

☒ PUBLIC

☐ CONFIDENTIAL

Type of action

**\*I confirm that the title of the Ombudsman in the correspondence respects [these rules](#).\*** ☐

- ☐ Request Clarifications
  - ☐ Opinion Request
  - ☐ Opinion + Inspection Request
  - ☐ Inspection Request
  - ☐ Observations Request
  - ☐ Report on inspection of files
  - ☐ Further Inquiry
  - ☐ Friendly solution
  - ☒ Draft recommendation
  - ☐ Deferment of deadline
  - ☐ Decision
  - ☐ Further Correspondence
- In case no FC summary, insert *Entrée* number(s) use "from ... to" if multiple references.**
- ☐ 14.3 Article ECGAB
- ☐ Reply to request for access to documents
- ☐ Reply to request for review
- ☐ Reply to service complaint
- ☐ EDPS Consultation
- ☐ Other please specify :

Details of correspondence

- ☒ Letter to the complainant
- ☒ Enclosures : please specify [draft recommendation](#)
- ☐ CC : please specify name & address

- ☒ Letter to the Institution
  - ☒ Enclosures : please specify [draft recommendation](#) [Complainant's Observations](#)
  - ☐ CC : please specify name & address
  - ☐ Direct transmission to Commissioner's cabinet
- Please specify Cabinet Contact Person :

- ☐ Information letter to third parties
- ☐ Enclosures : please specify
- ☐ CC : please specify name & address

Other comments/information :

**MALLEA JIMENEZ Juan Manuel**

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**From:** BUTLER Fintan  
**Sent:** 14 November 2013 17:42  
**To:** MARTINEZ NAVARRO Martin  
**Cc:** GADESMANN Gundi  
**Subject:** RE: Draft Recommendation proposal in complaint 1183/2012/MMN  
Martin,

Thanks for that. I think the additional few sentences, on the need to protect and encourage whistleblowers, covers the point I was making.

There is one small remaining language issue with Para. 18 - my proposed amendment is in red below.

18. Second, as far as the confidentiality of investigations is concerned, OLAF argued that Article 8(2) of Regulation 1073/1999 concerning investigations conducted by OLAF<sup>[1]</sup> imposes a broad confidentiality obligation applicable to its investigations. This rule aims at preserving OLAF's fact-gathering mission and also at safeguarding the presumption of innocence. OLAF added that the successful performance of an investigation may require that the person, the subject of the investigation, is not made aware of it.<sup>[2]</sup> Furthermore, the disclosure of information obtained in the course of investigations to persons other than those whose function requires that disclosure may be illegal and may give rise to a liability on the part of the EU.<sup>[3]</sup>

Otherwise, I think the draft recommendation may be issued. Gundi is interested in the possibility of issuing a press statement in conjunction with this draft recommendation. For this reason, we should liaise with her further at the point when the draft recommendation is about to issue.

Regards,

Fintan

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**From:** MARTINEZ NAVARRO Martin  
**Sent:** 14 November 2013 17:19  
**To:** BUTLER Fintan  
**Subject:** RE: Draft Recommendation proposal in complaint 1183/2012/MMN

Dear Fintan,

Please see attached a slightly amended draft, in light of our discussion. Feel free to amend point 37...

Regards,

Martin

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**From:** MARTINEZ NAVARRO Martin  
**Sent:** 06 November 2013 16:14  
**To:** O'REILLY Emily  
**Cc:** EO-Secretariat General  
**Subject:** Draft Recommendation proposal in complaint 1183/2012/MMN

**I confirm that the title of the Ombudsman in the correspondence respects [these rules](#)**

Dear Ms O'Reilly,

Please find enclosed a draft recommendation in the above case.

Please note that the drafts were originally submitted to the lawyer-linguists 14 days ago. However, we have just been informed that we should not expect their feedback for at least two more weeks. In such circumstances, following Gerhard's instructions, we are submitting the drafts to you without prior language-check.

Best wishes,

Martín