

## Decision of the European Ombudsman on complaint 3446/2004/GG against the European Anti-Fraud Office

Decision

**Case 3446/2004/GG - Opened on 13/12/2004 - Recommendation on 31/05/2005 -  
Decision on 12/12/2005**

The complainant, who used to be the Brussels correspondent of the German weekly newspaper *Stern*, had obtained copies of confidential documents of the European Anti-Fraud Office (OLAF) and used these documents in two articles. Complaint 1840/2002/GG concerned allegations of bribery by OLAF, which, according to the complainant, had to be understood as directed against him. The Ombudsman made a critical remark in that case. Complaint 2485/2004/GG (see summary in this Annual Report) concerned incorrect and misleading statements in OLAF's submissions to the Ombudsman in complaint 1840/2002/GG.

The present complaint concerns a press review for June 2004, which OLAF published on its website and which contained references to articles in the *Süddeutsche Zeitung* and the *EUObserver* on the complainant's conflict with OLAF. The complainant alleged that by citing these articles in a manner that distorted their meaning and that was tendentious, OLAF had failed to behave objectively and impartially. Following his request, OLAF had already changed the relevant passage. However, the complainant considered that it was still misleading. He claimed that OLAF should immediately withdraw or correct the text.

The Ombudsman considered that OLAF's text clearly implied that a former spokesman of the Commission had confirmed his accusations against the complainant. However, according to the article in the *Süddeutsche Zeitung*, the spokesman had rather qualified and toned down his statements. Therefore, the Ombudsman considered that OLAF's text was misleading.

Furthermore, OLAF's press review mentioned that its deputy spokesman had told the *EUObserver* that he saw no reason for a disclaimer as regards the article in the *Süddeutsche Zeitung*. However, since OLAF had not presented the contents of that article correctly, the Ombudsman considered that the meaning of the spokesman's statement had been distorted. In a draft recommendation, he therefore asked OLAF to review and correct the information in its press review.

OLAF suggested three possibilities as to how the Ombudsman's draft recommendation could be implemented: To eliminate two paragraphs of the press review, to modify one paragraph or to remove all press analyses from its website and to discontinue this service. The Ombudsman



informed OLAF that the first two of the possibilities appeared to be likely to solve the problem. The complainant considered the second of the options to be particularly suitable.

Subsequently, OLAF changed the wording of one of the paragraphs. The complainant acknowledged that OLAF had now made the necessary corrections and thanked the Ombudsman for his intervention. He noted, however, that he failed to see why OLAF had waited more than a year before making the corrections. In his view, the delays were deliberate, which was absolutely unacceptable.

The Ombudsman took the view that OLAF had accepted his draft recommendation and that the measures taken to implement it were satisfactory. He noted the complainant's criticism. However, since the complainant did not appear to have made any further allegations and claims in this context, the Ombudsman closed the case.

Strasbourg, 12 December 2005

Dear Mr T.,

On 15 November 2004, you made a complaint to the European Ombudsman concerning information published on the website of the European Anti-Fraud Office ("OLAF").

On 13 December 2004, I forwarded the complaint to the Director General of OLAF. I received the English version of OLAF's opinion on 5 April 2005 and the translation of the opinion into German on 18 April 2005. I forwarded the opinion to you on 7 April 2005 (English original) and on 19 April 2005 (German translation) with an invitation to make observations, which you sent on 19 April 2005.

On 31 May 2005, I addressed a draft recommendation to OLAF.

By letter dated 29 July 2005, OLAF informed me that it was ready to accept the draft recommendation and suggested three possibilities as to how it could be implemented. OLAF requested me to indicate which of these possibilities it should choose in order to satisfy the requirements of the draft recommendation.

In my reply of 30 August 2005, I informed OLAF that the first two of the possibilities described by OLAF appeared to be likely to solve the problem raised in the present case. I pointed out, however, that I considered it appropriate to obtain your views as well. A copy of OLAF's letter of 29 July 2005 and of my reply thereto were therefore forwarded to you on 30 August 2005.

In your reply of 5 September 2005, you pointed out that you considered the second of the options outlined by OLAF to be particularly suitable.

