

## Decision on the European Commission's decision not to invite an organisation to participate in a working group on combating antisemitism (case 2146/2020/TM)

Decision

**Case 2146/2020/TM - Opened on 12/02/2021 - Decision on 03/02/2022 - Institution concerned** European Commission ( No maladministration found ) |

The case concerned the composition of the working group on combating antisemitism, which was set up by the European Commission. The complainant, an umbrella organisation representing European Jewish peace groups, wanted to participate in the working group. The complainant argued that the Commission failed to ensure that the working group had a balanced and pluralistic composition.

The Ombudsman found that the Commission provided reasonable explanations for the composition of the working group and the criteria it applied in inviting organisations to participate in its work. Furthermore, it gave the complainant an opportunity to present its views outside the format of the working group. While the Ombudsman considered that the Commission should have been clearer in its initial correspondence with the complainant's member organisations on the composition of the working group, she closed the case, finding no maladministration.

## Background to the complaint

1. The complainant is an umbrella organisation representing European Jewish peace groups based throughout Europe.
2. In 2018, the Council of the European Union unanimously adopted a *declaration on the fight against antisemitism and the development of a common security approach to better protect Jewish communities and institutions in Europe* [1]. In 2019, as a follow-up to the declaration, the European Commission decided to set up an *ad hoc* working group on combating antisemitism [2] to implement the declaration. In line with the declaration, the working group aims to support Member States to adopt "*a holistic strategy to prevent and fight all forms of antisemitism as part of their strategies on preventing racism, xenophobia, radicalisation and violent extremism*". The working group based its discussions on a 'working definition' of antisemitism, which was adopted by the International Holocaust Remembrance Alliance and has since been endorsed by the EU institutions [3] and many Member States.



3. The complainant was not invited to participate in the working group, but nonetheless wanted to participate in its deliberations and, in particular, a meeting of the working group discussing the practical use of the definition on antisemitism [4] .
4. To this end, the complainant and some of its member organisations carried out extensive correspondence with the Commission in 2019 and 2020 concerning the organisation of the working group meetings.
5. In the context of the correspondence, the complainant also questioned whether the working group had a balanced representation, as it included only organisations that support the working definition of antisemitism.
6. Dissatisfied with how the Commission dealt with the matter, the complainant turned to the Ombudsman in December 2020.

## The inquiry

7. The Ombudsman opened an inquiry into the complainant's concerns. In the course of the inquiry, the Ombudsman received the Commission's reply in relation to the complaint and subsequently the complainant's comments.

## Arguments presented to the Ombudsman

### Composition of the working group

8. In the **complainant's** view, the Commission failed to ensure a balanced and pluralistic composition of the working group, as all participants support the working definition of antisemitism. As *"the only Jewish umbrella organisation with a different and unique approach to the fight against antisemitism"*, it considered that its views were essential to ensure balanced discussion, particularly during the meeting of the working group on the practical use of the definition. The complainant referred to previous Ombudsman inquiries on expert and advisory groups [5] , and argued that the representation would fail to ensure an objective and pluralistic discussion.
9. The complainant also took issue with the Commission's failure to provide clear information on the criteria it used in inviting organisations to participate in the working group. The complainant argued that the Commission had provided unclear and misleading information and had failed to inform it appropriately on the possibility to participate in the working group as an umbrella organisation.
10. The complainant argued that it has the necessary expertise to participate in the working



group. It previously engaged with the Commission on antisemitism and the use of the working definition.

**11. The Commission** initially said that the working group was composed of two representatives from the relevant national authorities in the Member States and one representative from the Jewish community in each Member State. It subsequently said that, to certain meetings, it had invited local or regional level representatives, representatives of Jewish civil society umbrella organisations and experts, representatives of EU and international organisations.

**12.** The Commission stated that the major European Jewish umbrella organisations invited to participate in the working group were selected on the basis of their representativeness and the relevance of their expertise for the topics discussed.

**13.** To this end, **the Commission** argued [6] that the complainant has a significantly smaller membership in terms of Member States [7] in which it is active compared to the organisations represented in the working group, which have affiliates in almost all Member States. The Commission further said that the representativeness of umbrella organisations was assessed, based on established organisations, the number of their affiliates and the size of the membership of the affiliates.

**14.** The Commission stated that, given the specific remit of the working group, only umbrella organisations whose declared aim was to fight against antisemitism were invited to participate. The Commission noted that the complainant's expertise, as indicated by the complainant in the Transparency Register, focuses on foreign policy issues. The Commission considered that the working group was not the appropriate forum to discuss its area of expertise and, instead, extended a standing invitation to the complainant for dialogue outside the working group.

**15.** The Commission also contended that it had to limit the number of participants in the working group to ensure efficiency and respect working methods of the working group.

## On overall communication with the complainant

**16. The complainant** said that the Commission provided misleading and evasive replies concerning the working group. In its initial replies, the Commission provided inaccurate information about the meetings of the working group and its composition.

**17. The Commission** clarified certain matters concerning its overall communication with the complainant. It explained that it was initially contacted by a national Jewish organisation with a request for information about the composition of the working group. Its initial reply therefore did not deal with the participation of umbrella organisations, even though that organisation is a member of the complainant's umbrella organisation. It was only subsequently, after the complainant and other member organisations became involved in the correspondence, that it provided broader information on participation in the working group.



## Further arguments following the Commissions' reply to the complaint

**18. The complainant** contended that it was qualified to participate in the working group, as a Jewish umbrella organisation directly affected by antisemitism, comprising several Jewish groups across Europe.

