

Complaint : 1183/2012/ROW  
LO : ROW  
Date : 24 July 2012

24-07-2012

☐ **Letter of inadmissibility**

- Brochures :
- ☐ EO
  - ☐ Committee on Petitions of the European Parliament
  - ☐ OTHER .....
- ☐ **Original complaint**  
(Copy the complaint for the EO's file – Send by registered post)

☐ **Transfer of a complaint**

- ☐ Letter to Institution + Original of the complaint (Send by registered post)
- ☐ Letter to inform the complainant
- ☐ (Copy the complaint for the EO's file)

☒ **Opinion Request**

- ☒ Letter to inform the complainant
- ☒ Letter to President of the Institution
- ☒ Copy of the complaint *Observations of the complainant*
- ☒ (cc : *Commissioner Secret*)

☐ **Observations request**

- ☐ Letter to complainant
- ☐ Copy of the Institution's opinion
- ☐ Annexes

☐ **Further Inquiries / Friendly solution / Draft recommendation** (circle as appropriate)

- ☐ Letter to inform the complainant
- ☐ Letter to President of the Institution
- ☐ Copy of the complaint's observations
- ☐ (cc : .....

Direct transmission to Commissioner's cabinet: Yes ☐ If yes, contact person:

No ☐

**Decision**

- ☐ Original Decision to the complainant
- ☐ Letter to President of the Institution
- ☐ Copy of the decision in EN
- ☐ (cc : .....

**1183/2012/MMN**

**ADMISSIBLE**

**NOT CONFIDENTIAL** (scroll down to change)

Date of complaint :	25 May 2012	2 years rule :	<input checked="" type="checkbox"/> tick if within 2 years
Date registered :	25 May 2012	Prior approaches :	<input checked="" type="checkbox"/> tick if made
Date of summary :	7 June 2012	Petition :	<input checked="" type="checkbox"/> tick if no petition
	19 July 2012		
		Legal proceedings :	<input checked="" type="checkbox"/> tick if no proceedings
		Grounds :	<input checked="" type="checkbox"/> tick if grounds

Name of complainant :  
represented by (as  
relevant) :

Language : EN

Country of address : UK

Nationality :

**SUMMARY**

*Complaint against :*

European Anti-Fraud Office ('OLAF').

*Concerning: (As it will be published on the website, this section should be ☒ as short as possible ☒ self-explanatory ☒ drafted in the style of a title and not as an entire sentence ☒ systematically anonymised). It should identify the subject-matter of the complaint in a neutral way.*

A complaint lodged with OLAF concerning the Fundamental Rights Agency ('FRA').

*Facts and relevant points according to complainant: (This section will not be published on the website)*

In June 2007, the complainant (who used to work as a seconded national expert for the FRA from 2000 to 2007) brought to the attention of OLAF certain irregularities allegedly committed by the Head of the Administration department. In particular, the alleged irregularities concerned recruitment procedures, tender procedures and the use of the FRA's budget.

On 24 June 2009, OLAF informed the complainant that, following its investigation, it had concluded that no further action should be taken. However, OLAF added that it had addressed a number of issues to the management of the FRA.

On 24 September 2009, the complainant wrote again to OLAF challenging its decision to close the investigation and requesting clarifications concerning the reasons for this decision.

On 3 May 2012, the complainant lodged a complaint with the EO against OLAF (complaint 896/2012/MMN). On 11 May 2012, the EO's services requested the complainant to provide additional information, which he did on 14 and 19 May 2012.

The complainant did not provide a copy of OLAF's reply. However, it appeared from the complaint form that OLAF replied (at an unspecified date) that it did not need to provide further reasons for its decision to close the investigation.<sup>1</sup>

On 25 May 2012, the EO informed the complainant that complaint 896/2012/MMN was time-barred. This conclusion resulted from the fact that OLAF's decision and the complainant's letter to OLAF of 24 September 2009 pre-date the period of 2 years during which complaints can be lodged with the Ombudsman (Article 2(4) of the Statute of the EO). The EO's services requested the complainant to provide a copy of all the correspondence between OLAF and him. However, the complainant did not provide a copy of OLAF's reply to his letter dated 24 September 2009. In these circumstances, the EO considered it likely that this reply was sent more than 2 years ago and that Article 2(4) applies. Nevertheless, the EO added that if it were to emerge that OLAF's reply had been sent on or after 2 May 2010, the complainant could of course renew his complaint to the EO, on the condition that he provides a copy of the said letter.

