

31 October 2012  
11:19

# European Ombudsman

## Complaint form

### Complaint about maladministration

#### Your complaint is ready to be submitted

The complaint that you are about to submit is set out below. Please check its contents.

If you wish to modify the complaint, please use the "Back" button to access the relevant page, then modify the contents.

When you are ready to submit your complaint, please click the "Submit the complaint" button.

#### European Ombudsman

First name:

Surname:

On behalf of (if applicable):

Address line 1:

Address line 2:

Town/City:

County/State/Province:

Postcode:

Country:

Germany

Tel.:

Fax:

E-mail address:

**Part 2 - Against which European Union (EU) institution or body do you wish to complain?**

European Personnel Selection Office

**Part 3 - What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.**

I complain about refused access to documents. I requested access under Regulation (EU) 1049/2001, but EPSO neither granted access, nor did they justify their refusal by explaining whether and why an exception according to Article 4 applies.

In a human-readable short form (paraphrased by me), the dialog went like this:

***Me on July 2, 2012:*** Please give me anonymized answer data from the ongoing EPSO concours in a large table whose columns are: Question ID, Candidate ID, Question Type, ID of the correct answer, ID of the actual answer, time spent, language, for Situational Judgement questions also the IDs of the correct worst option and the actually picked worst option. (see Annex I, request for access to documents)

***EPSO on August 9, 2012 (after having extended the deadline on July 23 without proper justification):*** We indeed have these data, but they are stored in more than one document. Therefore, the table you request does not exist, and we cannot give you a non-existing table. (see Annex II, rejection)

***Me on Aug. 21, 2012:*** OK, fine, then just hand over those parts of your existing documents which I will need to construct my desired table myself. So, all you need to do is take your existing documents, remove the information I should not see, and give me the rest. No joining of data from different documents is needed on your side. And, by the way, I forgot to also ask for the “difficulty” column, please include that one too. No exceptions according to Art. 4 apply, so you really have to hand these data over to me. (see Annex III, confirmatory request for access to information)

***EPSO/Secretary General on Aug. 30, 2012 (pre-dated to Aug. 29):*** Since you are asking for one single table which does not exist, we cannot help you. Also, what you are asking is too complicated for us to do. And these data are stored in more than one database, therefore we cannot share them with you. (see Annex IV, rejection of confirmatory request)

***Me on Sept. 17, 2012:*** You misquoted me. In the confirmatory request, I did not ask for one single table but only for parts of existing documents. Also, the complexity of the data or of the act of sharing them is no excuse for a refusal. Spreading data over multiple databases will not help you to hide information from citizens. Finally, your rejection is missing some required parts (information about possible recourse). (see Annex V, request for clarifications)

***EPSO/Secretary General:*** (long silence).

***EPSO/Secretary General on Oct. 23, 2012:*** We did not reject your application, that's why we did not write about redress. Also, EPSO thought you did not ask for disclosure of documents but for data processing. (see Annex VI).

***Me on Oct. 25, 2012:*** you better get going with the process of handing over the data, or else I will have to escalate this. (see Annex VII).

**EPSO/Secretary General on Oct. 26, 2012:** sorry to hear that you don't want to wait for the outcome of our re-examination. By the way, the document(s) you want do not exist. And what you ask for is very complex and technical. (see Annex VIII)

**Me on Oct. 26, 2012:** No, it's not. I know you can do this. And someone already confirmed on Aug. 9 on behalf of Mr. Bearfield that the requested data do exist. (see Annex IX)

**What is the context of my application for access to information, and why is there a strong public interest in disclosure?**

There is widespread concern about unfairness and language-based discrimination during EPSO's admission tests for concours such as the on-going open competition EPSO/AD/231/12. In online forums and when chatting with fellow candidates, I read and heard about many people who had scored well in the "verbal reasoning" section back when it was still possible to take this part of the test in the original English language, but earned much worse scores in the current competition, when they were forced to take the test in a different language. Without access to the data I requested, it is difficult to see whether systematic discrimination depending on the test language really occurs, to what degree, and whether EPSO was right when they skipped the equating step which is common practice in standardized tests whenever the wording of supposedly identical questions is different, as is necessarily the case if the questions are posed in different languages (see Point 3.4.2 in [http://www.intestcom.org/upload/sitefiles/qcguidelines\\_2012-07-13.pdf](http://www.intestcom.org/upload/sitefiles/qcguidelines_2012-07-13.pdf), Page 15, and Points D.5 and D.7 in <http://www.intestcom.org/upload/sitefiles/40.pdf>, Page 2). One can tell that no equating has taken place because EPSO reports the raw scores, i.e. the number of correctly answered questions, only sometimes modified by "neutralizing" questions, and the decision about admission to the next stage depends only on this raw score.

