

Decision on how the EU Delegation to Mauritania handled a contract for auditing and accounting services (case 2196/2019/NH)

Decision

Case 2196/2019/NH - Opened on 27/04/2020 - Decision on 24/01/2023 - Institutions concerned European Commission (No maladministration found) | European Commission (Maladministration found) |

The case concerned the decision by the EU Delegation to Mauritania to terminate a contract for auditing services with an audit company. The Delegation argued that the audit company, which had its seat in Morocco, had failed to base its auditors in Mauritania permanently, despite its contractual obligation to do so. The Delegation had also decided to reject one of the audit reports that the company submitted because it deemed that the audit mission had been carried out by an unauthorised staff member of that company. The Delegation also refused to pay the company for the remaining reports.

The Ombudsman conducted an extensive inquiry. She found that the Delegation's decision to reject the audit report and to terminate the contract was not unreasonable and did not amount to maladministration. The Ombudsman did not find maladministration in how the Delegation handled the subsequent amicable settlement procedure.

However, how the Delegation handled the communication with the complainant, in particular in providing comments on draft audit reports and explaining clearly its decisions, did amount to maladministration.

As these issues occurred five years ago, the Ombudsman considered that no purpose would be served by making a recommendation on that aspect of the complaint.

Background to the complaint

1. The complainant, a French national, is an accountant and the managing partner of an accounting and auditing company based in Casablanca, Morocco.
2. In March 2016, his company entered into a contract with the EU Delegation to Mauritania ('the Delegation') to provide auditing and accounting services for contracts and grants financed



by the EU in Mauritania.

3. The contract specified that the contractor would set up an office in Nouakchott, Mauritania, with the necessary logistics. In his proposal, the complainant submitted a list of key experts who would be providing the services, as well as a list of other experts who would assist the key experts. He offered to base his key experts in Mauritania on a permanent basis.

4. The contract was a 'lump sum contract'. This meant that the complainant would be assigned specific auditing tasks and would be paid based on the different outputs to be produced under the contract ('the deliverables'), irrespective of the actual amount of work carried out.

5. Between 2016 and 2018, the complainant provided auditing services to the Delegation based on the contract. In particular, the complainant executed tasks related to financial system audits and financial expenditure verifications concerning several projects financed by the EU. The Delegation sent the complainant a reference statement stating that, for 2016 and 2017, his audit company had performed the services in accordance with the contract and to the satisfaction of the Delegation.

6. In January 2018, the complainant exchanged several e-mails with the Delegation concerning alleged delays in submitting certain reports. In February 2018, the complainant wrote a letter to the Head of the Delegation in which he argued that the Delegation had requested changes to the content of his audit reports and had interfered in the audit activities. He stated that he had found serious irregularities and possible fraud committed by some of the organisations carrying out EU-funded projects in Mauritania. The complainant also said that the Delegation had been late in paying for certain deliverables. In March 2018, the complainant wrote two additional e-mails to the Delegation in which he claimed that there had been suspected fraud and irregularities in several projects, including an attempt by a staff member from the Delegation to cover up instances of fraud.

7. In May 2018, the Delegation rejected an audit report submitted by the complainant concerning a project called 'Appui Budgétaire'. The Delegation explained that the complainant's expert who carried out the audit as the '*chef de mission*' was not in the list of key experts in the contract. As the complainant had not filed any modifications to the list, the Delegation considered that it was a breach of the complainant's obligations. The Delegation also said that the complainant had submitted the report late.

8. The complainant contested the Delegation's arguments. He explained that '*chef de mission*' was his expert's job title, which was a standard title among auditors in his company. It did not mean that she led the audit mission. She was not the main contributor of the audit report: two key experts, who had carried out the main part of the audit. The complainant also argued that he had sent the report in various draft versions on five occasions since February 2018, but that the Delegation had failed to react.

9. On 1 June 2018, the Delegation sent a registered letter to the complainant, informing him that it would terminate the contract due to a serious breach of the contract by the complainant. The



Delegation referred, again, to the chef de mission not appearing in the list of key experts in the contract. It also argued that the complainant's company had failed to base the key experts on a permanent basis in Mauritania, therefore breaching the contractual obligations.