On 25 May 2012, the complainant wrote again to the EO. In his view, the two years time-bar invoked by the EO was arbitrary. Furthermore, the complainant indicated that OLAF had never replied to his request for clarifications of 24 September 2009. He added that he was unable to lodge his complaint earlier due to the anxiety he suffered as a result of his experience at the FRA. Moreover, the complainant asked the EO to return certain documents he had provided in hard-copy.

*Allegations: (As it will be published on the website, this section should be systematically anonymised)*

OLAF failed to reply to a request for clarifications by the complainant concerning the reasons to close the investigation against the FRA, which was dated 24 September 2009.

*Supporting arguments: (This section will not be published on the website)*

*Claims: (As it will be published on the website, this section should be systematically anonymised)*

OLAF should reply to a request for clarifications by the complainant concerning the reasons to close the investigation against the FRA, which was dated 24 September 2009.

## **ANALYSIS**

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In view of the fact that the complainant clarified in his e-mail of 25 May 2012 that OLAF never replied to his request for clarifications (contrary to what the complainant appeared to suggest in the complaint form), the EO should consider this e-mail as a new complaint concerning OLAF's alleged failure to reply.

Since OLAF's alleged failure to reply is still ongoing, it is submitted that the two years time-limit established by Article 2(4) of the Statute of the EO does not apply to the present case. Therefore, this complaint is admissible.

## **PROPOSAL**

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<sup>1</sup> In particular, the complainant indicated in the complaint form the following: "OLAF has told me that it does not need to justify its decisions".

It is submitted that the EO should open a telephone procedure concerning OLAF's alleged failure to reply to the request for clarifications. The EO should explain the reason for this, in line with the above considerations.

Moreover, the EO should return to the complainant the documents provided in hard-copy, as requested.

## **FURTHER DEVELOPMENTS**

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On 26 June 2012, OLAF provided a copy of its reply to the complainant. In its reply, first, OLAF apologised for its failure to reply to the complainant, which was due to an administrative mistake. Second, as regards the content of its reply, OLAF indicated the following: *"it is not OLAF's policy to explain or give reasons for its decision to close an investigation. I would only add that all such decisions are taken after a careful reflection and discussions between investigators and their management."*

OLAF's reply was forwarded to the complainant for his observations, which were provided on 9 July 2012. In his observations, the complainant expressed his dissatisfaction with OLAF's reply. Moreover, he insisted that OLAF should provide reasons for its decision to close its investigation.

## **APPRAISAL AND PROPOSED ACTION**

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Article 296 TFEU (ex-Article 253 EC) establishes the following: *"Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties."* The case-law of the Courts has derived from this provision a general obligation for the EU institutions to state the reasons for the measures which they adopt.<sup>1</sup>

Moreover, in accordance with the principles of good administration, the EU institutions have a duty to state the grounds for their decisions (see Article 18 of the European Code of Good Administrative Behaviour).

Having regard to the foregoing, OLAF's declared policy not to state the reasons for its decisions to close an investigation would seem to run counter the above-mentioned principle of EU law. Moreover, in the present case the complainant was also a whistleblower to OLAF and was directly affected by at least some of the alleged irregularities reported to OLAF. In view of this, OLAF's reply to the complainant appears to be in principle unsatisfactory.

Thus, the EO should invite OLAF to provide an opinion into the following allegation and the following claim:

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<sup>1</sup> See, for instance, the opinion of Advocate-General Léger in Case C-257/01 *Commission v Council* [2005] ECR I-345, at paragraph 53: *"It must be borne in mind that Art.253 EC lays down a general obligation to state reasons, which applies to all measures taken by the institutions."*

*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 view of the foregoing, after the telephone procedure which has been conducted, the EO should open a normal inquiry into the present case.