On 7 September 2005, I forwarded a copy of your reply to OLAF.

On 28 September 2005, and in the absence of a reply, I asked OLAF for its detailed opinion on my draft recommendation.



On 24 October 2005, OLAF submitted the English version of its detailed opinion on my draft recommendation. The German translation followed on 8 December 2005. I forwarded it to you on 27 October 2005 (English version) and on 8 December 2005 (German translation) with an invitation to make observations, which you sent on 21 November 2005.

I am writing now to let you know the results of the inquiries that have been made.

## THE COMPLAINT

### *Background*

The complainant, a German journalist, used to be the Brussels correspondent of the *Stern*, a German weekly newspaper. On 7 March 2002, the newspaper covered a number of accusations concerning alleged irregularities that had been raised by an EU official, Mr Paul van Buitenen, and the inquiries carried out by the European Anti-Fraud Office ("OLAF") regarding these accusations. The article was based on the report of Mr van Buitenen and a confidential OLAF document that the newspaper had obtained. According to the complainant, no other newspaper had obtained copies of these documents by that time.

On 27 March 2002, OLAF published a press release in which it pointed out that "a journalist" had obtained a number of documents relating to its inquiry into the points that had been raised by Mr van Buitenen and that OLAF had therefore decided to open an internal inquiry regarding the suspected disclosure of confidential data. According to the press release, this internal inquiry would also cover the allegation that the relevant documents had been obtained "by paying a civil servant". In its edition of 4 April 2002, the newspaper *European Voice* quoted an OLAF spokesman as having said that OLAF "had been given *prima facie* evidence that a payment may have occurred".

The complainant and his newspaper considered that, although no name had been mentioned in OLAF's press release, the accusation of bribery contained therein had to be understood as directed at them. According to the complainant, this accusation was unfounded.

### *Complaint 1840/2002/GG*

In October 2002, the complainant turned to the Ombudsman (complaint 1840/2002/GG).

The Ombudsman took the view that the relevant press release had to be understood as referring to the complainant and that OLAF had not put forward any evidence to support the accusation it had made therein. He therefore addressed a draft recommendation to OLAF according to which OLAF should consider withdrawing the allegations of bribery that were published and that were likely to be understood as directed at the complainant.

In its detailed opinion, OLAF informed the Ombudsman that it had accepted the draft recommendation and published a new press release on 30 September 2003 which included the following statement: "OLAF's enquiries have not yet been completed, but to date, OLAF has not obtained proof that such a payment was made."



The Ombudsman considered that OLAF had thus not properly implemented his draft recommendation. In his decision closing the case, he made the following critical remark: "By proceeding to make allegations of bribery without a factual basis that is both sufficient and available for public scrutiny, OLAF has gone beyond what is proportional to the purpose pursued by its action. This constitutes an instance of maladministration."

#### *Subsequent developments*

In its edition of 9/10 June 2004, the *Süddeutsche Zeitung* ran an article on the complainant's case under the title "Much too thin - The T. case ('Stern'): An abyss of an Office's failure". The main contents of this article may be summarised as follows: according to the author, the overall picture was that of an abyss of dilettantism on the part of the authorities and a text-book example of the consequences of journalists being garrulous. Mr G., a former spokesman for a member of the Commission, had told OLAF's spokesman, on 22 March 2002, that he had been informed that the complainant had obtained confidential documents from an OLAF official in exchange for remuneration amounting to either EUR 8 000 or 8 000 DM. Having been asked by OLAF to verify his story, Mr G. had subsequently named Mr K. from the *Stern* as a source who had confirmed that the *Stern* could pay for information as in the complainant's case. Mr K. vehemently denied having spoken to Mr G. in recent years. Mr G. afterwards confirmed this and told the *Süddeutsche Zeitung* that the relevant conversation had not been "really concrete". He also told the newspaper that he had not approached Mr K. as regards the present case but rather asked whether it was "still usual" for *Stern* journalists to pay for information.

On 9 June 2004, the *EUobserver* ran an article on the case in which it summarised the main contents of the above-mentioned article. The *EUobserver* concluded by mentioning that OLAF's deputy spokesperson had told it that, at first sight, he did not see any reason for a disclaimer as regards the article published in the *Süddeutsche Zeitung*.

