European Ombudsman

Decision

on how the European Commission dealt with the use and publication of a study produced under an EU-funded contract (case OI/4/2024/MIK)

The case concerned a study produced by a research organisation under a contract with the EU Delegation to Guinea-Bissau. The organisation raised concerns about conditions related to the publication of the study, notably that it should be distributed free of charge. The organisation considered that this condition would effectively prevent the publication of the study as an academic book, as academic publishers are commercial entities who make profit on books they publish.

The inquiry demonstrated that the study had been commissioned under a 'service contract', as part of which the European Commission - which is responsible for the overall budget in question - acquired the ownership of the study. As such, the study was considered a 'public good', and the Commission was correct to insist that it be made available to the public free of charge.

The Ombudsman considered that it was reasonable of the Commission to insist that the study be distributed free of charge, given that it was produced using EU funds and thus should not be commercialised. Nevertheless, the Ombudsman found it regrettable that the Commission had specified in a clear manner the conditions regarding publication only after the study had been completed. The Ombudsman closed the case finding that no further inquiries were justified but made a suggestion to avoid similar issues occurring in the future.

Background to the inquiry

1. The Ombudsman received a complaint from a non-governmental organisation, registered in Paraguay, that conducts research and promotes civil engagement.

2. The EU Delegation to Guinea-Bissau concluded two contracts with the organisation to produce and then expand a scientific study on the political views of the population of Guinea-Bissau. The contracts were concluded in a 'negotiated procedure', in which only the complainant made an offer and then both parties negotiated the specific terms of the contracts. Under the contracts, the 'contracting authority' - the European Commission[1] - would have the copyright of the study produced by the complainant. The contracts were 'global price contracts', which means that the complainant was paid for providing the 'deliverables' specified in the contracts.

3. The second contract was modified by two addendums. The second addendum, of August 2020, which is relevant in this case, was signed on the complainant's initiative. According to the modified terms of the contract, the complainant was required to produce a report from the study as well as "*a translated copy of the book manuscript in English, for*

[1] The EU is represented around the world through EU delegations. Amongst other things, EU delegations manage spending under the EU budget in non-EU countries. The European Commission is responsible for the EU budget, and related aspects of the work of EU delegations.

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submission to reputable academic press". However, the specific terms and conditions for the possible academic publication were not specified. Moreover, the purpose of the contract was modified to include promoting knowledge about Guinea-Bissau and making novel information about this country publically available. In 2022, the Delegation reviewed the final draft of the report from the study before its envisaged printing. However, the Delegation requested that the printing be put on hold. It considered that some conclusions included in the report were subjective and could undermine the EU's relations with Guinea-Bissau. In this context, the EU Delegation proposed to the complainant to sign a further addendum to the contract to withdraw the complainant's duty to prepare a book manuscript suitable for academic publication without any adverse effect on the payment, which the complainant would still receive in full. The complainant provided the required 'deliverables' and was paid in full, but did not sign the further addendum. The complainant continued to express the wish to have the study published as a book with a reputable academic publisher.

4. In March 2023, upon the complainant's request, the Commission granted the complainant permission to publish the study with an academic publisher on condition that (a) an appropriate disclaimer be included dissociating the EU from the views included in the book and (b) the book, as a 'public good' produced with EU funds, be distributed free of charge.

5. The complainant did not agree to this proposal. It argued that the second condition would essentially prevent the publication of the study with a reputable academic publisher. Academic publishers are commercial entities and, in the complainant's view, they would not agree to publish a book for which they cannot make any profit or, at least, recover the costs of the publication. The complainant was also concerned that the study would not receive appropriate recognition from the academic community if it is not published with a reputable academic publisher.

6. After the Commission had informed the complainant that its decision was final, the complainant turned to the Ombudsman.

The inquiry

7. Although the complainant did not fulfil the admissibility criteria for complaints to the Ombudsman, the Ombudsman opened an own-initiative inquiry into the issues raised in the complaint.[2]

8. In the course of the inquiry, the Ombudsman inquiry team inspected documents related to the case and met with representatives of the Commission to clarify the circumstances of the case and the conditions related to the contract.

[2] The Ombudsman may open inquiries on her own initiative where she finds grounds to do so. This can include matters of possible maladministration affecting an individual who would normally not be eligible to complain to the Ombudsman, according to the rules governing the Office, such as natural persons who are not EU citizens or residents, or legal persons who are not registered in the EU. The complainant, being an organisation registered in Paraguay, did not satisfy this admissibility criterion.
Article 228 Treaty on the Functioning of the European Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT; Statute of the European Ombudsman: https://www.ombudsman.europa.eu/en/legal-basis/statute/en

9. The Ombudsman shared a report from the meeting with the complainant and, subsequently, received the comments of the complainant on this report.

Arguments presented to the Ombudsman

10. The **complainant** argued that the last addendum it signed with the Delegation clearly set out the objective of publishing and disseminating the results of the study. By imposing the obligation of free-of-charge distribution, the Commission undermined this objective, as it will essentially prevent academic publication. The complainant added that, as it is a non-profit organisation, it would not make any profit on book sales, and would allocate any revenue to increasing the visibility of the study.

11. In the complainant's view, the Commission should be aware that the conditions it imposed regarding publication breach the terms of the contract, which foresees that the results are published. This is because, at first, the Commission did not waive the duty of publication unilaterally, as the copyright holder, but requested that the complainant sign an additional addendum to the contract withdrawing this duty. Only after the complainant had refused to sign the addendum, the Commission decided unilaterally that the results should not be published.

12. The complainant further argued that it cannot allocate any funds it received under the contract to financing the non-commercial publication of the study (in so-called 'open access'). This is because the payment under the contract was insufficient even to cover the full costs of the research.

13. The complainant contended that the Delegation had been wrong to use a service contract, rather than a 'grant contract', to finance the study. Under a 'grant contract', the copyright of the study would have remained with its authors. The complainant would like the copyright of the study to be transferred to it.

14. The complainant insisted on individual redress for its case, including by having the copyright of the study transferred to it and receiving compensation, but also argued that the Commission should address the problem systemically, as other researchers may encounter similar issues when signing service contracts for research activities.

15. The **Commission** acknowledged that the modalities of publishing the study were not clear in the initial version of the second contract. It was only after the addendum of August 2020, that the publication of a book manuscript in English with an academic publisher was specified as an objective. This was done at the request of the complainant. However, while this was an objective, this did not mean that it definitely would be published.

16. The Commission emphasised that there is no provision in the contracts or addendums authorising the complainant to publish and commercialise the study. The complainant was only required to submit a book manuscript suitable for submission to a reputable academic publisher. The Commission also contended that the complainant should have been aware that commercial publication would not be feasible for a study such as the one produced under the contract in this case.

17. The Commission said that the Delegation had accommodated several requests from the complainant to modify the contract while the project was ongoing. In particular, the Delegation agreed to: extend the duration of the contract; the translation of the study into English (from the original drafting language, Portuguese); the publication of the study with a reputable academic publisher; and the printing of at least 500 copies for distribution at certain events.

18. The Commission disagreed with the complainant's claim that the conditions hinder the publication of the study. It had agreed that the study could be published with a disclaimer that it represents the views of the authors, and not the EU. Publication could be in any language and in any format, digitally or as an academic book, provided the publication contains an appropriate disclaimer and is distributed free of charge. Thus, the Commission went beyond its contractual obligations to enable the publication of the study. The Commission noted that the study is already published online in Portuguese and nothing prevents the complainant from also publishing the English version online.

19. The Commission further explained that the condition of free-of-charge distribution is mandatory because the study was produced with public funds and is therefore a 'public good'. For the same reason, it could not transfer the copyright to the complainant. However, the Commission would have no problem with the complainant using part of the funds received under the contract to finance non-commercial academic publication (such as by paying a fee to a publisher to publish the study as an 'open access' publication).

20. The Commission added that the choice of a service contract rather than a grant contract was correct in light of the rules on grants and procurement for EU external action.[3] Under a service contract, the Commission could specify the outcome it sought and the complainant was not obliged to ensure co-financing, as is usually required in case of grants. Moreover, a service contract does not require the involvement of an independent auditor to verify the complainant's expenses. Instead, the service contract in this case provided for a global sum to be paid to the complainant for the service provided, that is, the preparation of the study. Furthermore, the purpose of the EU funds used to finance the study was to promote objectives in the public interest, such as fostering sustainable and inclusive social development and consolidating and supporting democracy. It was not only "*support of the academic researchers*". Therefore, it would be at odds with applicable rules to allow any entity to potentially profit from the sale of a 'public good' such as the study.

The Ombudsman's assessment

21. The inquiry focused on assessing whether the Commission was justified in applying conditions concerning the publication of the study and how it communicated this to the complainant.

22. The Commission's explanation as to why it was correct for the Delegation to finance the study using a service contract, rather than a grant contract, appears reasonable. In any case, the complainant accepted this contract.

[3] The Commission referred to the Practical guide on contract procedures for European Union external action ('PRAG'): https://wikis.ec.europa.eu/display/ExactExternalWiki/3.+Service+Contracts#id-3.ServiceContracts.

23. The addendum of August 2020 specified that the ultimate goal of the contract was the publication of the study in the form of an academic book. The contract stipulated that the report from the study "*will be translated into English and submitted to an academic publisher*". Publication in English would help ensure the subsequent publication of a Portuguese version and help raise awareness about Guinea-Bissau. The contract seems to be based on an assumption that the book would be published, since it requires the monitoring and evaluation of the contract's results based on the "*number of citations and reviews of the book publication in English*".

24. Nonetheless, as the Commission noted, the contract does not contain a provision clearly stating that the book must or would definitely be published. The contract also did not specify who would be responsible for the publication process and what the specific modalities of publication would be.

25. The Commission was also right to point out that, as a contracting authority, it acquired the copyright of the study and, therefore, was responsible for deciding about publication. As such, by stipulating certain conditions related to publication, the Commission does not seem to have breached any contractual provisions. The Commission could reasonably assume that it did not ultimately need to amend the underlying contract, as it could unilaterally stipulate the conditions related to publication and, at the same time, still ensure that the main objective of the contract would be fulfilled.

26. Although the Commission ultimately decided not to publish the study using its own means, it allowed the complainant to publish unlimited copies of the study, in any language and format, on condition that these copies be distributed free of charge. In the Ombudsman's view, the Commission thus gave effect to the main objective of the underlying contract, which was to disseminate knowledge about Guinea-Bissau.

27. The Ombudsman also considers that it was reasonable of the Commission to insist that the study be distributed free of charge, given that it was produced using EU funds and thus should not be commercialised.

28. That said, the inquiry also demonstrated shortcomings in how the Commission made the complainant aware of the above condition.

29. The Commission acknowledged that it had made the condition of free-of-charge distribution explicit only after the complainant had completed the study, on 20 March 2023. The Commission maintains that, before that, the Delegation had no reason to believe the complainant wanted to publish the study as a commercial publication, which is why it did not inform the complainant about the condition earlier.

30. However, by signing the addendum of August 2020, the Delegation agreed to incorporate into the contract, as one of the deliverables, that the manuscript be "*translated into English and submitted to a leading academic publisher*". The Delegation must have been aware that it would be the complainant who would be responsible for trying to get the study published, not the Delegation or the Commission. This is particularly so given that the complainant had expressed a clear interest in the publication and requested the addendum of August 2020 to that effect. In this context, the Delegation should have sought to specify all relevant conditions regarding publication to provide the complainant with

certainty. It is therefore regrettable that the above condition was clearly communicated to the complainant in March 2023 only. If the conditions had been clear to the complainant from the outset, it could have sought to negotiate the terms of the contract, such as by requesting additional funding for an 'open access' publication.

31. The Commission implied that the complainant should either have been aware of the free-of-charge publication condition, due to the nature of the contract, or sought clarifications before signing the addendum. However, this does not seem reasonable. While contractors of EU institutions and bodies should be required to exercise due diligence, the EU institutions are also responsible for ensuring transparency and legal certainty when procuring services. The Ombudsman is not convinced that the Commission did so in this case.

32. However, no useful purpose would be served by further inquiring into the matter because the Commission has given a reasonable explanation why it cannot waive the condition of non-commercial publication. Nonetheless, the Ombudsman will make a suggestion for improvement aimed at ensuring that, in the future, the Commission's contractors are aware of all conditions that apply to contracts for funding research or studies, notably where these may foresee subsequent publication with potentially commercial implications.

Conclusion

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

No further inquiries are justified.

The complainant and the Commission will be informed of this decision.

Suggestion for improvement

The Commission should provide guidance to the EU Delegations on contracts for funding research or studies, notably where these may foresee subsequent publication, especially academic publication or other forms of publication with potentially commercial implications. The Delegations should ensure that contractors are aware of all conditions that apply in such cases.

Teresa Anjinho
European Ombudsman

Strasbourg, 08/07/2025

European Ombudsman

Mr Miguel Carter
DEMOS

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Strasbourg, 08/07/2025

Subject: Decision on how the European Commission dealt with the use and publication of a study produced under an EU-funded contract (OI/4/2024/MIK)

Dear Mr Carter,

You recently submitted a complaint to the European Ombudsman against the European Commission concerning the above issue.

On the basis of my inquiry into this complaint, I have decided to close it with the following conclusion:

No further inquiries are justified.

In addition, I have made the following suggestion for improvement to the Commission:

The Commission should provide guidance to the EU Delegations on contracts for funding research or studies, notably where these may foresee subsequent publication, especially academic publication or other forms of publication with potentially commercial implications. The Delegations should ensure that contractors are aware of all conditions that apply in such cases.

I have asked the Commission to inform me by 08/01/2026 of any action it has taken in relation to my suggestion for improvement.

Yours sincerely,

Teresa Anjinho.

Teresa Anjinho
European Ombudsman

Enclosure: Decision on case OI/4/2024/MIK

Transmittal of the Decision

Email from the European Ombudsman to Miguel Carter, 8 July 2025

Euro-Ombudsman <EO@ombudsman.europa.eu> Tue, Jul 8, 2025, 9:49 PM
to me

Dear Mr Carter,

Please find attached the Ombudsman's closing decision regarding your complaint.

Best regards,

Secretariat

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Directorate for Administration

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Follow up Case OI/4/2024/MIK

Inbox