10. On 2 June 2018, [1] the complainant sent a registered letter to the Delegation giving notice to terminate the contract on the grounds of a serious breach of contract by the Delegation. The complainant argued, in particular, that the Delegation had been late in examining the audit reports submitted and in paying invoices since 2017, and was wrong to have rejected the Appui Budgétaire audit report. He also said that the Delegation had failed to negotiate the audit plan for 2018, [2] which left his team of auditors without any new assignments.

11. On 8 June 2018, the complainant wrote to the European Commission [3] asking it to intervene to reach an amicable settlement between his audit company and the Delegation. He pointed out the irregularities found in certain EU-funded projects in Mauritania and the pressure that the Delegation had put on his audit company. The Commission replied that it would not intervene because the contractual dispute was between the Delegation and the complainant. It stated that the Delegation was dealing with the alleged irregularities confidentially. It also noted that the Delegation had terminated the contract first, and accused the complainant of delaying tactics by allegedly trying to refuse the delivery of the termination letter of 1 June.

12. In August 2018, the complainant sent an invoice of EUR 160 000 to the Delegation for 22 deliverables under the contract that his team had submitted but which the Delegation had not paid for. The Delegation refused to pay, arguing that the work was carried out by unauthorised experts, who were not permanently based in Nouakchott. As it considered that this was a serious breach covering all the tasks to be carried out under the contract, the Delegation further stated that it could not use any of the audit reports submitted by the complainant's company, and intended to recover all the funds under the contract, amounting to EUR 594 500.

13. The complainant contested the Delegation's decision to recover all the funds under the contract in a letter sent on 16 October 2018. After a delay [4], the Delegation replied to the complainant on 8 April 2019, confirming its decision to terminate the contract for a serious breach and to recover all the amounts paid to the complainant. The Delegation added that it was willing to seek an 'amicable solution' to the dispute under a procedure set out in the contract, especially for the parts of the contract already executed.

14. Between May and December 2019, the complainant's company and the Delegation engaged in an 'amicable settlement procedure', as part of which the Delegation accepted to drop the recovery decision amounting to EUR 594 500 but refused to pay the complainant for the outstanding amounts of EUR 160 000. Instead, the Delegation offered to pay a lump sum of EUR 30 850 as part of the amicable settlement, a sum it considered proportionate based on the delays and low quality of the 22 audit deliverables produced by the complainant's company. The complainant rejected the offer and considered that the amicable settlement procedure had failed. The Delegation nonetheless transferred the amount of EUR 30 850 in November 2019 and considered that amicable settlement as final.



15. Dissatisfied with how the Delegation had handled the matter, the complainant turned to the European Ombudsman in December 2019.

The inquiry

16. The Ombudsman opened an inquiry into the following aspects of the complaint:

- a) The decision by the EU Delegation to Mauritania to reject the audit report concerning a project called 'Appui Budgétaire'.
- b) The subsequent decision by the Delegation to terminate the contract for the provision of auditing and accounting services due to a serious breach of the contract by the complainant.
- c) How the Delegation handled the amicable settlement procedure concerning the outstanding amounts due for 22 audit deliverables.
- d) In general, how the Delegation handled the contractual relationship with the complainant.

17. When opening the inquiry, the Ombudsman informed the complainant that an inquiry into a case like this is limited in the sense that the Ombudsman is not a court that settles legal disputes, nor a mediator for contractual disputes. The Ombudsman's mandate concerns instances of maladministration and thus principles of good administration. Principles of good administration require that the position public authorities take is legally sound, reasonable, transparent and fair. Public authorities should always be able to explain the position they take.

18. In the course of the inquiry, the Ombudsman asked the European Commission, as the institution responsible for budgetary issues in EU Delegations, to reply to the complaint. The Ombudsman subsequently sent a further inquiry letter to the Commission in order to obtain additional explanations. The Ombudsman inquiry team also met with representatives of the Commission and of the Delegation to clarify certain outstanding issues. The Ombudsman gave the complainant the possibility to provide comments on two occasions.