**19.** The complainant further said that it has significant expertise on the issues discussed at the working group meetings, in particular on the working definition of antisemitism. While it also works on foreign policy issues, so do all participants in the working group. The decision not to invite the complainant was thus arbitrary, unfair and violated the principle of equal treatment.

**20.** Concerning the Commission's arguments about the need to limit the number of participants, the complainant noted that the number of total participants varied greatly during the meetings. Two more participants representing the complainant would not have compromised the efficiency of the working group.

**21.** The complainant said that bilateral dialogue with the Commission is not an effective alternative to participating in a forum with different stakeholders.

## The Ombudsman's assessment

### Composition of the working group

**22.** During the inquiry, the Commission provided information about the criteria for inviting umbrella organisations to participate in the working group. In summary, the Commission selected major European Jewish umbrella organisations based on their representativeness, the relevance of expertise for the topics discussed and the need to ensure an efficient working method.

**23.** The criteria applied by the Commission appear to be objective and there is nothing to suggest that the Commission did not apply them in a consistent and impartial manner when deciding which organisations to invite to participate in the working group. It is also reasonable that, depending on the subject matter of the meetings of the working group, the required expertise and the number of participants varied.

**24.** In the Ombudsman's view, the composition of a particular group is balanced if it accurately reflects the different types of expertise necessary to enable the group fully to carry out the mandate conferred on it [8] .

**25.** The Commission explained that only umbrella organisations whose explicit aim is to fight



against antisemitism were invited to participate in the working group, alongside the other participants. Given the remit of the group, this explanation appears reasonable.

**26.** The focus of the working group during its fourth meeting was to discuss the practical use of the working definition on antisemitism. While the Ombudsman understands the wider context of the strong and valid debate on the definition, the fact is that the working definition has been endorsed by the EU institutions, as noted above. Against this background, the purpose of the meeting was to discuss the practical application of the definition. Thus, the position of an organisation on the definition itself was not relevant to the meeting, per se, or in determining whether there was a balanced representation of interests in discussions on its practical use.

**27.** There is nothing to suggest that the Commission failed to consider appropriately the complainant's arguments on the definition and its application, which were set out in its correspondence. It was thus given the opportunity to present its views on the matters covered by the discussions in the working group [9] .

## **Communication with the complainant**

**28.** The Commission initially failed to provide accurate and comprehensive information on the composition of the working group. In the context of the inquiry, it explained that this was because it had initially replied to one of the national members of the complainant's umbrella organisation, and therefore did not provide information on umbrella organisations.

**29.** While the Commission subsequently provided more comprehensive information on the composition of the working group and the criteria on which it invited participants, it is nonetheless regrettable that its initial reply created confusion. Providing clear and transparent information about the composition of expert or advisory groups, including about the basis on which participants were chosen, is essential for ensuring public confidence in those groups and the role of the Commission in ensuring balanced representation. However, in its subsequent replies to the complainant and during the course of the inquiry, the Commission has now provided clarification on this.

## **Conclusion**

Based on the inquiry, the Ombudsman closes this case with the following conclusion [10] :

**There was no maladministration by the European Commission.**

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

Tina Nilsson Head of the Case-handling Unit



Strasbourg, 03/02/2022

[1] Council conclusions of 6 December 2018, available at:

<https://data.consilium.europa.eu/doc/document/ST-15213-2018-INIT/en/pdf> [Link]

[2] More information is available at: [Working Group on combating antisemitism | European Commission \(europa.eu\)](#) [Link]

[3] For more information, see the European Commission publication *Handbook for the practical use of International Holocaust Remembrance Association definition of antisemitism* :

<https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en> [Link].

[4] See background information on the 4th meeting of the Working Group on combating antisemitism:

[https://ec.europa.eu/info/sites/default/files/background\\_-\\_working\\_group\\_on\\_antisemitism\\_-\\_8\\_december\\_2020.pdf](https://ec.europa.eu/info/sites/default/files/background_-_working_group_on_antisemitism_-_8_december_2020.pdf) [Link]

[5] The complainant referred, among others, to the European Ombudsman's decisions in cases 1830/2017/SRS and OI/6/2014/NF concerning the composition and transparency of European Commission expert groups:

[https://www.ombudsman.europa.eu/en/decision/en/86030#\\_ftn15](https://www.ombudsman.europa.eu/en/decision/en/86030#_ftn15) [Link]

[https://www.ombudsman.europa.eu/en/decision/en/109762#\\_ftnref11](https://www.ombudsman.europa.eu/en/decision/en/109762#_ftnref11) [Link]

[6] The Commission based its position on the information concerning the complainant available in the Transparency Register as of 5 March 2021. It is the responsibility of interest representatives to register and update their information in the Transparency Register.

The purpose of the Transparency Register is to allow the public to monitor the activities of interest representatives who seek to influence the formulation and implementation of EU legislation and policy. More information is available at:

<https://ec.europa.eu/transparencyregister/public/homePage.do> [Link]

[7] Based on the publicly available information on the complainant's website, accessed on 12 January 2022, the complainant is represented in nine countries.

[8] Decision of the European Ombudsman in her strategic inquiry OI/6/2014/NF concerning the composition and transparency of European Commission expert groups, paragraph 21, available at <https://www.ombudsman.europa.eu/en/decision/en/86030> [Link]



[9] The Commission also met with some of the complainant's member organisations on previous occasions.

[10] This complaint has been dealt with under delegated case handling, in accordance with [the Decision of the European Ombudsman adopting Implementing Provisions \[Link\]](#)