One likely explanation for the observed performance differences between the language versions is: the translation of questions from English was not followed by a re-calibration and/or careful validation of the equivalence of the original and translated questions. Equating scores and careful validation is state of the art in standardized tests, and leaving these steps out or only doing a half-hearted attempt is likely to introduce unfairness and, in this case, language-based discrimination. EPSO admits to the existence of erroneously posed questions. If there had actually been a successful recalibration and validation of the equivalence of translated question, all erroneously posed questions should have been noticed and corrected before the start of the competition. EPSO now tries to retroactively "neutralize" these errors. I have described the flaws of this "neutralization", and the impossibility of a proper retroactive neutralization, in a separate Ombudsman complaint.

I applied for access to documents because the public has an interest in finding out whether the following issues actually influence the results of EPSO's admission tests and thereby the reserve lists:

1. Erroneously posed questions are likely to cost candidates more time than correctly posed ones. The reason for this is that in order to have any chance to succeed in the admission test, one must make a serious attempt to answer all questions. Analyzing an erroneously posed question tends to take more time than answering a correctly posed question. For myself, in the on-going concours EPSO/AD/231/12, one erroneously posed question cost me 79 seconds more than the average time available per question. I answered some questions in as little as 43 seconds, thus 79 seconds are a noticeable amount of time.

2. Erroneously posed questions are likely to be unevenly distributed over the various languages. This, together with the damage caused even by "neutralized" erroneously posed questions (because of the wasting of additional time, see 1.), would imply discrimination based on a candidate's language. An uneven distribution over languages is likely because different translators handled the different languages, and there does not seem to have been a successful re-calibration and validation step after the translation.

3. Probably not all erroneously posed questions have been identified and "neutralized". This is indicated by the fact that new erroneously posed questions are identified in every concours, and EPSO does not seem to proactively identify them (e.g., based on statistical analyses of the answer data) but rather rely on candidates pointing them out. Also, I have heard from another candidate who pointed out an erroneously posed question to EPSO which was not subsequently corrected. Since candidates are not allowed to record any information during the test, it is not always easy to remember enough information for EPSO to identify the faulty questions. I could well imagine that the one verbal reasoning question which I supposedly did not answer correctly is also erroneously posed. Obviously, the results of not even trying to neutralize an erroneously posed question are even worse for the affected candidates than those of EPSO's flawed "neutralization".

### **What were the steps so far?**

In order to be able to prove or disprove these three hypotheses, I submitted a request for access to documents under Regulation (EC) 1049/2001 on July 2, 2012 (see Annexes I and III). I requested anonymized answer data, that is, subsets of the existing electronic documents in which EPSO stores the questions, answers, and data about candidates of the admission test. I chose the requested subsets in a way that no personal data of candidates and no contents of questions and answers would be included, but the presence or absence of language-based discrimination and translation errors could still be assessed accurately. The requested data would be publishable without triggering one of the exceptions laid out in Regulation 1049/2001, Art. 4.

On August 9, EPSO rejected the initial request (see Annex II). On August 21, I submitted a confirmatory request (see Annex III). On Aug. 30, this request was answered in a rather cryptic way which to me sounded like a rejection (see Annex IV). I asked for clarifications on September 17 (see Annex V). On October 23, I received another letter stating that my request

has not been rejected (see Annex VI). However, it also has not been granted – I am still without the requested data. According to Regulation 1049/2001, this means that the request is rejected.