19. The Ombudsman has apologised to the complainant for the time taken to handle this inquiry.

The decision to reject the audit report

Arguments presented to the Ombudsman

Concerning the contribution of the “chef de mission” to the audit report



20. The Commission argued that the audit report concerning the Appui Budgétaire project showed that a non-key expert who had carried out the work as head of the audit mission (in French: ' *chef de mission* '). According to the Commission, that expert was not included in the list of key experts proposed by the complainant in the contract. The complainant had not requested to modify the list of key experts under the contract. The Commission said the list showed that the title of chef de mission was given exclusively to key experts. The Commission found problematic the fact that the complainant had asked a non-key expert, who did not have the necessary qualifications, to lead the audit mission for that report.

21. In a subsequent meeting with the Ombudsman inquiry team, the Commission clarified that, besides the issue with the chef de mission, the problem was mainly that the team of auditors (key experts) who carried out this audit did not comply with the requirements set out in the contract. [5]

22. The complainant argued that the expert concerned, who was listed as a non-key expert in the contract, had a minor supporting role in the audit report, which is fully in line with the contract. He insisted that two key experts had carried out the main work on the report in Nouakchott, while the expert concerned had contributed by checking the figures from the audit company's headquarters in Casablanca - a task that corresponded to 5% of the total time spent by the auditors on this file. Her job title, 'chef de mission ', was a standard title in the company: other non-key experts listed in the contract had the same job title.

23. The complainant remains convinced that the Delegation's real reason for rejecting the audit report was not the contribution of the chef de mission, but the fact that the report had uncovered irregularities by some of the organisations carrying out EU-funded projects in Mauritania, and alleged fraud by a staff member at the Delegation. The complainant said that the Delegation's attempt to cover up these irregularities also led to the decision to terminate the contract later on.

24. The Commission rejected the complainant's allegations of fraud as unfounded.

Concerning the time taken to submit the report

25. The Commission explained that the Delegation had rejected the audit report not only because of the contribution of the chef de mission, but also because the complainant had submitted the report well beyond the contractual deadlines, which were set at 21 days [6] running from the end of the field missions (4 October 2017). The complainant had submitted the report on 7 March 2018, that is, five months after the deadline.

26. The complainant explained that the Delegation had informed him on 16 November 2016 that the start of the audit for the Appui Budgétaire project had to be postponed to September 2017. The audit team carried out the audit in October/November 2017 and submitted the first draft report to the audited entity for comments on 22 December 2017. Since the audited entity failed to provide any comments, his company then submitted the draft report to the Delegation on 6



February 2018, and a final report on 7 March 2018.

27. He said that the Delegation and his company had agreed, in the early days of the contract, that the auditors would submit draft audit reports directly to the audited entities instead of the Delegation, in order not to burden the Delegation's services. As such, the complainant argued, the contractual deadlines of 21 days were no longer applicable.

28. The complainant also argued that, as laid down in the contract, the Delegation had 45 days [7] to provide comments on the reports, otherwise those reports would be deemed approved. The Delegation failed to react to any of the draft audit reports for the Appui Budgétaire project submitted by the complainant between February and March 2018. This meant that, according to the contract, the Delegation had tacitly approved the audit report. The complainant further pointed out that, had the Delegation reacted within 45 days after the submission of the final version of the audit report, any misunderstanding as regards the delays could have been sorted out at that stage.

The Ombudsman's assessment

29. The Ombudsman inquiry team examined a copy of the contested draft audit report, which clearly shows the contributions of two key experts (including the complainant) and a non-key expert (with *chef de mission* as job title). As the complainant stated, the job title *chef de mission* is standard in the complainant's auditing firm, as evidenced by the list of experts in the annexes to the contract where there are several other *chefs de mission*. There is nothing to indicate that the non-key expert led the audit mission. Yet, throughout the inquiry, the Commission and the Delegation insisted that the non-key expert had led the audit mission, and that it was a breach of contract.

