



## Decision

### in case 1802/2016/CEC on how the European Commission handled a call for tenders concerning air quality inside the cabin of large transport aeroplanes

*The case was about how the European Commission handled a call for tenders to carry out a study on the air quality inside the cabin of large transport aeroplanes and the health implications of that air quality.*

*The Ombudsman inquired into the complainant's concerns that the Commission favoured specific stakeholders in the process and set a time limit for submitting tenders that was too short. The Ombudsman informed the complainant that the call for tenders involved complex scientific issues and that her review was limited to a possible manifest error of assessment by the Commission.*

*The Ombudsman found that the Commission's handling of the call did not constitute maladministration.*

## Background to the complaint

1. The complainant, Global Cabin Air Quality Executive (GCAQE), is an organisation that aims to find solutions to poor air quality in aircraft<sup>1</sup>. It is also a member of the European Committee for Standardisation/Technical Committee 436, 'Cabin air quality on civil aircraft: Chemical agents' ('CEN/TC 436').
2. On 26 August 2016, the European Commission published a call for tenders for a study on the quality of the air inside the cabin of large transport aeroplanes and the health implications of that air quality<sup>2</sup>. The Commission later extended the deadline for receiving tenders from 30 September to 7 October 2016<sup>3</sup>.
3. On 4 October 2016, the complainant wrote to the Commission complaining that it had failed to consult with all relevant stakeholders before issuing the call for tenders and that the time limit for submitting a tender had been too short. In addition, it disagreed with the content of the call (its scope and research approach) and asked which stakeholders had been involved in the development of the tender research programme.
4. On 3 November 2016, the Commission replied to the complainant. It explained that to provide advanced and detailed knowledge of the call for tenders to some potential bidders, on a preferential basis, would have

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<sup>1</sup> <https://gcage.org/about/>

<sup>2</sup> Contract notice, 2016/S 164-294886, available at: <https://ted.europa.eu/udl?uri=TED:NOTICE:294886-2016:TEXT:EN:HTML&tabId=1>

<sup>3</sup> Corrigendum, 2016/S 175-313689, available at: <https://ted.europa.eu/udl?uri=TED:NOTICE:313689-2016:TEXT:EN:HTML>



prevented them from bidding for it. It noted that the European Aviation Safety Agency (EASA) had however informed the CEN/TC 436 in November 2015 of the Commission's intention to commission the study. Regarding the content of the call for tenders, the Commission stated that the study was intended to follow up on two previous studies<sup>4</sup>, with a view to identifying measures to improve air quality in large transport aeroplanes. In addition, a scientific committee of independent experts would assist in the work to ensure that the study adhered to the highest scientific standards. The Commission stated that tenderers were in a position to reply to the tender on time.

**5.** On 9 December 2016, the Commission awarded the contract to a consortium called FACTS<sup>5</sup>. There was only one competing bid.

**6.** On 11 December 2016, the complainant turned to the European Ombudsman.

**7.** In December 2016, March and May 2017, the complainant had further exchanges with the Commission and EASA on the call for tenders and the results of the completed EASA studies<sup>6</sup>. The complainant said that the Commission's call relied on two EASA studies which were wrong. The complainant also met with both institutions in July 2017. In reply to further correspondence from the complainant, EASA stated that it had selected the best organisations with the necessary skills and using state of the art scientific techniques to carry out the two studies. According to EASA, it was clear that the complainant disagreed with the scientific approach taken on this matter by EASA and other organisations. In December 2017, the complainant wrote again to the Commission and EASA expressing its concerns about the FACTS study.

## The inquiry

**8.** The Ombudsman opened an inquiry into the complainant's concern that the Commission, when issuing the call for tenders, gave preferential treatment to specific stakeholders and set a time limit for submitting tenders that was too short. In the course of the inquiry, the Ombudsman received the Commission's reply on that concern and, subsequently, the comments of the complainant.

**9.** Regarding the complainant's main concern, which is about the content of the call for tenders (its scope and research approach), the Ombudsman informed the complainant in her opening letter that this raised complex scientific questions. The Ombudsman pointed out that her Office is not a scientific body and that the Ombudsman's role is not to examine the merits of scientific evaluations and decisions. The Ombudsman's review in this case is limited to assessing whether the Commission has made a manifest error of assessment when determining the content of the call for tenders. She invited the complainant to provide evidence that would enable the Ombudsman to pursue her inquiry into this aspect of the case.

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<sup>4</sup> Namely, preliminary cabin air quality measurement campaign ("CAQ") (EASA.2014.C15) and characterisation of the toxicity of aviation turbine engine oils after pyrolysis ("AVOIL") (EASA.2015.C16).