**Visa HLU :**

**Visa Director: GG by e-mail**

**Date :**

**Date : 23 July 2012**

**Approved by the Secretary General : IH by e-mail**

**Date : 23 July 2012**

## Statistical information sheet 1

**Page 1: to be completed at the moment of making the decision on in-/admissibility and checked again when closing an inquiry**

**Page 2: only for complaints where no inquiry is initiated**

1. Please fill in this information sheet by selecting the appropriate answer when several possibilities are given, or by filling in the blanks.
2. Attach the COMPLAINT SUMMARY on a separate sheet. Please also copy the COMPLAINT SUMMARY under S:\Legal\Complaint summaries\ADMISS or INADMIS or NO GROUNDS\year (please use "Read only" option).

**INQUIRY:** ☐ YES

☐ NO (Please fill in the information sheet "Stat 1 - Page 2")

**Case reference:** .....

11031 2012 / MPA

**Confidential:** ☐ YES

☒ NO

**On behalf of:** (fill out when needed) .....

**Kind of complainant:** Specify if it is a:

☒ **Physical person** (man or woman?) - Specify if EU staff or MEP

☐ **Legal person:** Company - Lawyers office - Association/Non profit organisation) - Other (specify): .....

For both categories, mention any information you have such as: **nationality** (if possible) .....

**Profession** (e.g.: journalist - farmer - student - doctor - dentist - vet - teacher - other): .....

**Area of activity** (e.g.: software company - human rights NGO - other): .....

**Transmitted** directly - by an MEP - by transfer from the Committee on Petitions of the EP - Other: .....

**Institution or body complained against:**

Eur. Commission (+DG or service, when possible.....) - Eur. Parliament (+ DG, when possible.....) - EPSO - Court of Auditors - Court of Justice - Committee on Petitions of EP - MEP - Other: .....

OLAF  
if the complaint concerns a **national body or institution**, please be as precise as possible:

mention the **country**: .....

and choose the appropriate answer(s) or complete the heading "other": Government - Administration - Courts - Social security - Police - Tax authorities - Health service - Prisons - .....

Other: Council of Europe - .....

**Keywords** (keywords "2", "3" and "4" are only given for inquiries and for "Within the mandate, admissible but not grounded" complaints. It is possible to select several key words in each list):

**Key word 1** "EUROVOC": .....

OLAF

If it concerns a competition/selection procedure: select "Administrative competition" and specify the name of the competition: .....

**Key word 2** "Field of law": General financial and institutional matter

**Key word 3** "Type of maladministration": Duty to state the grounds of decision

**Key word 4** "Subject matter of the case": Institutional and policy matter

## MARTINEZ NAVARRO Martin

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**From:** EOdraftsSG  
**Sent:** 23 July 2012 15:41  
**To:** MARTINEZ NAVARRO Martin  
**Subject:** RE: New inquiry in complaint 1183/2012/MMN

Dear Martin,

Thank you for the information.

Yes, you can proceed. Please inform Giovanna for the website.

Best wishes,

Ian

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**From:** MARTINEZ NAVARRO Martin  
**Sent:** 23 July 2012 14:18  
**To:** EOdraftsSG  
**Subject:** RE: New inquiry in complaint 1183/2012/MMN

Dear Ian,

Thank you for spotting and correcting the typo in the summary.

I can confirm that so far there are no personal data about third parties in the documents in the file relating to the present complaint.

Shall we go ahead?

Regards,

Martin

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**From:** EOdraftsSG  
**Sent:** 23 July 2012 13:30  
**To:** MARTINEZ NAVARRO Martin  
**Subject:** FW: New inquiry in complaint 1183/2012/MMN

Dear Martin,

Thank you for the drafts.

I corrected what I think must be a typo in the summary - please check.

Does the complaint contain personal data about third parties? If so, perhaps the complaint should be classified as confidential.

Best wishes,

Ian

24/07/2012