In its press review for June 2004, which was made available on its website, OLAF referred to the two articles published by the *Süddeutsche Zeitung* and the *EUobserver*. According to this text, it emerged from the article in the *Süddeutsche Zeitung* that a journalist and former spokesman of a member of the Commission had told OLAF's spokesman in 2002 that he had been informed by a colleague that the complainant may have paid for the information concerned. OLAF's text further stated that, according to the article published by the *EUobserver*, this former Commission spokesman had confirmed that the complainant had paid either EUR 8 000 or 8 000 DM and had named a member of the *Stern* staff as his source. OLAF'S text also mentioned that the *EUobserver* had reported that the deputy spokesperson at OLAF had told it that at first sight there was no reason for a disclaimer as regards the article published in the *Süddeutsche Zeitung*.

On 1 September 2004, the complainant wrote to OLAF in order to ask it to correct what he considered to be wrong and misleading statements in this press review and in a document referred to in one of OLAF's press releases. The complainant criticised in particular that OLAF's text gave the impression that it was an undisputed and confirmed fact that he had been accused, on the basis of information received from a colleague at the *Stern*, of paying a civil servant. According to the complainant, however, the article in the *Süddeutsche Zeitung* had not mentioned that Mr K. had been the source for the statement according to which the *Stern* had



paid either EUR 8 000 or 8 000 DM to somebody. He further pointed out that this article had clearly stated that this colleague had denied having spoken to Mr G. In the complainant's view, OLAF had thus omitted to mention facts that were essential for the proper understanding of the article published in the *Süddeutsche Zeitung*.

The complainant added that OLAF's text had correctly quoted the *EUobserver's* statement that OLAF's deputy press spokesman saw no reason for a disclaimer as regards the article in the *Süddeutsche Zeitung*. In the complainant's view, however, this passage was misleading as long as readers of the website were not informed that this article had contained a damning appraisal of OLAF's work and had reported erroneous statements made by OLAF. The complainant pointed out that the *EUobserver* had correctly reported about this article but that OLAF's text had rendered it in a wrong and misleading manner.

In his reply of 21 September 2004, the Director General of OLAF informed the complainant that the relevant passage in its press analysis section had been modified in the light of the comments he had made.

The revised text of this press analysis section for June 2004 now reads as follows:

"1. OLAF investigation into possible misconduct by an EU official suspected of corruption and/or having revealed confidential information concerning ongoing investigations.

In June some critical articles about an OLAF investigation into a possible misconduct by an EU official suspected of corruption were published. For example, *EUObserver* reported on 2 June that Stern's Brussels correspondent ' had filed a case against the European Commission at the Court of first instance asking for damages of 250,000 euro and demanding that the case against him be annulled' (Annex 1). (...)

The same online service reported on an article published in *Süddeutsche Zeitung* on 9 June under the headline: 'Much too thin – The T. case ('Stern'): An Abyss of an Office's Failure' (Annex 2), according to which ' before the first public allegation of bribery was made in an OLAF press release' a journalist and former European Commission spokesman ' had met OLAF's spokesperson in 2002 and mentioned that he had heard from a colleague that the Stern's correspondent may have paid for the information'. According to the article this former European Commission spokesman had 'reconfirmed the allegations that the Stern's correspondent had paid 8000 mark or euro and mentions a stern-staff member as his source'.

Regarding the *Süddeutsche* article *EUobserver* reports that ' the deputy spokesperson at OLAF had told them that at first sight there was no reason for a disclaimer'.

(...)"

#### *The present complaint*

In his complaint to the Ombudsman lodged in November 2004, the complainant alleged that the above-mentioned text was still misleading.



The complainant alleged that, by citing the relevant articles of the *Süddeutsche Zeitung* and the *EUobserver* in a manner that distorted their meaning and that was tendentious, OLAF had failed to behave objectively and impartially as required by Article 11 of the Staff Regulations for officials of the European Communities.

The complainant claimed that OLAF should immediately withdraw or correct its misleading text.

## THE INQUIRY

### OLAF's opinion

In its opinion, OLAF made the following comments.