30. During the meeting with the Ombudsman inquiry team, the Delegation argued that the main problem was that the team of auditors had failed to respect the 'categories' of auditors set out in the contract. Having examined the relevant provisions in the contract, [8] the Ombudsman does not find any merit to that argument. It is clear from the audit report that the team consisted of a 'category 1 auditor' and a mix of auditors from categories 2 to 4. There appears to be no correlation in the contractual provisions between the 'categories' of auditors and whether they should be key or non-key experts. Any other interpretation would lead to the conclusion that non-key experts are not allowed to participate in any audit work, which would not appear to be logical.

31. Thus, the Ombudsman finds that the first reason invoked by the Delegation to reject the audit report is not convincing.

32. The other reason given at the time by the Delegation to reject the report was that it had been submitted late, well beyond the 21 days set out in the contract. [9] However, it seems that the Delegation and the complainant's audit company developed a practice not to respect that contractual obligation. [10] Equally, it seems that a practice developed for the Delegation not to



respect the contractual obligation to expressly inform the complainant's company of any comments within 45 days (failure to do so meaning under the contractual provisions that the report was tacitly approved).

33. The Ombudsman is aware that parties to a contract may not follow contractual provisions to the letter during the lifetime of the contract. In such cases, and where a contractual dispute arises, it is not unusual for one of the parties to subsequently insist on strict compliance with the terms of the contract. Whether and how a party can 'revert' to insisting on strict compliance with contractual provisions in such cases is a matter of contract law that may be assessed differently from one legal system to another. [11]

34. In this case, the Ombudsman considers that the Commission's view does not appear to be unreasonable or ostensibly legally unsound. The complainant's claims concerning the alleged cover-up by the Delegation of the irregularities identified in the report are addressed below.

The decision to terminate the contract

Arguments presented to the Ombudsman

Concerning the permanent presence of the experts in Mauritania

35. The Delegation terminated the contract due to an alleged serious breach by the complainant's company. The Delegation argued that the key experts were not carrying out their tasks on a permanent basis on premises in Mauritania. This, the Delegation said, was in breach of the contractual obligations. [12]

36. The Delegation also argued that the complainant and the other key experts had signed statements of exclusivity and availability for the 36-month period of the contract. [13] They all confirmed that they would work "full-time" on the contract; yet the Delegation found out (through testimonies) that some key experts were not present in Mauritania or not available for long periods of time. The Delegation also learnt that, in March 2018, the complainant and the other key experts had signed another service contract with the EU Delegation to Mali concerning auditing services, in breach of their statements of exclusivity.

37. The complainant contested this argument by giving a detailed account of the apartments, leases, vehicles and office space his company had rented during the contractual period. He also provided proof of visas issued to the key experts by the Mauritanian authorities, and stated that the dates of entry of the visas demonstrated that they were present in Mauritania.

38. The complainant also argued that the contract was a lump sum contract, and not a unit-price contract. This meant that the Delegation paid his company based on the deliverables, not on the



time spent on location. As such, the argument by the Delegation concerning the permanent presence of experts in Mauritania was a non-issue: it was perfectly reasonable for his company to deploy only the experts needed for the deliverables requested by the Delegation. As an example, the complainant explained that he had only used three of the four key experts for the year 2018.

39. The complainant further explained that, during the first two years of the contract, his company had only received less than half of the maximum amount set in the contract (the amount his company would have received if the Delegation had requested all the planned deliverables). In addition, he argued that the Delegation had failed to negotiate the audit plan for 2018, which left his team of auditors without any assignments. The Delegation had also cancelled several audit activities or missions planned in the contract. He said that he could not reasonably be expected to keep all his key experts inactive in Mauritania when the Delegation did not assign any audit work. This is why his company applied for - and won - the other service contract for the provision of audit services with the EU Delegation to Mali.

40. The complainant explained that, contrary to the Delegation's claims, the statements of exclusivity and availability that he and his key experts had signed meant that he should not present his CV with another bidder competing for the same contract. They also meant that the experts should be available full-time to work on the deliverables requested by the Delegation, but in the absence of any requests, they could work on other projects.

41. In reply, the Delegation argued that the payment under the contract was generous enough for an audit company to base a team of experts in Mauritania full-time and permanently. In addition, the Delegation said that the complainant's company had submitted its proposal for the contract with the EU Delegation to Mali in December 2017, before he could possibly know whether there would be any decrease in the audit assignments under the Mauritania contract in 2018.

42. The Delegation further said that, since the beginning of the contract, the complainant's company had submitted work of very poor quality, containing errors and unsubstantiated statements, and with unexplained delays. The Delegation attributed the cause of these shortcomings to the complainant's failure to base his experts in Mauritania on a permanent basis.

Concerning the allegations of fraud and irregularities

43. The complainant argued that, in 2018, he had reported to the Commission several irregularities in the audited projects. He surmised that the Delegation's decision to terminate the contract may have been related. The complainant claimed that the Delegation tried to cover up the irregularities and decided to reject the Appui Budgétaire audit report and to terminate the contract as retaliation for his reporting.

44. During the inquiry, the Ombudsman asked the Commission to take a position on the



arguments presented by the complainant concerning the alleged irregularities. The Commission stated that his arguments were false and unfounded. During the meeting with the Ombudsman inquiry team, the Commission explained that the Delegation had informed the European Anti-Fraud Office (OLAF) [14] about the irregularities found in the complainant's report, and that OLAF had investigated the matter. The Commission explained that it was for OLAF to determine whether protective measures for the person reporting fraud were needed in case the allegations of fraud were confirmed. The Delegation provided some additional information to the Ombudsman inquiry team in this context, which is confidential because it concerns an OLAF investigation.

The Ombudsman's assessment

45. As a preliminary remark, the Ombudsman notes that both the Delegation and the complainant wished to terminate the contract on 1 and 2 June 2018 respectively. While both parties agree that they did not want to work together anymore, they disagree on who was responsible for "breaching" the contract. The Ombudsman's inquiry into that aspect focused on the argument presented by the complainant that the Delegation's decision to terminate the contract was wrong.

46. The main reason given by the Delegation for terminating the contract was that the experts were not based permanently in Mauritania, which was a requirement under the contract. It therefore does not appear unreasonable for the Delegation to consider that the failure to keep the experts based in Mauritania would constitute a breach of contract.

47. In support of its position, the Delegation has referred in particular to the testimony of a key expert to the effect that the complainant's company failed to respect that provision. The complainant himself has acknowledged that his key experts were not based full-time in Mauritania when he argued that the contract was a lump sum contract. While the reasons given by the complainant for this are not without merit, the fact remains that this was at odds with one of the contractual obligations, the compliance with which had not been waived through an opposing practice.

48. In addition, the complainant and other key experts signed statements of availability and exclusivity to work full-time on the contract between 2016 and 2019. It was not unreasonable for the Delegation to consider that the complainant violated that statement when he applied for a contract with another EU Delegation with the same key experts. The wording of the statement is clear: key experts should not commit to work on any other EU-funded project or activity, and there is no indication that this requirement was waived.

49. The Ombudsman notes the complainant's view that the termination may have been in retaliation for his reporting of alleged fraud and irregularities in some EU-funded projects in Mauritania. However, the Commission and the Delegation explained during the meeting with the Ombudsman inquiry team that they had notified OLAF about possible irregularities, and that an OLAF investigation took place. The Ombudsman is therefore satisfied that the Delegation acted



diligently on this issue. Any determination of whether there had been fraud or irregularities would be for OLAF to determine.

How the Delegation handled the amicable settlement procedure concerning the outstanding amounts for 22 audit deliverables

Arguments presented to the Ombudsman

50. When the Delegation took the decision to terminate the contract, there were still 22 audit deliverables for which it had not paid the complainant. These included audit reports (including the Appui Budgétaire audit report examined above in the first section) as well as expenditure verification reports. The complainant's company had completed some of the tasks but other tasks were still ongoing when the contract was terminated in June 2018. According to the complainant, the total amount due was EUR 160 000.

51. The Delegation initially intended to recover the full amounts paid to the complainant's company for all the audit work carried out between 2016 and 2018 (EUR 594 500). The Delegation considered that, because the experts were not based in Mauritania on a permanent basis, all deliverables should be rejected. However, following the amicable settlement procedure, the Delegation agreed to drop the recovery of the full amounts.

52. As part of the amicable settlement, the Delegation drew up a list of the 22 deliverables with explanations concerning the reasons for rejecting them and the penalties applied. It communicated that list to the complainant. The Delegation argued, among other reasons, that the complainant submitted a majority of the reports long after the contractual deadline of 21 days, and that some reports contained errors that made them unusable. Those reports, the Delegation said, would need to be checked again by the relevant services. The Delegation nevertheless agreed to pay EUR 30 850 for the outstanding deliverables. It calculated this amount based on a proportional methodology with a 10% penalty for substantially delayed reports and 30% for other shortcomings.

53. The complainant considered that the reasons for rejecting the 22 deliverables were unfounded and disagreed with the amount offered by the Delegation. His main arguments were that the Delegation had either not sent any comments on the deliverables or sent comments long after the contractual deadline to do so. This meant that the Delegation had tacitly approved the reports. To justify his position, the complainant referred to the same contractual provision mentioned above for the audit reports, [15] and to another contractual provision for the expenditure verification reports. [16]

54. He argued that, between April 2016 and July 2017, the Delegation had approved 63 audit deliverables and even sent the complainant a formal reference certificate stating that the complainant's company had performed the services in accordance with the contract and the



terms of reference “ *to the satisfaction of the Delegation* ”. According to him, the Delegation never raised the issue of the 21-day deadline in 2016 and 2017 even though he had submitted some deliverables beyond that deadline. In addition, he said that the Delegation never once provided any negative feedback on the quality of the reports. In fact, the complainant said that he had stopped receiving any reaction from the Delegation to the submitted reports after August 2017.

55. During the meeting with the Ombudsman inquiry team, the Delegation explained that, before 2018, there had been another team working in the Delegation's Finance, Contracts and Audit unit, which may have had a more flexible approach to the contractual obligations, especially as it was the start of the contract with the complainant. The Delegation changed its approach after 2018 in view of the severe delays by the complainant in submitting the audit reports.

56. In reply to the complainant's argument that the 22 deliverables had been tacitly accepted, the Delegation referred to the 'General Conditions' of the contract [17] , which state that, if there is a delay in the submission of a report, the Delegation is entitled to 'liquidated damages'. Once the amount of such damages reaches 15% of the contract value, the Delegation may terminate the contract. As this threshold was reached for the reports submitted by the complainant, and given the decision to terminate the contract, the Delegation did not deem it necessary to expressly reject the reports.

The Ombudsman's assessment

57. The Ombudsman has already examined one of the 22 deliverables (the Appui Budgétaire audit report) above.

58. The Delegation provided the complainant with a detailed list of the main reasons for rejecting the 22 deliverables, in particular that all reports were submitted late and that some of the reports contained various mistakes that made them unusable. On this basis, it concluded that EUR 30 850 was a proportionate sum based on the delays and low quality of the 22 audit deliverables. The Ombudsman is not in a position to determine whether that amount is right, as this would involve re-assessing the quality of the audit work performed by the complainant's company - a task for which the Ombudsman does not have the requisite expertise.

How the Delegation handled the contractual relationship with the complainant

The Ombudsman's assessment

59. As noted above, the Commission's views on the contractual dispute do not appear to be legally unsound. That being said, there seem to have been serious communication issues between the complainant and the Delegation's team responsible for audits, in particular in providing comments on the reports submitted by the complainant. It would appear that these



issues are related to a change in the composition of the team at the end of 2017, which led to a change in the working relationship between the parties throughout 2018, and which deteriorated sharply. The new team altered significantly the Delegation's approach to the matters at hand.

60. Moreover, the reasoning of the Delegation for its actions altered considerably over time without much explanation to the complainant as to the reasons why. As explained above, the Ombudsman remains unconvinced by the explanations given by the Delegation concerning the contribution of the chef de mission on one of the audit reports. This argument also appears as a supporting argument in the Delegation's letter terminating the contract.

