

## Decision in case 1234/2018/TM on how an EU delegation to a non-EU country dealt with an individual who raised concerns about an EU-funded project

Decision

**Case** 1234/2018/TM - **Opened on** 22/08/2018 - **Decision on** 27/06/2019 - **Institution concerned** European External Action Service ( Settled by the institution ) |

The case concerned how an EU delegation to a non-EU country responded to an individual who made allegations of wrongdoing and misconduct by a member of staff at the delegation. The complainant wanted to know how to report these issues formally and receive whistleblower protection.

In the course of the inquiry, the European External Action Service (EEAS), which is responsible for the EU's delegations, provided a better reply on the options available to the complainant. The EEAS thus settled the matter. To avoid similar problems arising in the future, the EEAS should publish on its website the rules that it applies in this area and the options available to individuals who might want to report wrongdoing. The EEAS could also consider adopting a similar approach to the one it applies for EU missions, which it introduced following an own-initiative inquiry of the Ombudsman.

## Background

1. The complainant is an external consultant [1] who worked on a project for an EU delegation to a non-EU country (the delegation) [2] . On 1 June 2018, the complainant wrote to the head of the delegation saying that he wanted to make a *"whistleblower complaint"*. The complainant alleged that there had been a *"repeated series of incidents of abuse of power"* by a staff member at the delegation in breach of the EU Staff Regulations [3] and the European Code of Good Administrative Behaviour [4] (ECGAB). The complainant said that he would like to exercise his right to protection as a whistleblower under the relevant EU and national rules.

2. On 13 June 2018, the delegation replied to the complainant that his letter contained no information that would enable it *"to assess the appropriate way forward"*. The delegation also stated that an unsubstantiated accusation towards an individual could entitle that individual to sue for defamation. The delegation added that the relevant rules on whistleblowing apply only to EU staff members [5] and not to the complainant. It added that, if the complainant could provide



more substantial evidence of the alleged wrongdoing, he should send this to the European Commission [6] and/or to the delegation. In the latter case, the head of delegation would assess the matter, determine the appropriate course of action and reply to the complainant.

3. Dissatisfied with the reply, the complainant turned to the Ombudsman.

## The inquiry

4. The Ombudsman asked the European External Action Service (EEAS) to elaborate on the delegation's reply to the complainant, and to provide clearer information on how to report wrongdoing and misconduct by staff members. Specifically, the Ombudsman asked the EEAS to explain the procedural steps it normally follows when handling complaints made against members of its staff. This should include a description of measures it has in place to protect the rights of individuals who are not staff members and who want to make a disclosure in the public interest.

## Arguments presented to the Ombudsman

5. The **complainant** argued that the delegation failed to provide him with appropriate guidance on how to make a "*whistleblower complaint*" and thus placed him in a difficult situation. He claimed that the EEAS had failed to publish any information on how to report wrongdoing and what protection is offered to those who make a disclosure in the public interest. The complainant noted that the Ombudsman had urged EU institutions, bodies and agencies to adopt internal rules on protecting whistleblowers [7], and to make public the measures they have to protect individuals who are not staff members but who make a disclosure in the public interest. The complainant also noted that the EEAS failed to follow-up on its commitment, in the context of the Ombudsman's inquiry, to adopt rules on protecting whistleblowers.

6. The **EEAS replied** that it takes any report of irregularities very seriously. It stated that the delegation found that it had not been possible to give precise guidance or advice on the appropriate action to take, as the complainant had not provided any information to substantiate his allegations.

7. The EEAS also clarified that it applies the European Commission's Guidelines on Whistleblowing [8], which set out internal rules on whistleblower protection, in accordance with the Staff Regulations. The rules do not apply to the complainant, as he is not a staff member. However, the delegation had "*replied to [the complainant] and treated [his] claim on an ad hoc basis in the same way it would have replied to a staff member bringing forward a claim of a similar nature*". It added that any person raising an issue of wrongdoing or misconduct of EU staff may submit an anonymous complaint to the European Anti-Fraud Office (OLAF).

8. The **complainant** argued that the EEAS had still not provided him with clear information on how to report the issues he raised, and that it failed to put in place clear rules to protecting



those outside the organisation who report wrongdoing.

## The Ombudsman's assessment

9. In the course of the inquiry, the EEAS provided information on the rules it has in place to protect whistleblowers. The EEAS also informed the complainant about the possibility of submitting an anonymous complaint to OLAF about wrongdoing by EU staff members. The Ombudsman further notes that, in the meantime, the complainant filed a complaint with the EEAS' Director of Human Resources. The EEAS acknowledged receipt of that complaint and provided the contact details of the person dealing with the complainant's concern.

10. The Ombudsman thus finds that the EEAS has provided the complainant with a reasonable reply on how to report possible wrongdoing by an EU staff member and has taken steps to settle the matter raised in this case.

11. To avoid similar issues arising in the future, it could be useful for the EEAS to publish on its website the Guidelines on whistleblowing that it applies [9] . Moreover, given the extent to which the EEAS and EU delegations work with contractors and project beneficiaries, who might become aware of issues of concern, the EEAS should mention the possibilities open to those who are not staff members to report wrongdoing, for example by submitting a complaint to OLAF.

12. Finally, in her own-initiative inquiry on whistleblowing [10] , the Ombudsman asked the EU institutions to reflect on how individuals who are not staff members could be encouraged to report serious irregularities. The Ombudsman welcomed the whistleblowing rules [11] for EU missions [12] that the EEAS subsequently put in place. While the Ombudsman appreciates the distinct role and purpose of EU missions and delegations, the EEAS could consider adopting a similar approach for its delegations.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**The European External Action Service has settled the issues raised in this complaint .**

The complainant and the EEAS will be informed of this decision.

Emily O'Reilly

European Ombudsman



Strasbourg, 27/06/2019

[1] The complainant did not have a work relationship with the EEAS, which is responsible for the EU's delegations. He is employed by the United Nations Development Programme.

[2] The EU is represented in non-EU countries around the world by 'delegations'. These delegations manage relations between the EU and the host country, including administering EU-funded projects.

[3] Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community:  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link].

[4] <https://www.ombudsman.europa.eu/en/publication/en/3510> [Link]

[5] Permanent officials, and temporary or contract staff employed by an EU institution, agency or body; specifically, Article 22a and 22b of the Staff Regulations.

[6] In particular, to the Director General of the Commission's Directorate-General for Neighbourhood and Enlargement Negotiations.

[7] Own-initiative inquiry OI/1/2014/PMC concerning whistleblowing  
<https://www.ombudsman.europa.eu/en/decision/en/59114> [Link].

[8] The EEAS applies the Commission's Internal Control Standards (ICS), which include the Commission's Guidelines on Whistleblowing (SEC (2012) 679 final).

[9] These are currently available on its intranet.

[10] See OI/1/2014/PMC, available at:

<https://www.ombudsman.europa.eu/en/decision/en/59114> [Link]

[11] In 2015 the EEAS adopted the Standard Operating Procedure (SOP) on whistleblowing.

[12] EU missions are set up under the Common Security and Defence Policy by a decision of the Council of the EU with a specific mandate and term. A list of the EU missions is available at:

[https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations_en)  
[Link]