OLAF's press analysis was intended to present a summary of press articles published about OLAF each month. The press analysis, which was prepared in a printed version, with annexes containing the full version of the articles mentioned therein, was provided to the OLAF Supervisory Committee and the secretary of Parliament's Budgetary Control Committee and was circulated within OLAF. In the interests of transparency, the analysis was also made available to the public on OLAF's internet site.

The paragraph challenged by the complainant had stated the following when originally placed on the website:

"[The *EUobserver* ] reported on an article published in *Süddeutsche Zeitung* on 9 June (Annex 2) according to which ' before the first public allegation of bribery was made in an OLAF press release' a journalist and former European Commission spokesman ' had met OLAF's spokesperson in 2002 and mentioned that he had heard from a colleague that the Stern's correspondent may have paid for the information'. According to the article this former European Commission spokesman had 'reconfirmed the allegations that the Stern's correspondent had paid 8000 mark or euro and mentions a stern-staff member as his source'."

On 1 September 2004, the complainant had written to OLAF, expressing concerns similar to those expressed in his present complaint to the Ombudsman. On 21 September 2004, OLAF had informed him that it had modified the June 2004 press analysis in response to his concerns. In particular, the headline of the article published in the *Süddeutsche Zeitung* had been added.

The complainant alleged that the statement in the June 2004 press analysis concerning the articles in the *Süddeutsche Zeitung* and the *EUobserver* "grossly falsifies and distorts" the contents of these articles, because it creates the impression that "it is an undisputed fact that, on the basis of information received from a colleague at Stern, I stand accused of having paid an official." The complainant argued that OLAF had not included quotations of statements made by Mr G. that would call into question his earlier statements.

However, there was no such declaration in the statements cited. Rather, with the addition of the heading made following receipt of the complainant's letter of 1 September 2004, it was clear that the *Süddeutsche Zeitung* and the *EUobserver* articles were critical of OLAF, as they



suggested that the evidence against the complainant was "much too thin". (These three words were, in fact, a quotation from Mr G.) Moreover, viewed in the context of this section of the press analysis in its entirety, it was clear that these articles were substantially critical of OLAF. Thus, the summary presented could not be read as grossly falsifying and distorting the relevant articles.

OLAF had not been willing to amend this paragraph with all the details that the complainant had requested to have included, as it was not the purpose of the press analysis to provide an exhaustive description of what each article contained. Rather, its purpose was to provide a brief overview of the major press coverage of OLAF for the month, together with some highlights of what those articles report.

On the basis of the above considerations, OLAF submitted that it had presented a fair summary of the relevant press articles in its press analysis section.

#### **The complainant's observations**

In his observations, the complainant maintained his complaint. He pointed out that Mr G. had stated, in an affidavit dated 6 August 2004 (a copy of which the complainant submitted to the Ombudsman), that he had told the *Süddeutsche Zeitung* that he had not approached Mr K. as regards the present case but had asked in general terms whether it was still usual to pay for information. Mr G. had added that he had been cited by the *Süddeutsche Zeitung* in its article of 9 June 2004 accordingly. According to the complainant, the statements in this affidavit were known to OLAF.

The complainant further alleged that OLAF had clearly made incorrect statements in its 'background' paper to a press release (concerning complaint 2485/2004/GG) that it had published on 11 March 2005. In this paper OLAF had stated that the complainant had lost his case against Mr G. before the German courts because Mr G. had made his statements incriminating the complainant in the context of an exchange of information "within a public authority". The complainant considered this to be incorrect, given that, in his view, Mr G. had only escaped a condemnation due to the immunity he enjoyed as a former civil servant of the EU.

## **THE OMBUDSMAN'S DRAFT RECOMMENDATION**

### **The draft recommendation**

On 31 May 2005, the Ombudsman addressed the following draft recommendation to OLAF:

OLAF should review and correct the information concerning the two articles published by the *Süddeutsche Zeitung* and the *EUobserver* that is contained in its press analysis section for June 2004.

This draft recommendation was based on the following considerations.

#### **1 Introductory remarks**

1.1 In his complaint lodged in November 2004, the complainant, a German journalist, objected to the contents of the press analysis for June 2004 that had been prepared by the European



Anti-Fraud Office ("OLAF") and published on OLAF's website. The complainant considered that the relevant text was misleading.

