



CONSILIUM

COUNCIL OF THE  
EUROPEAN UNION

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*The Secretary-General*

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**Subject :** Your Letter of 24<sup>th</sup> June 2010, regarding disclosures under Article 22b of Staff Regulations, addressed to Mr Yves Leterme, President of the Council

Thank you for your letter to Mr Yves Leterme, of 24<sup>th</sup> June 2010, regarding the important issue of treating disclosures on the basis of Article 22b of the Staff Regulations (SR). Please allow me to answer your questions on behalf of the Presidency.

By way of a preliminary remark, let me stress that, the Council attaches great importance to the efficient application of the provisions of the SR on disclosing information (whistleblowing), which constitute an important instrument with a view to protecting the Union's financial interests and are contributing to the improvement of the public image of the institutions.

Please find hereafter the reply to your questions.

1) As regards the first question, there has been one case - which arose after the entry into force of the Lisbon Treaty - in which a Commission official addressed a communication to the "President of the Council", though the text made clear that it was intended for Mr Van Rompuy. In this case, the Director-General of the Administration of the General Secretariat of the Council (GSC) responded to the complainant, noting in his reply that allegations made by the official had already been rejected by the Civil Service Tribunal.

Another case, which was brought to the attention of the President of the Council in August 2010 on the basis of Article 22b SR by a former official of the European Economic and Social Committee, is currently being examined.

Three other cases, all dated after 1<sup>st</sup> May 2004, are noteworthy, although it is not clear to what extent they fall within the scope of Article 22b of the SR.

\* In one case, the President of the Council was addressed by a candidate in an EPSO open competition. However, due to lack of prior disclosure to the institution concerned or to OLAF, the person concerned was directed to the competent services of EPSO.

\* In another case, an official of the European Commission, invoking, among others, Article 22a of the SR, addressed a communication to the Secretary General of the Council. The complaint consisted only of a copy of a case brought before Civil Service Tribunal against another official of the European Commission. Therefore, no parallel examination of the case could be launched.

\* In a third case, information on an alleged irregularity concerning an official of the GSC was disclosed to the President of the Council in the form of an anonymous letter, invoking Article 22a of the SR.

2) All of the above-mentioned cases concerned single issues. There are no records of those informants coming back to the Council with the same or with other issues. The content of the anonymous letter suggests that the identity of the complainant is not the same as the identity of other complainants.

3) In the first case mentioned under 1), the official complained about the treatment of his case by all of the bodies he previously addressed, including OLAF.

4) Regarding the GSC, a Staff Note 190/06 of 11<sup>th</sup> December 2006 established the modalities for the application in the GSC of Articles 22a and 22b of the SR and of Article 60 of the Financial Regulation. It aims at raising the level of the awareness of GSC staff and providing maximum protection for the staff who invoke these provisions.

5) As pointed out under point 4), the Staff Note 190/06 of 11<sup>th</sup> December 2006 aimed at improving GSC staff awareness and providing maximum protection for staff who invoke Articles 22a and 22b of the SR. The measures foreseen in that note, e.g. the right of an official who invokes these provisions to request a transfer or the information of new staff members on the relevant provisions, addressed the issues of awareness, confidentiality, anonymity, protection, support, and management follow-up, all of which were found to be insufficiently addressed within EU institutions by the 2006 study requested by the European Parliament's Committee on Budgetary Control.

6) In the case of the anonymous disclosure of information to the President of the Council mentioned under 1), an administrative investigation was conducted. However, given the anonymity of the informant, the GSC was not in a position to communicate the follow-up measures to him/her.

7) Internal administrative enquiries can be carried out within the GSC according to the provisions set out in Decision n° 73/2006 on the conduct of and the procedure for administrative investigations and the Disciplinary Board. In accordance with Article 66(4) of the Financial Regulation, a body has been established to deal with alleged financial irregularities within the GSC. If misuse of the financial means of the institution is suspected, OLAF has to be informed and asked if it intends to conduct an inquiry. If OLAF decides not to conduct an inquiry, the GSC can carry out an internal inquiry on that case.

8) The case mentioned under 6) concerned a single issue which was not the result of any structural deficiency. It thus did not lead to modifications or influence activities within the normal execution of tasks (e.g. audit).

9) The interpretation of Union law is the exclusive prerogative of the Court of Justice of the European Union. It is not for the Council to express a view on the matter raised by the Honourable Member.

10) The Council is not aware of any case in which a whistleblower suffered prejudicial effects on the part of his/her institution, in violation of Article 22b of the SR.

The fact that only very few cases have been brought to the attention of the President of the Council under Article 22b of the SR suggests that the internal audit and control mechanisms and the follow-up of information disclosed to OLAF is overall satisfactory as far as the Council is concerned. We

nevertheless remain fully committed to ensuring that whistleblowing, when it occurs, is properly followed up.

I hope that the above answers will make a valuable contribution to the forthcoming study on whistleblowing.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'P' followed by a horizontal line that tapers off to the right.

Pierre de Boissieu