidate had knowledge of, the more points they would receive. However, the language requirement assessed in the talent screener did not necessarily reward the candidate's first languages.

11. EPSO argued that the language requirements were formulated in such a way to put candidates on an equal footing, avoiding giving an advantage to candidates with a native knowledge of certain languages. If a candidate were also to be awarded points for their first two languages (language 1 and language 2, see paragraph 1 above), this would mean giving bonus points to particular native speakers and thus favouring those native speakers over others. This would lead to indirect discrimination based on nationality. In contrast, by giving extra points only to languages other than the first two languages, all candidates were put on an equal footing. Moreover, if candidates had knowledge of more than one language at C1 level, they could have selected this as their language for the computer-based test and gained additional marks in the talent screener.

12. EPSO also explained in detail how it had interacted with the European Commission when deciding on the substantive aspects of notices of competition, including defining their content, the selection criteria and scoring. EPSO also described how it oversees the process.

The Ombudsman's assessment

13. EU institutions enjoy a wide margin of discretion when determining the rules and conditions under which a selection procedure is organised based on the ability criteria required for the posts to be filled and the interest of the service [6]. However, differences of treatment on the grounds of language knowledge must be justified by a legitimate objective of general interest, such as the interest of the service or the needs relating to the duties that the persons recruited will be required to carry out. In such cases, institutions must set out the grounds for the difference in treatment and set clear, objective and foreseeable criteria. This should enable candidates to understand the grounds for the requirements. [7]

14. In this selection procedure, it is clear that there was a legitimate interest of the service in recruiting staff members that can speak certain languages. In this context, the Ombudsman acknowledges the efforts made by EPSO not to give candidates with a native knowledge of the listed languages an automatic advantage. This was done, in order to put candidates on an equal footing.

15. At the same time, the Ombudsman understands how, to the complainant, it appeared that candidates with a native knowledge of the listed languages were in fact put at a *disadvantage*. It is true, for example, that candidates with knowledge of *more* of the desired languages could have received equal talent screener points compared to candidates with knowledge of *fewer* of the desired languages, depending on the candidates' choice of language 1 and language 2. It is



understandable that this may be perceived as being less optimal in terms of the EU administration's need for the languages in question.

16. However, the Ombudsman accepts EPSO's argument that the language requirements put all candidates on an equal footing, since they all had to have a third language (or more) to get points in the talent screener. Given candidates were also free to choose which of their languages to select for the different stages of the procedure, the Ombudsman finds that the language requirements were determined in a reasonable manner. However, the Ombudsman will make a suggestion for improvement regarding how EPSO presented the language requirements in the competition notice.

Conclusion

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

There was no maladministration by EPSO.

Suggestion for improvement

In future selection procedures with specific language requirements, EPSO should communicate more clearly the language requirements and their rationale, to avoid the perception that candidates with knowledge of one set of languages is disadvantaged over other candidates. This implies explaining more clearly in the competition notice the rationale for the language requirements, including explaining the objectives of general interest, particularly the interest of the service, as well as how the requirements aim to ensure fairness between candidates according to their respective language knowledge.

Emily O'Reilly European Ombudsman

Strasbourg, 20/10/2022

[1] EPSO/AD/380/19 (AD7) Notice of Competition available at: <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=OJ:C:2019:409A:FULL&from=EN> [Link], published on 5 December 2019.

[2] The notice of competition sets out the criteria and rules applying to the selection procedure.

[3] For more information on the talent screener, see: https://epso.europa.eu/help/faq/2711_en [Link]



[4] According to the Common European Framework of Reference for Languages (CEFR)

[5] Annex II of the notice of competition.

[6] See judgment of the Court of First Instance of 5 February 1997; case T-207/95, Ibarra Gil v. Commission, paragraph 66:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995TJ0207> [Link]

[7] See, for example, judgment of 27 November 2012, case C-566/10 P, *Italy v Commission*, paragraph 90:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=130402&pageIndex=0&doclang=EN&mode=lst&d>
[Link]