1.2 The Ombudsman sent the complaint to OLAF for an opinion. In his observations on OLAF's opinion, the complainant submitted a further allegation according to which OLAF had made incorrect statements in its "background" paper to a press release that it had published on 11 March 2005.

1.3 Article 2 (4) of the Statute of the European Ombudsman provides that a complaint to the Ombudsman must be preceded by the appropriate administrative approaches to the institutions and bodies concerned. Given that the complainant did not appear to have made any such approaches to OLAF with regard to his second allegation, the Ombudsman was unable to deal with this allegation at present. The complainant remained free to submit a new complaint regarding this allegation after having made the appropriate prior approaches to OLAF.

## **2 Allegedly misleading or tendentious statements made by OLAF in its press analysis for June 2004**

2.1 In its edition of 9/10 June 2004, the *Süddeutsche Zeitung* ran an article on the complainant's dispute with OLAF (1). On 9 June 2004, the *EUobserver* published an article in which it summarised the main contents of the above-mentioned article. In its press review for June 2004, which was made available on its website, OLAF referred to the two articles published by the *Süddeutsche Zeitung* and the *EUobserver*. After the complainant had objected to this text in a letter of 1 September 2004, OLAF informed him, by letter of 21 September 2004, that the text had been modified.

The relevant section of the amended text of OLAF's press review for June 2004 reads as follows:

"1. OLAF investigation into possible misconduct by an EU official suspected of corruption and/or having revealed confidential information concerning ongoing investigations

In June some critical articles about an OLAF investigation into a possible misconduct by an EU official suspected of corruption were published. For example, EUObserver reported on 2 June that Stern's Brussels correspondent ' had filed a case against the European Commission at the Court of first instance asking for damages of 250,000 euro and demanding that the case against him be annulled' (Annex 1). (...).

The same online service reported on an article published in *Süddeutsche Zeitung* on 9 June under the headline: 'Much too thin – The T. case ('Stern'): An Abyss of an Office's Failure' (Annex 2), according to which ' before the first public allegation of bribery was made in an OLAF press release' a journalist and former European Commission spokesman ' had met OLAF's spokesperson in 2002 and mentioned that he had heard from a colleague that the Stern's correspondent may have paid for the information'. According to the article this former European Commission spokesman had 'reconfirmed the allegations that the Stern's correspondent had paid 8000 mark or euro and mentions a stern-staff member as his source'.



Regarding the *Süddeutsche* article *EUobserver* reports that 'the deputy spokesperson at OLAF had told them that at first sight there was no reason for a disclaimer'.

(...)"

2.2 In his complaint to the Ombudsman, the complainant alleged that the above-mentioned text was still misleading. The complainant criticised OLAF's text in particular for giving the impression that it was an undisputed and confirmed fact that he had been accused, on the basis of information received from a colleague at the *Stern*, of paying a civil servant. According to the complainant, however, this was not what the article had said. The complainant alleged that, by citing the relevant articles of the *Süddeutsche Zeitung* and the *EUobserver* in a manner that distorted their meaning and that was tendentious, OLAF had failed to behave objectively and impartially as requested by Article 11 of the Staff Regulations for officials of the European Communities. He claimed that OLAF should immediately withdraw or correct its misleading text.

2.3 It should be noted from the outset that the present case does not concern the question as to whether the accusations that have (or may have been) made by Mr G. against the complainant are well-founded. The present complaint focuses exclusively on the issue of whether OLAF provided misleading information on two articles published in June 2004 in its press analysis for June 2004.

2.4 In its opinion, OLAF explained that its press analysis is intended to present a summary of press articles published about OLAF each month. According to OLAF, this press analysis is prepared in a printed version, with annexes containing the full version of the articles mentioned, that is provided to the OLAF Supervisory Committee and the secretary of Parliament's Budgetary Control Committee and that is circulated within OLAF. OLAF added that in the interest of transparency, the analysis is also made available to the public on OLAF's internet site.

2.5 The Ombudsman considers that it is good administrative practice to ensure that the information provided by EU institutions and bodies is correct and not misleading and to correct promptly any errors that may occur.

