

Decision in case 86/2017/CEC on how the European Commission treated an external expert who was involved in evaluating the EU Partnership for Peace Programme

Decision

Case 86/2017/CEC - Opened on 08/08/2017 - Decision on 13/11/2018 - Institution concerned European Commission (No maladministration found) |

The case concerned how the European Commission treated the complainant in the context of his work under the EU Partnership for Peace Programme (EUPfP), a programme aimed at promoting peace in the Middle East. The complainant was the team leader of a group of three experts tasked with evaluating the programme.

The complainant turned to the Ombudsman with a range of allegations against the Commission, the most important of which was that the Commission had instigated his dismissal.

The Ombudsman inquired into the complaint. As regards the complainant's dismissal, the Ombudsman noted that his employer had stated that the complainant had interfered in its client relationship without its consent, had damaged its reputation, and was not adhering to his contractual obligations. The inquiry did not identify any maladministration on the part of the Commission on this or on any of the other points raised by the complainant.

The Ombudsman thus closed the inquiry.

Background to the complaint

1. The complainant worked as a consultant for 'company X' which was a member of a consortium, led by a contractor, that had a contract with the European Commission. The object of the contract was to evaluate the EU Partnership for Peace Programme (EUPfP) [1] .
2. The complainant was the team leader of a group of three experts responsible for the evaluation. The Office of the EU Representative for the West Bank and Gaza Strip (EUREP), the EU Delegation to Israel (DELTA) and the Commission's Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) managed the contract.



- 3.** A number of problems arose in relation to the evaluation, leading to delays, disagreements and ultimately the complainant's dismissal from company X. A detailed account of the events, leading up to this complaint, including the relevant correspondence exchanged between the different parties, is set out in the annex to this decision. Here it suffices to mention:
- 31 March 2014: Original deadline for delivering the draft evaluation report.
 - 19 May 2014: the team had a meeting with the head of social sector (hereafter, 'head of social sector') at EUREP, the task manager and deputy task manager at EUREP, and the task manager at DELTA [2] . The complaint says that he was bullied at the meeting.
 - 26 May 2014: the complainant told the Commission that he would not be able to submit the report within the extended deadline of 9 June because his mother had died two days earlier. The complaint says that the Commission acted inappropriately when learning about his mother's death, and unreasonably on his request for an extension of the deadline.
 - 9 June 2014: Extended deadline for delivering the report. The report was not delivered.
 - 18 June 2014: company X dismissed the complainant. He says that the Commission instigated the dismissal and acted unreasonably towards him after his dismissal.
 - 23 July 2014: the complainant sent the head of social sector a 'draft final report'. The complainant says that throughout the process, the Commission had asked for unjustified changes to evaluation findings and caused delays.
 - 7 October 2014: The contractor sent the first official version of the draft final report to the Commission. The report was approved in April 2015.
 - Lengthy and prolonged exchanges ensued between the complainant and the Commission. In December 2016, the Commission told the complainant that it would discontinue correspondence with him due to the repetitive character of his e-mails.

4. On 11 January 2017, the complainant turned to the Ombudsman.

The inquiry

5. The Ombudsman opened an inquiry into the complainant's concerns that the Commission (1) abused its authority by instigating his dismissal, which he claimed was unfair; (2) acted unreasonably in response to his attempt to have his dismissal rescinded; (3) bullied him during the meeting on 19 May 2014; (4) behaved unreasonably following the death of his mother; (5) demanded unjustified changes to the findings of the evaluation report he had prepared; and (6) caused unreasonable delays.

6. The complainant wanted the Commission to (1) apologise for the manner in which it treated him; (2) hold to account its staff members who were responsible for his unfair treatment and subsequent dismissal; (3) pay him compensation of 40 500 EUR for the unpaid work done, and his legal costs [3] following his unfair dismissal; (4) compensate him appropriately for the distress caused; and (5) compensate everyone who worked on the evaluation for the delays.

7. In the course of the inquiry, the Ombudsman's inquiry team inspected the Commission's file and held a meeting with Commission representatives in order to fully understand the case.



1) The Commission's role in the complainant's dismissal

Arguments presented to the Ombudsman

8. The complainant said that Commission staff members played an active role in his dismissal. He referred to an e-mail sent by the task manager at EUREP to the contractor on 18 June 2014 in which he asked the contractor to take “*immediate and effective*” measures to “*ensure a satisfactory output*” [4]. He also referred to another e-mail, dated 19 June 2014, sent by company X to members of the project team, but not including the complainant, stating that, after a telephone call with the task manager at EUREP, it had no other option but to dismiss the complainant. For the complainant, these two pieces of evidence and particularly the e-mail of 18 June 2014, proved beyond any doubt that the Commission had asked the contractor to dismiss him.