61. An important principle of good administration is that the administration should always give convincing reasons for its decisions. This has not been the case here, neither to the complainant nor, during the course of this inquiry, to the Ombudsman inquiry team. The Ombudsman finds that the general shortcomings identified as regards how the Delegation handled the contractual relationship amount to maladministration.

62. As these issues occurred five years ago, the Ombudsman considers there is no merit in making a recommendation on this aspect of the complaint. However, the Ombudsman trusts that, in future, the Delegation will communicate with contractors in line with best administrative practices.

Conclusion

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

The decision by the EU Delegation to Mauritania to reject an audit report and to terminate the contract was not unreasonable and did not amount to maladministration.

The Ombudsman did not find maladministration in how the Delegation handled the subsequent amicable settlement procedure.

However, how the Delegation handled the communication with the complainant, in particular in providing comments on draft audit reports and explaining clearly its decisions, amounted to maladministration.

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

Emily O'Reilly European Ombudsman

Strasbourg, 19/12/2023

[1] The complainant claims that he received the Delegation's termination letter of 1 June 2018



only on 22 June, allegedly due to him travelling away from his office. The Delegation argues that it also sent the termination letter by e-mail, and that the complainant must therefore have been aware of it as soon as 1 June 2018.

[2] The contract sets out that the Delegation should draw up annual audit plans for the audit needs identified in the contract. According to the contract, these annual audit plans “ *will be adopted and amended during the period of performance of the contract* ”.

[3] Since its creation in 2011, the European External Action Service (EEAS) is responsible for the EU Delegations and offices around the world. However, the European Commission is responsible for all matters concerning the EU budget, including projects administered by EU Delegations.

[4] Which was the subject of a previous Ombudsman inquiry.

[5] The Commission referred to Article 4.2 of the Terms of reference of the contract, which sets out that “ *The team of auditors required for this assignment will consist of a Category 1 auditor with ultimate responsibility for the audit and an audit team with an appropriate mix of Category 2 to 4 auditors with the qualifications and experience specified below. (...) Category 1: associate. Category 2: Audit manager. Category 3: confirmed auditor. Category 4: assistant auditor.* ”

[6] According to point 6.3 of the Terms of Reference of the specific audit contract for the Appui Budgétaire project.

[7] Provided for under Article 27.5 of the Specific Provisions of the Contract: “ *The documents or reports shall in all cases be deemed to have been approved by the contracting authority if it has not expressly informed the contractor of its comments within 45 days of receipt.* ”

[8] Article 4.2 of the Terms of reference of the contract (see footnote 5).

[9] The Delegation later added that the audit report was not usable.

[10] As evidenced by the fact that the majority of reports prepared in 2016 and 2017 were submitted beyond the 21-day deadline, but still accepted by the Delegation - see paragraph 54 below.

[11] The relationship of the parties was, as concerns this matter, governed by Belgian law.

[12] Article 5.1 of Annex II and Article 2.6 of Annex III to the contract, which says “ *The key experts will be operational immediately after the signature of the contract. They will be installed in Nouakchott during the 36 months of performance of the contract and will be mobilised at all times during this period .* ”

[13] The statements state that “ *I also declare that I am able and willing to work during the period(s) foreseen for the position for which my CV has been submitted in view of the present*



tender, namely: April 2016 - April 2019 - FULL TIME. I confirm that I have no confirmed commitment as a key expert to any other EU-funded project or activity incompatible in terms of capacity or planning with the commitments set out above .”

[14] The European Anti-Fraud Office (OLAF) is a body mandated by the EU to protect the EU's financial interests. OLAF carries out independent investigations into fraud and corruption involving EU funds. Its investigations are usually confidential in order to protect its investigative processes.

[15] Article 27.5 of the Specific Provisions of the Contract (tacit approval after 45 days, see footnote 7).

[16] Article 4.2.1 of Annex II (terms of reference) of the contract: “ *Each certificate (expenditure verification report) must be approved by the Delegation within fifteen (15) calendar days of receipt of the payment order form... Failure by the Delegation to react within the above period shall be deemed to constitute formal approval .”*

[17] In particular Articles 19.3, 19.4 and 19.5 of the General Conditions.