2.6 In the Ombudsman's view, the relevant section of OLAF's press analysis for June 2004, as revised following the presentations made to OLAF by the complainant, contains the following two statements: (1) According to the article published in the *Süddeutsche Zeitung*, a journalist and former Commission spokesman had met OLAF's spokesman in 2002 and mentioned that he had heard from a colleague that the complainant may have paid for the confidential information he had obtained; (2) according to the same article, this former Commission spokesman had "reconfirmed the allegations that the *Stern's* correspondent had paid 8000 mark or euro and mentions a *stern-staff* member as his source".

2.7 The Ombudsman considers that the first of these two statements is essentially correct. It is true that the article in the *Süddeutsche Zeitung* also mentions that the person (Mr K.) whom Mr G. (the "journalist and former European Commission spokesman") had ultimately named as his



source denied having spoken to Mr G. in relation to the issue of bribery. The Ombudsman considers, however, that this fact does not affect the correctness of the above-mentioned statement made in OLAF's press analysis. Mr K.'s statement may well call into doubt the value of the statement that Mr G. made to OLAF's press spokesman in 2002, but it does not alter the fact that this statement was made.

2.8 As regards the second of the above-mentioned statements, OLAF's text clearly implies that Mr G. confirmed (or reconfirmed, as OLAF put it) his accusations against the complainant after having been questioned by the newspaper. The Ombudsman notes, however, that this was clearly not what the article said. According to the article published by the *Süddeutsche Zeitung*, Mr G. had, when confronted with Mr K.'s statement, admitted that the relevant conversation had not been "really concrete". Still according to this article, Mr G. had also told the newspaper that he had not approached Mr K. as regards the present case but rather asked whether it was "still usual" for journalists at the *Stern* to pay for information. It is thus clear that, contrary to OLAF's press analysis, it does *not* emerge from the article in the *Süddeutsche Zeitung* that Mr G. "reconfirmed the allegations that the Stern's correspondent had paid 8000 mark or euro and mentions a stern-staff member as his source" (2). In these circumstances, the relevant part of OLAF's press analysis must indeed be considered as being misleading. This conclusion is not affected by the fact that the current version of OLAF's text mentions the title of the article published in the *Süddeutsche Zeitung* which shows that its author was very critical of OLAF's behaviour. The Ombudsman considers that hardly any person who has read the second of the above-mentioned statements will surmise that the title of this article quotes Mr G. himself who, according to the article, told the newspaper that the information he had provided to OLAF was in his view "much too thin" to open an inquiry.

2.9 In its press analysis section for June 2004, the above-mentioned section is followed by a paragraph that is worded as follows: "Regarding the *Süddeutsche* article EUobserver reports that 'the deputy spokesperson at OLAF had told them that at first sight there was no reason for a disclaimer'." It should be noted that the article in the EUobserver reported what had been written in the article in the *Süddeutsche Zeitung*, namely that Mr G. had admitted that he had not talked "very concretely" with Mr K. and that he had only asked whether Stern staff in general still used the practice of paying for information. The Ombudsman considers that omitting this information distorts the meaning of the statement that OLAF's deputy spokesman did not consider it necessary to react to the article in the *Süddeutsche Zeitung*. In the absence of correct information on the relevant contents of the articles that were published in the two newspapers, this statement in OLAF's press analysis for June 2004 thus also has to be considered as being misleading.

2.10 On the basis of his inquiry into the present complaint, the Ombudsman concludes that OLAF did indeed, as the complainant alleged, continue to provide misleading information in its press analysis for June 2004. This constitutes an instance of maladministration.

**OLAF's detailed opinion** *Preparatory correspondence*

By letter dated 29 July 2005, OLAF informed the Ombudsman that it was ready to accept the draft recommendation and suggested three possibilities as to how it could be implemented. OLAF requested the Ombudsman to indicate which of these possibilities it should choose in



order to satisfy the requirements of the draft recommendation.

In his reply of 30 August 2005, the Ombudsman informed OLAF that the first two of the possibilities described by OLAF appeared to be likely to solve the problem raised in the present case but that he considered it appropriate to obtain the complainant's views as well. A copy of OLAF's letter of 29 July 2005 and of the Ombudsman's reply thereto were therefore forwarded to the complainant on 30 August 2005.