9. During the inspection meeting, the Commission categorically refuted the allegation that its staff members had played any role in the complainant's dismissal by company X. It said that, if it had wanted to have the complainant dismissed, it would have formally requested this, as it was entitled to do under the provisions of the contract. If the contractor had considered that the Commission had asked it to dismiss the complainant, it should have asked the Commission to follow the applicable formal procedures [5]. It said that the contractor did not do so and was thus fully responsible for the decision to dismiss the complainant.

10. The Commission explained that, in its e-mail of 18 June 2014, it had asked the contractor to take “*immediate and effective*” measures, since the contractor was the only party that could decide what measures should be taken to ensure the timely and effective completion of the contract. It said that by “*effective measures*” it meant that the contractor could take any number of measures such as to reshuffle the allocation of tasks and responsibilities between the team members, or see how best to reinforce the final check of the output produced by the team. In fact, it was not in the Commission's interest to have the complainant dismissed, since dismissing him was bound to cause additional delays thus further undermining the timely execution of the whole project. It noted that this was confirmed by subsequent events.

11. Finally, the Commission said that all the relevant Commission staff members were copied in the email sent to the contractor on 18 June 2014, and that it was not the view of one individual acting in his own capacity, as the complainant had argued. The position was discussed and approved by both EU Delegations concerned.

12. Regarding the telephone conversation, referred to in the e-mail sent by company X on 19 June 2014, the Commission explained that this was simply a repetition of the content of the e-mail it had sent to the contractor on 18 June 2014. It said that the e-mail of 19 June 2014 could not be read as implying that it had asked for the complainant's dismissal.



13. In response to the Commission's statements made during the inspection meeting, the complainant said that the Commission did not use the formal procedures foreseen in such cases, as it had no legitimate grounds for requesting his dismissal. In his opinion, the head of social sector and the task manager at DELTA had asked for his dismissal because they were angry about the e-mail he had sent to their managers on 16 June 2014 [6] and because they did not agree with the provisional findings of the evaluation. He noted that the head of operations at EUREP may have endorsed this approach. He also acknowledged that the contractor and company X had failed to comply with their obligations when dismissing him, but argued that they were simply trying to comply with the wishes of their client, the Commission. Regarding the e-mail of 18 June 2014, the complainant noted that this was the first e-mail from the Commission to the contractor in more than two weeks. It raised no serious concerns about the work, only about his behaviour.

14. The complainant further stated that company X had informed him that the Commission had wanted him to be dismissed but was not willing to confirm this in writing. The contractor also refused to communicate with him.

The Ombudsman's assessment

15. The Ombudsman notes that there is no conclusive evidence to support the complainant's allegation that the Commission asked for his dismissal. On the contrary, the documents in the file support the Commission's explanations given during the inspection meeting.

16. In the dismissal letter sent to the complainant, company X said:

- The complainant had once again interfered in its client relationship with the Commission without its consent.
- The complainant had damaged its reputation, and noted that the Commission had requested it to take action to repair the situation.
- The complainant was not adhering to his contractual obligations, nor had he provided any assurance that he would deliver the requested outputs.

17. Furthermore, prior to its e-mail of 18 June 2014, the Commission had previously expressed concerns regarding the lack of progress in the implementation of the evaluation.

18. The Ombudsman does not share the complainant's view that the reasons put forward by company X to justify his dismissal are irrelevant, and that it was the Commission which had asked company X to dismiss him. Company X provided clear reasons why the complainant was dismissed. Furthermore, another member of the consortium subsequently offered the complainant a new contract, which it would arguably not have done if this was against the wishes of the Commission [7] .

19. The Ombudsman finds further weight in the Commission's argument that, if the contractor had considered that the Commission had asked it to dismiss the complainant, it should have asked the Commission to follow the applicable formal procedures. As it did not do so, company



X was thus fully responsible for the decision to dismiss the complainant.

20. The complainant's allegation that Commission staff members wanted him dismissed because they disagreed with the report's findings is not substantiated. Moreover, as the Commission said, the complainant was part of a team of experts and the findings were meant to represent those of the entire team, not just of the complainant.

21. Regarding the complainant's statements that company X admitted to him that the Commission had asked it to dismiss him, the complainant has not provided any proof of this.

