



P. Nikiforos Diamandouros
European Ombudsman

Mr Giovanni Kessler
Director General
OLAF
European Anti-Fraud Office
European Commission
1049 Brussels
BELGIQUE

Strasbourg, 24 -07- 2012

Complaint 1183/2012/MMN

Dear Mr Kessler,

On 2 May 2012, I received a complaint from [REDACTED] against the European Anti-Fraud Office ('OLAF') concerning the latter's handling of a complaint against the Fundamental Rights Agency ('FRA') that he had submitted to it. I took the view that the complaint which I received and which was registered as complaint 896/2012/MMN was as inadmissible. This decision was based, *inter alia*, on the assumption that OLAF had replied to the complainant's letter of 24 September 2009 and that this reply pre-dated the period of 2 years during which complaints can be lodged with the Ombudsman.

On 25 May 2012, the complainant informed me that OLAF never replied to his request for clarifications concerning OLAF's decision to close the investigation relating to the FRA. This e-mail was registered as a new complaint (complaint 1183/2012/MMN).

Given that the complaint concerned an alleged failure to reply on OLAF's part, I asked my services to contact OLAF's services informally in order to ascertain when OLAF would reply to the complainant. On 26 June 2012, OLAF provided my services with a copy of the reply it had sent to the complainant. This reply was forwarded to the complainant for his observations, which he provided on 10 July 2012.

In these observations, [REDACTED] submitted the following allegation and claim, which I decided to include in a formal inquiry.

Allegation:

By failing to state the reasons for its decision to close the investigation into the alleged irregularities reported by the complainant, OLAF violated its duties flowing from EU law and the principles of good administration.



Claim:

OLAF should provide the complainant with the reasons for its decision to close the investigation in question.

In accordance with Articles 2(2) and 3(1) of the Statute of the European Ombudsman, I inform you of this complaint and invite you to submit an opinion on the above allegations and claims by 31 October 2012.

I would be grateful to you if, in your opinion, you could take into account the general obligation for EU institutions to state the reasons for the measures which they adopt, as established by the Treaty on the Functioning of the EU and the case-law of the Court of Justice. Furthermore, it appears useful to note that it is good administration for the EU institutions, bodies, offices and agencies to state the grounds for their decisions (see Article 18 of the European Code of Good Administrative Behaviour). As regards the specific circumstances of the present case, it would be useful if OLAF could also address the fact that the complainant, as he emphasised in his observations on OLAF's reply, acted as a whistleblower and claims to have been directly affected by at least some of the alleged irregularities reported to OLAF.

I will forward your opinion to the complainant for possible observations.

Enclosed, please find a copy of the complainant's observations on the reply provided by OLAF.

Yours sincerely,

P. Nikiforos Diamandouros

cc: Cabinet of Commissioner Semeta

Enclosure (sent by e-mail):

- Copy of the complainant's observations on the reply provided by OLAF

WEISKORN Michael

From: [REDACTED]
Sent: 09 July 2012 23:32
To: Euro-Ombudsman
Subject: Re: Complaint 1183/2012/MMN

Dear Mr Navarro

Thank you for your reply. I wish to add the following comments to my complaint:

It took me many months to exhaust the internal processes before I decided to become a whistleblower and report to OLAF instances of fraud, manipulation of budgets, nepotism and mismanagement. This led directly to my enforced resignation which meant I gave up my career in Vienna and a period of very difficult separation from my partner as I had to return to London for work.

The actions of the Head of Administration were against the Staff Regulations and the Financial Regulation and yet after a two year investigation I am not given the courtesy of an explanation as to why these actions are acceptable because "it is not OLAF's policy to do so". Not only does OLAF not justify its actions but during the whole investigation not one person from OLAF expressed any concern for my welfare or future. While I lost my job the Head of Administration has been promoted - within the European Institutions this is surely the wrong message to pass to potential whistleblowers, and the wrong message to pass to staff. The staff in Vienna who turned a blind eye to the situation and to my situation in particular have flourished. The one member of staff who supported my situation has long suffered and is still suffering

With regard to my request to OLAF for an explanation - I cannot accept that a body such as OLAF which receives regular reports from whistleblowers has such a weak internal process for incoming mail that an oversight can lead to the archiving of mail before it is actioned. It would be interesting to know whether mine was an isolated instance or it is common practice to file "inconvenient" letters before they are actioned.

I repeat my request for an explanation as to why, for example, deliberate post-dating and back-dating of contracts, back-dating administrative decisions for personal gain and deliberate budget manipulation are acceptable practices to OLAF.

One final comment - I have grave concern about the independence and objectivity of the staff OLAF - at times they are far too close to the staff they are investigating.

Yours sincerely

[REDACTED]

From: Euro-Ombudsman <EO@ombudsman.europa.eu>
To: [REDACTED]
Sent: Wednesday, 27 June 2012, 13:00
Subject: Complaint 1183/2012/MMN

Dear [REDACTED]

Please find attached OLAF's reply concerning your above complaint.

If you wish to make any observations on OLAF's reply, please send them to the Ombudsman before 31 July 2012.

Please note that, if the Ombudsman does not receive any observations from you, he may close the case with a decision based on the information you have already provided, and on OLAF's reply to you.

Yours sincerely,



European Ombudsman

Martín Martínez Navarro

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BISMARQUE-ALCANTARA Bruno Alexandre

From: EORegistry
Sent: 24 July 2012 11:35
To: [REDACTED]
Cc: [REDACTED]
Subject: Complaint 1183/2012/MMN
Attachments: 1183-2012-MMN-S2012-159344.pdf

Dear Ms Ullrich,

Please find enclosed, for rapid information, a copy of the Ombudsman's letter to Mr Giovanni Kessler, Director General (OLAF) concerning the above complaint.

Best regards,

Bruno BISMARQUE-ALCÂNTARA

The Registry

24/07/2012