<sup>5</sup> <https://www.facts.aero/index.php>.



**10.** In reply to the Ombudsman's invitation, the complainant argued that extensive scientific evidence showed that the scope and research approach of the call were wrong.

**11.** The Ombudsman considers that the complainant's references to existing scientific evidence do not establish that the Commission made a manifest error of assessment into which she could inquire. While the Ombudsman understands that the complainant disagrees with the Commission on the scientific approach taken, this does not alter the nature of her inquiries.

## **Preferential treatment of selected stakeholders in a tender procedure**

### **Arguments presented to the Ombudsman**

**12.** The complainant noted that the Commission consulted certain unnamed industry stakeholders in the process leading up to the call for tenders. They may thus have benefited from preferential treatment during the tender procedure. In support of this argument, the complainant referred to a paragraph in the Tender Specifications, which reads: *"Conscious of the public interest in the issue, its sensitivities and inherent difficulties, the European Commission, supported by EASA and various aviation stakeholders, decided to start a new initiative aimed at collecting additional scientific evidence on which to root more robust policies in this subject area"*.

**13.** The Commission stated that together with EASA, it had drafted the Terms of Reference (TOR) for the call based on the results and recommendations of the studies carried out by EASA and of similar recognised international initiatives. It stated that the evidence collected by national air accident investigators on cabin air quality-related accidents and incidents was the core material for the preparation of the TOR.

**14.** In addition, in recent years, together with EASA, the Commission discussed these cabin air quality-related accidents and incidents with the aviation sector at large - including airlines, crew unions, passenger associations, supply industry and national regulatory authorities - in order to ascertain the need for mitigation measures and further regulation. The Commission stated that two companies, which were leaders in the supply of, respectively, commercial aircraft and on-board air management systems, had necessarily been part of those discussions. It noted that these two companies were members of the winning consortium.

**15.** The complainant contended that the two companies mentioned by the Commission should not have been the primary stakeholders consulted on the TOR. Instead, there should have been a balanced consultation of stakeholders. Both companies had been unwilling adequately to review the various issues at stake, one more reason why the TOR had been wrong from the start.



## The Ombudsman's assessment

**16.** In the Ombudsman's view, the paragraph in the Tender Specifications that the complainant takes issue with does not imply that the Commission drafted the call in cooperation with stakeholders that could be bidders. That said, the Ombudsman recognises that the paragraph can be misinterpreted. That is regrettable. It would have been preferable were the call for tenders drafted in a way that did not lend itself to misinterpretation.

**17.** The Commission has, however, explained what underpins that paragraph, namely that discussions among interested parties showed a need for further research. The complainant does not seem to take issue with the fact that further research was needed, but rather with the research approach taken.

**18.** The Ombudsman considers it normal that aviation stakeholders such as the two companies in question have, like the complainant, been part of such discussions. That fact alone in the absence of any evidence of preferential treatment or undue advantage cannot prevent them from participating in the winning consortium.

**19.** In light of the above, **the Ombudsman does not find maladministration by the Commission on this issue.**

## Time limit laid down in the tender procedure

### Arguments presented to the Ombudsman

**20.** The complainant argued that the time limit for submitting tenders was too short.

**21.** The Commission stated that the time between the date of dispatch of the original notice (16 August 2016) and the extended submission deadline (7 October 2016) was 52 days. This was in line with the applicable rules, which provide that *"the time limit for receiving tenders should be no less than 42 days from the date on which the contract notice was dispatched"*<sup>7</sup>.

**22.** The complainant argued that it is not the date of dispatch, but the date of publication of the tender (26 August 2016) that counts. Therefore, the time limit for submitting a tender was 36 days. After the extension of the deadline, the time limit became 43 days, which although it technically complied with the applicable rules, was not realistic.

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<sup>7</sup> Article 152, paragraph 2 of the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, as amended by Commission Delegated Regulation (EU) 2015/2462, OJ L 362 31.12.2012, p. 1 (consolidated version of 1 January 2017).



## The Ombudsman's assessment

**23.** The Ombudsman notes that the applicable rules clearly state that the date on which the contract notice was dispatched is the date to be taken into account to determine the minimum time limit (42 days) within which tenders may be submitted.

**24.** In this case, the Commission extended the time limit to 52 days. The complainant has not put forward any convincing arguments as to why this extended time limit was not sufficient.

**25.** In light of the above, **the European Ombudsman finds no maladministration by the Commission on this aspect of the case.**

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion<sup>8</sup>:

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

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

Emily O'Reilly  
European Ombudsman

Strasbourg, 11/12/2018

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<sup>8</sup> Information on the review procedure can be found on the Ombudsman's [website](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>