22. Against this background, the Ombudsman considers that the arguments and information put forward by the complainant do not demonstrate that the Commission instigated his dismissal. Therefore, **the inquiry has revealed no maladministration on this issue.**

2) The Commission's behaviour after the complainant was dismissed

Arguments presented to the Ombudsman

23. The complainant claimed that the Commission acted unreasonably in response to his attempt to have the dismissal revoked. He said that the Commission had sent him an anonymous and intimidating e-mail to dissuade him from seeking to remedy the situation.

24. According to the Commission, the complainant sent numerous e-mails with repetitive questions and claims linked to his contract to various staff members after his dismissal. In response, the Commission staff members had invited the complainant to address his concerns to company X with whom he was contractually bound and ultimately, if he had problems with company X, to the contractor. However, as the complainant continued to send e-mails that were repetitive in nature, on 22 July 2014, the Commission sent to the complainant a more general e-mail response, drafted by the EU Delegation, as the 'contracting authority'. The Commission referred to the principles of contract management, with references to the applicable rules [8] on the confidentiality of information. It denied that the e-mail was intimidating or anonymous, as it was clearly mentioned that it had been sent by the contracting authority.

25. The complainant claimed that the Commission's e-mail of 22 July 2014 and a later one of 5 January 2016 were not signed, had no designated sender and thus contravened the EU Code of Good Administrative Behaviour. He also said that the Commission did not address the intimidating nature of its email of 22 July 2014.

The Ombudsman's assessment

26. Article 14(2) of the European Code of Good Administrative Behaviour states that a reply by



an EU institution should mention the name and the telephone number of the staff member who is dealing with the matter, as well as the department to which he or she belongs. The Ombudsman notes that this was not the case for the e-mails of 22 July 2014 and 5 January 2016.

27. However, the purpose of that provision in the Code is to ensure that when someone contacts an EU institution, they are informed of who is dealing with the matter. In the present case, the complainant had been in contact with different Commission staff members and was aware of who was dealing with the matter. The Ombudsman understands that the Commission used a general e-mail address because the complainant had continued to send repetitive e-mails to its staff members, even though he had been advised to contact the contractor.

28. In these specific circumstances, the Ombudsman finds that the fact that the e-mails were not signed by a specific staff member does not amount to unreasonable behaviour by the Commission. These were not anonymous or unidentified e-mails, but were sent by a fully-identifiable Commission department.

29. The Ombudsman also finds that the content of the e-mails, including the last paragraph in the e-mail of 22 July 2014, which refers to the Commission's legal rights in cases of harassment, slander and inappropriate coercion, cannot be regarded as unreasonable or intimidating. The Ombudsman considers that the last paragraph in the e-mail of 22 July 2014 was a reminder to the complainant of the Commission's policy in case the complainant, despite all previous requests, were to continue sending emails to Commission staff instead of turning to company X, as his direct employer and supervisor and ultimately, the contractor.

30. In light of the above, **there was no maladministration in how the Commission behaved towards the complainant following his dismissal .**

3) The Commission's behaviour in a meeting

Arguments presented to the Ombudsman

31. The complainant said that during the meeting on 19 May 2014, the Commission's staff members, in particular the head of social sector and the task manager at DELTA, behaved towards the team and the complainant in an intimidating and bullying manner, and wrongly accused them of being responsible for the delays in the project.

32. The Commission said that, during that meeting, its staff members raised concerns in a professional way about: the lack of information provided over the previous months, the delays in carrying out the evaluation, and the short document produced by the complainant's team containing the provisional findings. It noted that, in the e-mail sent to the Commission the following day, the complainant described the meeting as "*useful*" without mentioning any offensive or bullying behaviour. The Commission had also sent an e-mail to the contractor on



the same day reporting on the meeting and reiterating its concerns.

33. The complainant contested this, noting that the concerns raised in the meeting were unfounded, and were due to the fact that the Commission staff members at the meeting objected to the findings in the document. He said that the head of social sector and the task manager at DELTA had made unreasonable demands for additional fieldwork and behaved unprofessionally. He also denied that there had been a lack of information or delays on the part of the team.

The Ombudsman's assessment

34. The Ombudsman notes that the complainant and the Commission have given significantly different accounts of the meeting of 19 May 2014. It is not possible for the Ombudsman to determine what exactly happened or how the Commission staff members behaved. In the inspection meeting, the Commission categorically rejected the complainant's allegations.

35. The only written evidence concerning the meeting is the e-mail the Commission sent to the contractor on 19 May 2014 and the complainant's e-mail to the Commission the next day, which described the meeting as useful and did not refer to intimidation or bullying. The Ombudsman notes that, in an e-mail of 16 June 2014, the complainant informed the head of operations at EUREP that the meeting in question was unsatisfactory, but did not provide any explanation as to why.

