



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Ref. Ares(2014)3010054 - 15/09/2014

Doc 1.2

Brussels, 31 AOUT 2010
SYB/ 2010 - AA 1423 (2010 - 20100831)

Ms Marta ANDREASEN, MEP
European Parliament
Rue Wiertz
1047 Brussels

Dear Ms Andreasen,

Thank you for your letter of 24 June 2010 on the subject of Article 22b of the Staff Regulations, which sets out the rules concerning 'external' whistleblowing. The President has asked me to reply on his behalf.

I will reply to your questions in the order in which you raise them.

1. Since Article 22b refers to reporting serious wrongdoings outside of one's own institution, the point of the reference in that article to the President of the Commission is as a potential recipient of information on such wrongdoings disclosed by members of staff of other institutions.

The President of the Commission has never received such information under Article 22b, nor is there any record that his predecessor might have received such information.

OLAF's statistics show that almost all recorded cases of whistleblowing under Article 22a ('internal' whistleblowing) come from members of staff of the Commission.

A whistleblower who considers that no appropriate action has been taken by his or her own institution would naturally be inclined to approach another institution which could be considered to have power to hold the "target" institution to account for any failure to follow up a case of legitimate whistleblowing. The Commission is aware of a limited number of cases where Commission staff approached the European Parliament or the Ombudsman under Article 22b. However, it is reasonable to assume that a member of staff of the European Parliament, for example, would be more likely to approach the Court of Auditors or the Ombudsman under Article 22b than the European Commission.

2. Since the President of the Commission has not been approached by whistleblowers from other institutions, I cannot provide you with further information.

3. I am aware of three cases in which a member of the Commission's staff approached either the European Parliament or the Ombudsman under Article 22b. In all these cases, the person concerned considered that neither OLAF nor the Commission had taken appropriate action.

4. No standard procedure has been established in the Commission for 'incoming' Article 22b disclosures, as there have not been any cases. For 'outgoing' Article 22b disclosures by Commission staff, the procedure repeats the provisions of Article 22b and is part of the Manuel of Operating Procedures of the Commission. It is also explained to staff in readily available documentation, such as the on-line Administrative Guide.

5. No – see my previous reply.

6. The Commission and OLAF are well aware of the obligation under Article 22a to inform the whistleblower of the appropriate action taken as a result of the whistleblowing. As far as your question refers specifically to Article 22b, see point 1.

7. In the few cases where members of staff of the Commission reported their concerns to other institutions under Article 22b, the Commission was held to account by the institutions concerned (European Parliament and Ombudsman) and explained all the measures taken as a result of the initial reporting. The Ombudsman has also dealt with complaints against OLAF in the past, although not necessarily in the context of the whistleblowing procedures.

8. OLAF regularly recommends improvements in procedures and fraud-proofing measures as follow-up to its investigations. However, no statistics are kept on the correlation between these follow-up measures and the source of the initial information that led to the opening of the investigation, and whistleblowers are only in a very few cases the primary source of information leading to an investigation. OLAF's statistics show that many investigations are opened as a result of requests from Commission management, where information available to them suggests a potential irregularity. This includes cases where individual members of staff have alerted their line management to their concerns in the normal course of their activities, but without apparently making any explicit reference to the whistleblowing rules.

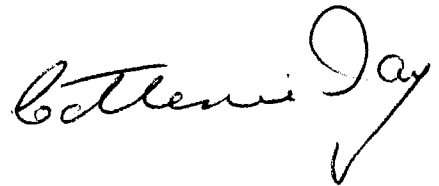
9. It is true that the Courts have held that whistleblowers do not have a right to judicial control over the follow-up measures taken by the authority concerned.. According to the case-law you refer to, the whistleblower has no personal interest in the outcome of the investigation, by reason only of being the person who reported the circumstances leading to it. However, this does not mean that the Courts do not exercise any control over OLAF investigations: see for example point 40 of the judgment in Case T-4/05 which you mention, which makes it clear that the General Court did look into the allegation made by the complainant that there had been no appropriate action by OLAF. ¹

¹ *'Il convient d'ailleurs de relever que, contrairement à ce que soutient le requérant, le rapport final d'enquête du 5 février 2004 a été réalisé à l'issue d'une enquête approfondie et d'une analyse détaillée des faits en cause. Ainsi, ce rapport expose clairement les différentes allégations présentées à l'OLAF par le requérant et détaille les mesures adoptées par l'OLAF pour instruire cette affaire pendant la période allant du 18 octobre 2002 au 5 février 2004.'*

10. I am not aware of any case in which a whistleblower who has disclosed facts within the meaning of Article 22b of the Staff Regulations has suffered harm as a result of having disclosed such facts.

I hope this information is of use to you and I look forward to the results of the forthcoming study on whistleblowing which you refer to in your letter.

Yours sincerely,

A handwritten signature in cursive script, reading "Catherine Day". The signature is written in black ink and includes a checkmark at the end.

Catherine Day