

Mr Miguel Carter
DEMOS

Strasbourg, 11/07/2024

Complaint 942/2023/MIK and Case OI/4/2024/MIK

Subject: How the European Commission dealt with the use and publication of a study produced under an EU-funded contract

Dear Mr Carter,

You recently submitted a complaint to my office against the European Commission about how it sought to ensure public access to a study produced under an EU-funded contract by your organisation.

Please note that, according to the Treaty on the Functioning of the European Union¹ and the Statute of the European Ombudsman,² legal persons that do not have a registered office in a Member State of the European Union, such as your organisation, are not authorised to lodge a complaint with my office. Therefore, we cannot deal with your complaint as such. However, in such circumstances, we determine whether there are grounds to carry out an inquiry on the European Ombudsman's own initiative. This occurs when her intervention could serve the public interest and ensure good administration.

In your case, we have decided to open an own initiative inquiry and explore the possibility of finding a solution to your problem.

I understand that you are concerned that the Commission, as the copyright-holder of the study your organisation produced, requires that the published study be distributed free of charge. In your view, this requirement makes it in practice impossible to have the study published with a reputable academic publisher and thus have its academic quality publicly recognised. You believe that no academic publisher would agree to publish the study without being able to make any profit on its publication or at least recover the costs of the publication process.

¹ Article 228(1) TFEU.

² Article 2(1) of the Statute. See <https://www.ombudsman.europa.eu/en/legal-basis/statute/en>.



We have now decided that it is necessary to meet with relevant representatives of the Commission to get answers to specific questions (as set out in the Annex to the attached letter to the Commission). We expect the meeting to take place before 31 August 2024.

Once the meeting has taken place, we will send you a copy of meeting report for your information and comments.

If you have any questions, please do not hesitate to contact Mr Michał Krajewski, +32 228 444 64, michal.krajewski@ombudsman.europa.eu, who is in charge of this inquiry.

Yours sincerely,

Rosita Hickey
Director of Inquiries

Enclosed:

- Letter to the Commission.

Mr Christian Linder
Secretariat-General
Head of Unit - C2
Ethics, Good Administration &
Relations with the European Ombudsman
European Commission

SG-MEDIATEUR@ec.europa.eu

Strasbourg, 11/07/2024

OI/4/2024/MIK

Subject: How the European Commission dealt with the use and publication of a study produced under an EU-funded contract

Dear Mr Linder,

We have received a complaint against the European Commission from DEMOS, an organisation promoting research and civic engagement. The European Ombudsman has asked me to deal with this case on her behalf.

Although the complainant is registered in Paraguay, we have decided to deal with the matter on our own initiative. It would be helpful to obtain more information from the Commission about the reasons for its decision and to explore the possibility of finding a pragmatic solution to the problem signalled by the complainant.

For this purpose, it would be useful to meet with the relevant representatives of the Commission to get answers to specific questions as set out in the Annex. I would be grateful if your staff could contact Mr Michał Krajewski (+32 228 444 64, michal.krajewski@ombudsman.europa.eu), who is responsible for this inquiry, and arrange for the meeting to take place before **16 September 2024**.

Yours sincerely,



Rosita Hickey
Director of Inquiries

Enclosures:

- Questions for the meeting
- The complaint in Case 942/2023/MIK.



Annex

The complainant produced a study concerning public opinion in Guinea-Bissau under a contract with the Commission (FED/2019/406-596). The Commission, as the copyright-holder, requires that the published study be distributed free of charge. In the complainant's view, this requirement makes it impossible in practice to have the study published with a reputable academic publisher. Any publisher would seek to make a profit on publishing this study or at least recover the publishing costs, the complainant says.¹ Some publishers agree to make academic work available online free of charge, but in such cases they usually require an 'open access fee' to be paid. As the Commission financed the study through a 'service contract', it seems not to have dedicated any funds for the complainant to be able to pay this fee.

Questions for the meeting

- (1) Why did the Commission request the complainant to produce the study through a 'service contract' rather than a research grant contract?
- (2) Did the Commission intend to publish the study with an academic publisher or otherwise? Why did it subsequently ask the complainant to halt the printing of the study?
- (3) Why does the Commission require the complainant not to allow a potential academic publisher to sell copies of the published study, thereby ensuring it could not make any profit on it? Is this a regular requirement for studies financed with EU funds?
- (4) Is this requirement applicable or justified in the specific case of the complainant, given the nature of the underlying contract - a service contract that did not provide for reimbursement of the costs of publishing in 'open access' rather than a research grant contract that might provide for such reimbursement?
- (5) Would it be feasible for the Commission to reimburse the costs of publishing the study in question in open access or, alternatively, withdraw the requirement to distribute the published study free of charge?
- (6) What would be the specific administrative obstacles, which the Commission has mentioned to the complainant, in the process of transferring the copyright of the study to the complainant?

¹ The complainant has organised a public campaign calling the Commission to "*lift all restrictions*" imposed on the publication of the study. See <https://vozesdopovo.org/en/>