36. On this basis, **the Ombudsman cannot conclude that there was maladministration in relation to this matter**.

37. The complainant's arguments that the Commission did not agree with the team's provisional findings and applied pressure to have these findings changed will be dealt with below under heading 5.

4) The Commission's behaviour following the death of the complainant's mother

Arguments presented to the Ombudsman

38. The complainant said that the Commission behaved unreasonably following the death of his mother. It did not reply to his e-mail informing it that his mother had died, and refused to extend the deadline for the draft final report, which fell six days after the funeral.

39. The Commission expressed regret that the behaviour of its staff members was perceived by the complainant as lacking in compassion. It noted that one of its staff members had, in fact, expressed condolences. It said that its duty was to ensure that the project would suffer as little



as possible from the complainant's loss. Therefore, the Commission contacted the contractor, which was the one responsible for submitting the report within the agreed deadline and the one who could request an extension. The Commission said that it was justified in insisting on the deadline of 9 June 2014 for the draft final report, since, beyond this, the report could not be used for part of its intended purpose. [9] It noted that as the contractor in fact sent the first official version of the draft final report with a four month delay, it could not be used as intended.

40. The complainant said that the Commission had not taken into account the practical implications of the death of his mother and had refused, without any explanation, to consider his request to extend the deadline. He acknowledged that he did not have a contractual relationship with the Commission, but noted that he had dealt with the Commission directly on a regular basis. He did not agree that, by expressing condolences, the Commission had acted reasonably, and said that it had felt obliged to do so after an exchange of emails.

The Ombudsman's assessment

41. Regarding the claim that the Commission lacked compassion by not replying to the complainant's e-mail announcing his mother's death, the Ombudsman notes that a Commission staff member expressed condolences in the first e-mail sent to the complainant shortly after being informed of his loss. While the Ombudsman emphasises the importance of showing empathy and compassion in situations such as that faced by the complainant, she cannot conclude that the way the Commission dealt with him on this sensitive matter amounted to maladministration. She, however, welcomes the fact that, in the course of this inquiry, the Commission itself expressed regret that the behaviour of its staff members was perceived by the complainant as lacking in compassion.

42. Regarding the deadline, the Commission had already extended the deadline from 31 March 2014 to 9 June 2014, and had informed the complainant that it would be impossible to extend the deadline again beyond this date. The Ombudsman finds that, while the deadline became more difficult to respect due to the complainant's loss, it was reasonable for the Commission to make every effort to seek to ensure that the deadline was met. It was also reasonable for the Commission to deal with this issue bilaterally with the contractor, who was the only party contractually-responsible for meeting the deadline. The contractor was responsible for raising this issue with the Commission and asking for an extension of the deadline if necessary. The Ombudsman notes that the Commission subsequently acknowledged the contractor's inability to meet the deadline, and in fact granted more time to the team to deliver their report.

43. In light of the above, **there was no maladministration in how the Commission treated the complainant after the death of his mother .**

5) The Commission's feedback on the findings of the evaluation



Arguments presented to the Ombudsman

44. The complainant said that the Commission demanded unjustified changes to the findings of the evaluation and that the contractor had to follow its wishes, rather than carry out a solely evidence-based evaluation. In his view, the draft report he submitted in July 2014 conveyed a more coherent reflection of the team's research than the draft final report that the contractor submitted in October 2014 and the final report approved in April 2015. The complainant noted that almost no recommendations from the July and October 2014 drafts were retained in the final report. According to him, this demonstrated how much the report was changed, undermining the purpose of an external evaluation.

45. The Commission denied that it had put pressure on the contractor to adapt the evaluation report to its wishes. It said that the team consisted of three experts with different perspectives in order to obtain a balanced view, and that it was not aware which member(s) of the team was responsible for the opinions in the report. Regarding the provisional findings, discussed during the meeting of 19 May 2014, the Commission considered that the document was too short and did not constitute sufficiently robust evidence-based work for the draft final report, which was due less than three weeks later.

46. The complainant alleged that the task manager at DELTA had attempted to influence the content of the report and had obtained the support of the head of social sector to do so. He referred to an e-mail sent on 16 December 2013 to support his view. He considered that the task manager's comments on the inception report in that e-mail showed that he had wished to impose his own views on the evaluation.

The Ombudsman's assessment

47. According to the rules applying to the contract [10], the Commission can request amendments to a report.

48. The Commission's evaluation of and feedback on the report involves a complex assessment of its relevance for the programme in question, the EU's policy on the matter and expert internal analysis. The Ombudsman is not in a position, in the context of this case, to second guess the Commission's assessment of the report.

49. That being said, there is no evidence in the file that supports the complainant's claims that certain Commission staff members tried to impose their own opinions on the findings of the evaluation. The Ombudsman notes that EUREP, DELTA and DG NEAR provided feedback on the draft final report. This suggests that it would have been difficult for specific members of staff to unduly influence the final report, also bearing in mind that it had to be approved by the Commission as an institution.

50. Moreover, the Ombudsman notes that there is nothing in the file to suggest that the



contractor, which was responsible for submitting the final report, considered that the Commission's proposed changes were unjustified. Therefore, regardless of the complainant's view on the quality or content of the evaluation report, **the Ombudsman is not in a position to find any maladministration on this issue** .

6) The delays caused by the Commission

Arguments presented to the Ombudsman

51. The complainant argued that the Commission “along with the contractors” caused unreasonable delays, undermining the usefulness of the evaluation and leading to fees being paid more than two years after the work had been undertaken. The complainant claimed that the Commission refused to read the report he submitted in July 2014, which dealt with matters of urgent operational significance, “knowing that” a further draft of the document would not appear for four months.

52. The Commission said that it had disregarded the draft report the complainant had submitted in July 2014 as (a) it had been sent informally, and (b) the complainant had been dismissed by company X. It said that it had received the official version of the draft final report on 7 October 2014, with a four-month delay. The Commission had then submitted comments on 11 November 2014. Afterwards, it requested a series of revisions, based on the comments of the three Commission departments. It provided its final approval on 7 April 2015.

The Ombudsman's assessment

53. The Ombudsman notes that initial delays in the project, which occurred before the draft final report was submitted, appear to have been caused by the replacement of one expert. Afterwards, there were further delays because of the death of the complainant's mother.

54. According to the applicable rules [11] , the Commission was correct not to accept the report that the complainant submitted unofficially, after he had been dismissed.

55. The Ombudsman notes that the Commission provided consolidated comments on the draft final report within one month of receiving it. Afterwards, the Commission and the contractor corresponded further on the report, which was finally approved in April 2015.

56. The Ombudsman cannot therefore concur with the allegation that the Commission was responsible for unreasonable delays in relation to the project. She notes that the contractor took six more months, after the approval of the final report in April 2015, to submit its invoices to the Commission, which led to the complainant and the other experts being paid in July 2016. This too was not due to the Commission's actions.



57. Thus, there was no maladministration by the Commission regarding this matter .

7) The complainant's claims

58. Against this background, there is no need to examine the complainant's claims.

Conclusions

Based on the inquiry, the Ombudsman closes this case with the following conclusion [12] :

There has been no maladministration by the European Commission in this case.

In the light of the above conclusion, there is no need to examine the complainant's claims.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 13/11/2018

Annex:

Detailed background to the complaint

1. The evaluation that the complainant and his team were responsible for started on 13 November 2013. It consisted of a 'desk phase', for which an 'inception report' needed to be drafted within fifteen days, a 'field mission phase' with a duration of fifty days, and a 'reporting phase' of fifteen days during which a draft final report and a final report were to be drafted [13] .

2. On 10 December 2013, the contractor submitted the inception report to the 'task manager' at EUREP, the staff member responsible for supervising the project.

3. On 16 December 2013, the task manager at DELTA sent an e-mail to the contractor, enclosing the inception report with comments and stating that he was replying on behalf of his



colleagues at EUREP. He said that the Commission was concerned that certain requirements set out in the terms of reference had not been met, in particular, regarding the minimum number of entities to be consulted. He further noted that part of the inception report was not sufficiently specific and that there were questions regarding the methodology. He asked the contractor to send a revised version by 23 December 2013.

4. On 22 January 2014, the complainant replied, referring to previous correspondence and a meeting with the Commission. He said that it was impossible to consult 300 entities meaningfully within the time allocated. The task manager at EUREP replied the same day, noting that the complainant had indicated that he would not be able to consult 300 entities, as foreseen in the terms of reference.

5. The complainant replied, stating that it was not an inability, but a methodological decision not to consult 300 entities since this would fail to add any significant value to the evaluation. He asked that this distinction be acknowledged. The 'head of social sector' at EUREP (hereafter, head of social sector) replied, stating that the complainant could go ahead with the field phase. He said that any issue not relating to the technical implementation of the evaluation would be dealt with between the Commission and the contractor. He invited the complainant to focus exclusively on the tasks foreseen by the terms of reference in order to ensure high quality output.

6. On 5 February 2014, the Commission approved the inception report and, on the contractor's request, extended the deadline for the submission of the draft final report to 9 June 2014. It asked the contractor to provide the team with the necessary support since it had the impression that the complainant was devoting considerable time to internal management issues and logistics, rather than technical work.

7. On 20 February 2014, one of the three experts resigned. His replacement was recruited on 9 April 2014.

8. On 29 April 2014, the task manager at EUREP reminded the team that the deadline for the draft final report was approaching, and that the Commission had not yet received any planning for this phase of the evaluation.

9. On 1 May 2014, the complainant asked for an extension of the deadline. The head of social sector replied that the Commission could not grant an extension since the findings of the evaluation were needed to formulate the action plan for the next programme, which was due by June 2014. He asked the complainant for a detailed planning for the second phase of the evaluation, which had started following the approval of the inception report.

10. On 14 May 2014, the complainant sent an e-mail to the contractor, stating that the attitude of the task manager at DELTA had become very negative and had influenced the task manager at EUREP. He said that he had the impression that criticism was being planned in advance because the task manager at DELTA had a specific view of how the next programme should be. He asked the contractor to support the team and to strongly refute the criticism.



11. On 15 May 2014, the task manager at EUREP asked the contractor for a meeting with the team. The complainant said that this was a very welcome initiative.

12. On 19 May 2014, the team had a meeting at EUREP's office in Jerusalem with the head of social sector, the task manager and deputy task manager at EUREP, and the task manager at DELTA.

13. On the same day, the head of social sector sent an e-mail to the contractor, referring to the meeting and stating that the Commission was still very concerned about the delays that had built up and that he could not understand why the complainant had not carried out the work as planned from March to May 2014. The Commission also found the initial provisional findings and recommendations made by the team to be very vague and weak in terms of analysis and from an operational perspective.

14. The day after the meeting, the complainant sent an e-mail to the Commission staff members who were present, stating that "[i]t was useful to meet yesterday" and welcoming *"the opportunity for closer liaison during the final phase of the evaluation"*.

15. On 26 May 2014, the complainant informed the Commission that he would not be able to submit the report within the deadline because his mother had died two days earlier.

16. On 27 May 2014, the head of social sector contacted the contractor stating that despite the event affecting the team leader the Commission relied on it to meet the deadline. On the same day, the contractor replied that it would support the team to deliver the report on time.

17. On 1 June 2014, the complainant sent another e-mail to the head of social sector, reiterating his request to have the deadline extended. On 2 June 2014, the head of social sector expressed condolences to the complainant in an e-mail on which he copied his colleagues at EUREP and DELTA. He said however that the relevant contractual issues were being dealt with between the Commission and the contractor, not the complainant.

18. On 2 June 2014, the contractor sent an e-mail to the head of social sector, stating that it could not meet the deadline. It made a commitment to deliver the draft final report on 16 June 2014. On 3 June 2014, the head of social sector acknowledged the contractor's inability to meet the deadline, expressing his concerns about the delays that had built up in the course of the evaluation.

19. On 10 June 2014, company X sent an e-mail to the complainant regarding the planning and financing of workshops. It said that the complainant should focus on the delivery of the draft report rather than the workshops. It also asked the complainant to refrain from directly communicating with the EU as it had requested many times before.

20. On 16 June 2014, the complainant sent an e-mail to the head of operations of EUREP with the head of delegation in copy to ask for an extension of the deadline. He said, among other



things, that Commission staff had not replied to his first e-mail about the death of his mother. He said that the Commission was wrong, during the meeting of 19 May 2014, to criticise the team for the delays in completing the evaluation report, adding that that meeting had been extremely unsatisfactory. He also complained about the allegedly hostile and threatening behaviour of company X towards him. On 17 June 2014, the complainant sent two more e-mails to them.

21. On 17 June 2014, the complainant sent an e-mail to the task manager at EUREP, informing him of the team's intention to postpone the workshops. On 18 June 2014, the task manager replied, expressing his extreme disappointment in relation to decisions taken unilaterally without prior consultation. He said that this was the last in a series of flaws in the implementation of the evaluation.

22. On 18 June 2014, the complainant wrote to the head of social sector. He said that he would prepare an incomplete version of the draft final report, which he would send to the Commission if he failed to persuade the contractor to do so.

23. The head of social sector replied to the complainant the same day asking him to address himself to the task manager instead of contacting the head of operations and the head of delegation directly. The complainant replied, also that day, stating that he did so because he did not have the support of the consortium. He claimed that company X subjected him to intimidating behaviour. He asked the Commission to reassure the consortium that it would accept the report being delivered late.

24. On the same day, the task manager at EUREP sent an e-mail to the contractor stating “[t] he mail below is sent to you for your information. It is sent from [the complainant] to our Head of Operations and Head of Delegation. The behaviour of the consultant you assigned to this important mission is undermining not only the entire exercise, but your reputation as serious contractors. We expect immediate and effective measures from you to repair the damages produced so far and to ensure a satisfactory output.”

25. On the same day, company X dismissed the complainant with immediate effect. It referred to the e-mail the complainant had sent to the head of operations on 16 June 2014, and said that the complainant had again interfered in its client relationship without its consent. It said that the e-mail he had sent directly to the Commission staff had damaged its reputation, and noted that the Commission had requested it to take action to repair the situation. It said that this was the last in a long row of incidents. It said that the complainant was not adhering to his contractual obligations, nor had he provided any assurance that he would deliver the requested outputs. Therefore, it was left with no choice but to dismiss him.

26. On 19 June 2014, company X informed the two other team experts about the complainant's dismissal. It said, “[a] fter an open telephone call with [the task manager at EUREP] it became very clear that we are left with no other option.”

27. On the same day, the head of social sector replied to the complainant's e-mail of 18 June 2014. He asked him to discuss his situation with the contractor. He added that although it was



for the contractor to send the draft final report, the Commission would welcome any preliminary findings, especially regarding the presentation to be held during the workshops.

28. Later that day, company X replied to the task manager at EUREP informing him that the complainant was no longer contracted for this study. It said that it had once again instructed him to stop communicating with the Commission. It said that it now had a better understanding of the situation and apologised. It would, as discussed, design a high quality plan of action.

29. On 20 June 2014, the complainant sent a draft chapter of the final report to the head of social sector. He complained about company X's decision to dismiss him. On the same day, the head of social sector reiterated that the complainant should revert to the contractor for any such issues, and that the Commission would only take into consideration the report sent by the contractor.

30. On 22 June 2014, the complainant apologised to the consortium and the Commission for having corresponded on 16 and 17 June 2014 with EUREP without the contractor's approval.

31. On 16 July 2014, the complainant informed the task manager at EUREP that company X considered that the report, which he had finalised did not contain a sound analysis. He also complained about his dismissal. On the same day, the contractor apologised to the task manager for the complainant's messages and asked him to ignore them. The head of social sector replied to the complainant that the Commission had contractual obligations only with the contractor. He said that the complainant should address himself to the contractor or the relevant jurisdiction.

32. On 16 and 17 July 2014, the complainant sent more e-mails to the Commission with questions regarding the report, his dismissal, the Commission's role in it and the reasons why the Commission staff did not want to extend the deadline after his mother's death and did not express their condolences. The head of social sector replied on 17 July 2014, referring to his previous messages. On 18 July 2014, the complainant sent a further e-mail on the above issues.

33. On 22 July 2014, the Commission wrote to the complainant, stating that the Contracting Authority has a contractual relationship with the contractor only [14]. It said that its staff had replied to all the complainant's queries and asked him to refrain from contacting its staff members individually. It added that in "*case of failure to comply with this request, the Contracting Authority reserves its legal rights applicable for cases of harassment, slander and inappropriate coercion on a European public administration body to disclose confidential contractual information.*" The reply was signed by "*The Office of the EU Representative*".

34. On 23 July 2014, the complainant sent another e-mail to the head of social sector, reiterating his concerns. He also attached a "draft final report".

