EUROPEAN
COMMISSION

Brussels, 5.12.2025
C(2025) 8523 final

Commission reply to the European Ombudsman

Complaint ref. OI/4/2024

Reply by the European Commission on a suggestion for improvement from the European Ombudsman
- Case ref. OI/4/2024/MIK

I. BACKGROUND

The Ombudsman received a complaint from a non-governmental organisation registered in Paraguay, DEMOS - Centro Para a Democracia Criatividade e Inclusao (hereafter 'DEMOS' or 'the complainant) that conducts research and promotes civil engagement about the conditions under which a report from the study as well as "a translated copy of the book manuscript in English, for submission to reputable academic press" could be published.

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.

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.

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

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN

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.

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.

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

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.

The Ombudsman noted the following points:

(…) 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 and that, in any case, the complainant accepted this contract.

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".

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.

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.

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.

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.

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

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.

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.

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.

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.(…) "

The Ombudsman published her decision on 8 July 2025[1].

III. EUROPEAN OMBUDSMAN'S SUGGESTION FOR IMPROVEMENT

The Ombudsman formulated the following suggestion for improvement to the European 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."**

IV. THE REPLY OF THE EUROPEAN COMMISSION

The Commission welcomes the Ombudsman's final assessment and decision to close this case with no further inquiries.

The Commission took note of the suggestion for improvement made by the Ombudsman and took, in particular, the following actions:

The Directorate-General for International Partnerships (DG INTPA) already updated its internal training material (module 7 of the e-learning training course on the PRAG - *Practical guide on contract procedures for European Union external action* -) to reinforce the Guidance material available to EU Delegations on contracts for research or studies as well as the awareness of EU Delegations staff about the fact that they need to ensure that contractors are aware of all conditions applying in such cases.

The following content was added to module 7 of the e-learning :

> Audio text: "I would also like to draw your attention to another important point when drafting the terms of reference of a contract for ordering a study or any other written document. Reports, studies, and any other written material produced by the contractor or its personnel during the performance of a service contract become the property of the contracting authority from the moment these results have been accepted. If the contracting authority agrees in writing to the publication of a study or any written

[1] See 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) here: https://www.ombudsman.europa.eu/en/decision/en/207775

material, the contractor shall be reminded that such publication must entail a disclaimer that it represents the views of the authors and not of the EU and has to be made available free of charge whatever its format, digitally or as an academic book. Indeed, the condition of free-of-charge distribution is mandatory because the study was produced with public funds and is therefore a public good."

Visual text "All reports, studies and materials produced under the service contract become the full and irrevocable property of the contracting authority, including all copyrights and intellectual property rights, upon delivery and acceptance. See Annex b8d, Article 14."

In addition, DG INTPA will implement the following changes in the next release of the PRAG (2026 planned updates):

1. Annex b8b – Instruction to tenderers, Section 13 (f): a new clause will be inserted to enhance visibility on the matter of ownership of copyrights.

   The text considered by Commission services for this new clause is the following :

   > « 13. Ethics, values and code of conduct and intellectual and property rights (...)
   >
   > f) Intellectual and property rights
   >
   > Participants are reminded that reports, studies, and other written material of any kind produced by the contractor or its personnel and obtained in performance of a service contract represent a result in the sense of Article 14 of the General conditions for service contracts. The contracting authority acquires the irrevocable worldwide ownership of such results and of all intellectual property rights associated thereto from the moment they are delivered to and accepted by it. Accordingly, the contracting authority may exploit the results as well as all associated intellectual property rights as it sees fit. (…) »

2. Annex b8d – General conditions, Art. 14.6: text will be amended to clarify the specific type of material produced under the contract that is owned by the contracting authority.

   The text considered by Commission services for this new clause is the following :

   > « 14.6 All reports, studies, and data such as maps, diagrams, drawings, specifications, plans, statistics, computations, databases format and data, software and any supporting records or materials acquired, compiled or prepared by the contractor and other written material of any kind produced in the performance of the contract, as well as, any outcome of the implementation of the contract, shall be the absolute property of the contracting authority unless otherwise specified. The contractor shall, upon completion of the contract, deliver all such documents and data to the contracting authority. The contractor must not retain copies of such documents and data and must not use them for purposes unrelated to the contract without the prior consent of the contracting authority. »

3. A reference to intellectual property rights will be inserted in the special conditions for external action services contracts.

Please note that the wording of the intellectual property rights clause in external action service contracts mirrors the intellectual property rights clause in the template for service contracts from the Directorate-General for Budget (DG BUDG) and includes, among other aspects, references on the reproduction, communication to the public and distribution of materials produced for the Union under a contract. In addition to the above-mentioned PRAG 2026 update, as the intellectual property rights clause of DG BUDG's template is under internal review (by the central intellectual property rights service in JRC), any amendments made will later be fully incorporated into DG INTPA's template for service contracts.

V. CONCLUSION

The Commission thanks the Ombudsman and her services for the good cooperation with the handling of this complaint.

For the Commission
Jozef SÍKELA
Member of the Commission

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION