

## **Decision in case 575/2020/NH on the time it took the European Food Safety Authority (EFSA) to finalise an administrative inquiry into alleged harassment**

Decision

**Case 575/2020/NH - Opened on 21/04/2020 - Decision on 20/11/2020 - Institution concerned** European Food Safety Authority ( No maladministration found ) |

The case concerned how the European Food Safety Authority handled a complaint from a former staff member about alleged harassment. The complainant considered that the administrative inquiry, which was carried out by external investigators, had taken too long.

The Ombudsman considered it regrettable that the investigation took so long but found, nevertheless, that the time taken was reasonable given the complexity and circumstances of the case.

The Ombudsman thus closed the inquiry finding no maladministration.

### **Background to the complaint**

1. The complainant is a former staff member at the European Food Safety Authority (EFSA).
2. On 4 July 2017, the complainant made a harassment complaint against three EFSA staff members. [1] On 12 July 2017, EFSA acknowledged receipt of the complaint. It informed the complainant that it would carry out a preliminary assessment as quickly as possible to determine whether to open an administrative inquiry, in line with EFSA's rules. [2] On 22 September 2017, the chair of EFSA's management board informed the complainant that it had chosen three EFSA staff members to carry out this preliminary assessment. Between October and November 2017, the complainant raised several concerns about potential conflicts of interests of these staff members.
3. On 11 December 2017, EFSA informed the complainant that the preliminary assessment had been finalised, and that it had decided to investigate the matter further by opening an administrative inquiry.
4. On 18 April 2018, the chair of EFSA's management board informed the complainant that it



had appointed two external investigators from other EU agencies to carry out the administrative inquiry, with the assistance of an EFSA staff member. The complainant expressed concern about the expertise of the two investigators and a potential conflict of interest of the EFSA staff member providing assistance. The complainant made a complaint under the EU Staff Regulations [3], and requested that EFSA replace the staff member. EFSA rejected his complaint.

**5.** In June 2018, EFSA informed the complainant that one of the external investigators had recused himself from the investigation due to concerns that his objectivity might be impaired. EFSA appointed a new external investigator from another EU agency in September 2018. The complainant objected and argued that he should have been given the opportunity to provide comments on the decision to appoint a new external investigator.

**6.** Between October 2018 and December 2019, the external investigators gathered evidence and organised two rounds of hearings with 16 witnesses and two of the three staff members that were the subject of the allegations. A hearing with the complainant took place in January 2019. The investigators explained to the complainant that delays had occurred due to the unavailability of several witnesses and the fact that some of the witnesses were not residing in Parma, Italy, where EFSA is based.

**7.** On 18 December 2019, the investigators sent the draft report to the complainant and asked for his comments. In January 2020, the complainant submitted his comments on the draft report. The investigators informed the complainant that they would finalise the inquiry report without undue delay and submit it to the chair of EFSA's management board.

**8.** In March 2020, the complainant asked to be updated on the status of the case. The chair of EFSA's management board informed him that the report would soon be finalised.

**9.** Dissatisfied with the time it was taking EFSA to finalise its inquiry, the complainant turned to the European Ombudsman.

## **The inquiry**

**10.** The Ombudsman opened an inquiry into the time taken by EFSA to finalise the administrative inquiry.

**11.** The Ombudsman asked EFSA to comment on the duration of the administrative inquiry and to describe how it monitors the work of external investigators in administrative inquiries.

**12.** In the course of the inquiry, the Ombudsman received EFSA's reply and, subsequently, the complainant's comments on EFSA's reply.

**13.** In September 2020, while the Ombudsman's inquiry was ongoing, the complainant informed the Ombudsman that he had received the final decision by EFSA on the investigation. The



decision concluded that there had been no inappropriate behaviour or harassment by the three staff members concerned by the investigation.

## **Arguments presented to the Ombudsman**

**14.** The complainant was concerned that the inquiry had taken almost three years. He contended that the inquiry appeared to advance only when he contacted EFSA for updates. He also argued that much of the delay was due to mistakes by EFSA, such as involving staff members with conflicts of interest, about which he had been forced to complain. The complainant said that nothing happened with the inquiry during the period June to December 2019.

**15.** In reply to the Ombudsman, EFSA provided a detailed timeline of the investigation steps following the harassment complaint in July 2017. EFSA said that the procedure took the time necessary to address such a complex file and that there was no intentional delay. The initial complaint was 140 pages long and the complainant provided additional documentation during the investigation. There were three persons concerned by the complaint and over 20 witnesses involved. The complainant also raised various concerns on procedural matters while the inquiry was ongoing. As of March 2020, the COVID-19 pandemic (which was a situation of force majeure) meant the two external investigators were required to devote their full time to other urgent matters within their respective agencies and needed more time to finalise the report.

**16.** In reply to the question whether EFSA monitors, from a procedural perspective, the work of external investigators in administrative inquiries, EFSA said that the two investigators were highly experienced and fully knowledgeable on the procedure, and that they regularly reported back to EFSA on their work.

## **The Ombudsman's assessment**

**17.** It took EFSA more than three years to carry out an administrative inquiry into a harassment complaint. At first sight, this appears unreasonably long. EFSA's internal rules for this kind of investigation do not set a timeframe for administrative inquiries. [4] However, it is good administration to take decisions within a reasonable time limit. [5]

**18.** After having examined the detailed timeline of the investigative steps, as described both by EFSA and the complainant, as well as the supporting documents, the Ombudsman finds that the time taken for the investigation is reasonable given the complexity and circumstances of the case.

**19.** The investigation looked into allegations against three staff members and involved more than 20 witnesses. EFSA also gave the complainant the opportunity to provide comments on the summary of facts, on the preliminary conclusions, on the draft report and on the witness statements. At several points during the investigation, the complainant raised concerns about



procedural matters, about the expertise of the external investigators and about possible conflicts of interest. He also made a separate administrative complaint [6] to this end, which is a procedure that takes some time.

**20.** In an email to the complainant, the investigators apologised for the delay that occurred between June and December 2019, which was due to unforeseen circumstances and long-term absences.

**21.** The purpose of relying on external investigators is to ensure objectivity and independence of the investigation, in particular in smaller EU agencies. EFSA's monitoring role over the investigators is thus necessarily limited by the objective of ensuring independence. EFSA explained that the external investigators reported regularly to the chair of EFSA's management board about their work.

**22.** Taking all aspects of this case into account, the Ombudsman finds no evidence to suggest unjustified or deliberate delays on the side of EFSA. Although it is regrettable that the investigation took more than three years, the Ombudsman finds no maladministration in how EFSA handled the investigation, nor in how it monitored the work of the external investigators.

## Conclusion

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

**There was no maladministration by the European Food Safety Authority.**

The complainant and EFSA will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 20/11/2020

[1] Harassment complaints are made by way of requesting assistance under Article 24 of the EU Staff Regulations. See Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link]

[2] Decision on the policy of EFSA on protecting the dignity of the person and preventing psychological harassment and sexual harassment, adopted on 21 June 2017, available at <https://www.efsa.europa.eu/sites/default/files/event/mb170621-a7.pdf> [Link].



[3] Article 90(2) of the Staff Regulations.

[4] See section 4.5 of EFSA's Decision on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment (see previous footnote). This section lays down that "*if an administrative inquiry is opened as part of the formal procedure, the timeframes for handling the request will be longer*".

[5] Article 41 of the Charter of Fundamental Rights of the EU lays down that "*Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*"

[6] Under Article 90(2) of the EU Staff Regulations.