35. On 7 October 2014, the contractor sent the first official version of the draft final report to the Commission.



- 36.** On 10 October 2014, the complainant signed a contract with another member of the consortium to work on the report.
- 37.** On 11 November 2014, EUREP, DELTA and DG NEAR sent their comments to the contractor. The Commission and the contractor exchanged further correspondence concerning the report in November and December 2014 and in January, February and March 2015.
- 38.** The Commission approved the final report on 7 April 2015.
- 39.** On 30 November 2015, the complainant asked the Commission when it would pay the contractor. The Commission replied on 1 December 2015, that it could release such information to the contractor only. The complainant and the Commission exchanged further e-mails on this issue on 2, 4, 7 and 8 December 2015. On 11 and 16 December 2015, the complainant sent three further e-mails.
- 40.** On 5 January 2016, the “Office of the EU Representative” replied to the complainant reiterating what it had said in its reply of 22 July 2014.
- 41.** On 6, 10, 20 January and 1 February 2016, the complainant sent further e-mails to the Commission. He enquired about the Commission’s “anonymous” e-mails (no personal signature) of 22 July 2014 and 5 January 2016, and about the Commission’s contract with the contractor. The Commission replied to these e-mails on 25 January and 10 February 2016.
- 42.** On 4 March 2016, the complainant sent a letter to the Commission in which he expressed his dissatisfaction about the Commission’s “anonymous” e-mails and requested a review of how Commission had overseen the evaluation report. On 21 March 2016, the Commission replied that it considered that all his questions had already been addressed.
- 43.** After lengthy and prolonged exchanges with the Commission, the complainant turned to the Ombudsman on 19 May 2016 (case 748/2016/DK) claiming that the Commission had treated him unfairly. The Ombudsman opened an inquiry into the Commission’s failure to reply to one of the complainant’s e-mails. The Commission replied with a detailed account of what had happened. It considered that there had not been any inappropriate behaviour by its staff members and rejected the complainant’s request for compensation. The Ombudsman closed the case [15] .
- 44.** From September to December 2016, the complainant continued corresponding with the Commission. After replying many times, the Commission informed the complainant on 15 December 2016 that, since he had not provided any further information that would justify a new assessment, it would not take any further action on his complaint. It also informed the complainant that it would discontinue correspondence with him due to the repetitive character of his e-mails.



[1] The EU Partnership for Peace programme, which ran from 2002 to 2013, aimed to bring together Arabs and Israelis, including the Arab-Palestinian minority in Israel, to promote peace in the Middle East. It supported relevant local and international civil society initiatives.

[2] The 'task manager' is the staff member responsible for supervising the project.

[3] Regarding his legal costs, the complainant stated that he had initiated legal action against company X for unfair dismissal, under national jurisdiction, but had to abandon this because of the cost and because his lawyer advised him that although he would probably succeed, this could not be guaranteed.

[4] The email read as follows: "[t] he mail below is sent to you for your information. It is sent from [the complainant] to our Head of Operations and Head of Delegation. The behaviour of the consultant you assigned to this important mission is undermining not only the entire exercise, but your reputation as serious contractors. We expect immediate and effective measures from you to repair the damages produced so far and to ensure a satisfactory output. "

[5] Article 17 "Replacement of personnel" of the General Conditions to Framework Contract COM 2011 - Lot 1 provides " Moreover, in the course of performance, and on the basis of a written and justified request, to which the Framework contractor shall provide his own and the staff member's observations, the Contracting Authority can ask for a replacement if it considers that a member of staff is inefficient or does not perform its duties under the contract. "

[6] On 16 June 2014, the complainant sent an e-mail to the head of operations of EUREP with the head of delegation in copy to ask for an extension of the deadline. He said, among other things, that Commission staff had not replied to his first e-mail about the loss of his mother. He said that the Commission was wrong, during the meeting of 19 May 2014, to criticise the team about the delays completing the evaluation report, adding that that meeting was extremely unsatisfactory. He also complained about the allegedly hostile and threatening behaviour of company X towards him. On 17 June 2014, the complainant sent two more e-mails to them.

[7] According to the complainant, the Commission was aware of his continued involvement in the assignment and report preparation. In his complaint to the Ombudsman, he said "[a] lthough Commission officials made efforts to exclude me, they knew that I remained involved with the assignment, at any rate from November, since I provided most of the comments and edits from the side of the [member of the consortium with whom the complainant signed a new contract]."

[8] It referred to the Practical Guide to Contract Procedures for EU External Actions (PRAG).

[9] Formulating an action plan for the next programme, in accordance with Section 4.2 of the Terms of Reference.

[10] Article 27.2 of the General Conditions to the Framework Contract provides that "[t] he Contracting Authority shall, within 30 days of receipt, unless otherwise specified, notify the



Framework contractor of its decision concerning the outputs, giving reasons should it reject the outputs or request amendments ”.

[11] The Guidelines of the Framework Contract state that “[a] report sent by an expert does not commit the responsibility of the framework contractor and should be regarded as an informal document ”.

[12] Information on the review procedure can be found on the Ombudsman’s [website \[Link\]](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark):
<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>
[Link]

[13] According to Article 4.3 of the Specific Terms of Reference.

[14] It referred to point 2.4.15.3 of the Practical Guide to Contract Procedures for EU External Actions (PRAG).

[15] Decision of the European Ombudsman in case 748/2016/DK, available at:
<https://www.ombudsman.europa.eu/cases/decision.faces/en/72005/html.bookmark> [Link]