File Name	Size	Content Type
<a href="#">Annex I July 2 2012 Request for information-Typke-EPPO.pdf</a>	817K	application/pdf
<a href="#">Annex II Aug 9 Réponse dem. initiale D1130795 publishable.pdf</a>	901K	application/pdf
<a href="#">Annex III Aug 21 confirmatoryAccessRequestAug2012.pdf</a>	833K	application/pdf
<a href="#">Annex IV Aug 30 [REDACTED] FINAL[short version] 29.08.2012 publishable.pdf</a>	696K	application/pdf
<a href="#">Annex V Sep 17 request for clarifications publishable.pdf</a>	258K	application/pdf
<a href="#">Annex VI Oct 23 [REDACTED] -EN.jpg</a>	564K	image/jpeg
<a href="#">Annex VII Oct 25 let us keep this simple publishable-00002.pdf</a>	320K	application/pdf
<a href="#">Annex VIII Oct 26 great complexity re-examination publishable-00002.pdf</a>	918K	application/pdf
<a href="#">Annex IX Oct 26 you can do this publishable-00002.pdf</a>	686K	application/pdf
<a href="#">Annex X July 23 Lettre d'attente D1056844.pdf</a>	90K	application/pdf

#### Part 4 - What do you consider that the EU institution or body has done wrong?

**1. EPSO did not grant access to the requested documents as would have been required under Regulation (EC) 1049/2001** since no exception according to Article 4 applies. Also, EPSO did not argue why any of the exceptions in this regulation, which would have allowed them to reject the request, would apply. Instead, EPSO invented excuses for not granting the request which are not foreseen as proper justifications for refusing access in Regulation 1049/2001. EPSO also invented a third possibility besides the two foreseen possibilities of either granting access, or refusing access and providing a proper justification: EPSO's third way is to pretend that I did not ask for access to documents (which is obviously not true) but rather for "processing data". Processing data is indeed inevitably needed as a part of granting access to subsets of electronic documents, but this fact is not a proper justification for not granting access in a timely fashion. The requested subsets of existing electronic documents cannot possibly be extracted without processing data.

For details, see Annexes I to IX.

In other words, EPSO violated Regulation (EC) 1049/2001 and thereby ECGAB Art. 4 (Lawfulness).

**2. EPSO violated Art. 17 ECGAB (Reasonable time limit for taking decisions).** Annex VI contains the claim that they have not yet taken a decision on my request for access to documents which was submitted on July 2, followed by a confirmatory request on Aug. 21. This should have happened within 15 working days after my confirmatory application, but more than 2 months have passed even since the confirmatory application.

3. By unreasonably delaying the release of the requested data, which will have to be released eventually anyways, EPSO risks giving the impression that they have something to hide, and EPSO makes it harder to restore fairness in the ongoing competition in case the data show such a need.

4. EPSO did not provide proper justification for extending the deadline on July 23. According to Article 7(3), "the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given". EPSO did not fulfill this condition for extending the deadline but extended the deadline anyways. See Annex X from July 23. The only reason given is "An extended time limit is needed as your application requests a thorough analysis." This does not meet the requirement "detailed reasons". Every application requests a thorough analysis; no information should ever be released into the public domain without first thoroughly analyzing the request. But a thorough analysis of my 2 page-application (Annex I) could easily have been performed within the initial 15 working days from July 2 until July 23. So, EPSO did not provide any valid reason, EPSO attempted to provide only one reason but not "reasons", and EPSO left out any of the required details to make it "detailed reasons".

5. EPSO/the Secretary General did not include information on possible redress together with their letter from Aug. 30.

**Part 5 - What, in your view, should the institution or body do to put things right?**

1. EPSO should grant my confirmatory request for access to documents from Aug. 21, 2012 (Annex III) without further delay.

2. EPSO should refrain from drawing up a reserve list for the ongoing competition EPSO/AD/231/12 before the data requested in my confirmatory application (Annex III) have been released and the public has been given a reasonable amount of time for analyzing them, in case corrective measures become necessary.

**Part 6 - Have you already contacted the EU institution or body concerned in order to obtain redress?**

Yes (please specify)

Yes, see Annexes I to X.

**Part 7 - If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?**

Not applicable

**Part 8 - Has the object of your complaint already been settled by a court or is it pending before a court?**

No

**Part 9 - Please select one of the following two options after having read the information in the box below:**

Please treat my complaint publicly

**Part 10 - Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?**

Yes

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