In his reply of 5 September 2005, the complainant pointed out that he considered the second of the options outlined by OLAF to be particularly suitable.

On 7 September 2005, the Ombudsman forwarded a copy of this reply to OLAF.

#### *The detailed opinion*

On 24 October 2005, OLAF submitted its detailed opinion on the Ombudsman's draft recommendation. OLAF indicated that it had opted for the second of the possibilities it had set out in its letter of 29 July 2005 and thus changed the wording of one of the paragraphs in the relevant press section. A copy of the revised version (in English, French and German) was attached to the detailed opinion.

This amended paragraph (and the following one that remained unchanged) now reads as follows:

"The same online service reported on an article published in *Süddeutsche Zeitung* on 9th June under the headline: 'Much too thin – The T. case ('Stern'): An Abyss of an Office's Failure' (Annex 2), according to which 'before the first public allegation of bribery was made in an OLAF press release' *a journalist and former European Commission spokesman* 'met OLAF's spokesperson in 2002 and mentioned that he had heard from a colleague that the Stern's correspondent may have paid for the information'. *Süddeutsche Zeitung* quotes him as saying that the conversation with that colleague had not been '*very concrete*' and that he had only asked whether Stern staff in general still used the practice of paying for information. He is also quoted as saying '*I would have considered these statements as much too thin*'. "

Regarding the *Süddeutsche* article EUobserver reports that 'the deputy spokesperson at OLAF had told them that at first sight there was no reason for a disclaimer'. "

#### **The complainant's observations**

In his observations, the complainant acknowledged that OLAF had now made the necessary corrections and thanked the Ombudsman for his intervention. He noted, however, that he failed to see why OLAF had waited more than a year before proceeding to make these corrections. The complainant expressed the view that OLAF had acted deliberately and that such behaviour by a public authority was absolutely unacceptable.

## **THE DECISION**

### **1 Allegedly misleading or tendentious statements made by OLAF in its press analysis for June 2004**



1.1 In his complaint lodged in November 2004, the complainant, a German journalist, objected to the contents of the press analysis for June 2004 that had been prepared by the European Anti-Fraud Office ("OLAF") and published on OLAF's website. The complainant alleged that by citing the relevant articles of the *Süddeutsche Zeitung* and the *EUobserver* in a manner that distorted their meaning and that was tendentious, OLAF had failed to behave objectively and impartially as requested by Article 11 of the Staff Regulations for officials of the European Communities. He claimed that OLAF should immediately withdraw or correct its misleading text.

1.2 On 31 May 2005, the Ombudsman addressed a draft recommendation to OLAF in which he recommended that OLAF should review and correct the information concerning the two articles published by the *Süddeutsche Zeitung* and the *EUobserver* that is contained in its press analysis section for June 2004.

1.3 On 29 July 2005, OLAF informed the Ombudsman that it was ready to accept the draft recommendation and suggested three possibilities as to how it could be implemented. OLAF requested the Ombudsman to indicate which of these possibilities it should choose in order to satisfy the requirements of the draft recommendation. In his reply of 30 August 2005, the Ombudsman informed OLAF that the first two of the possibilities described by OLAF appeared to be likely to solve the problem raised in the present case but that he considered it appropriate to obtain the complainant's views as well. A copy of OLAF's letter of 29 July 2005 and of the Ombudsman's reply thereto were therefore forwarded to the complainant on 30 August 2005. In his reply of 5 September 2005, the complainant pointed out that he considered the second of the options outlined by OLAF to be particularly suitable. A copy of this letter was forwarded to OLAF.

1.4 In its detailed opinion submitted on 24 October 2005, OLAF informed the Ombudsman that it had opted for the second of the possibilities it had set out in its letter of 29 July 2005 and thus changed the wording of one of the paragraphs in the relevant press section. A copy of the revised version (in English, French and German) was attached to the detailed opinion.

1.5 In his observations, the complainant acknowledged that OLAF had now made the necessary corrections and thanked the Ombudsman for his intervention. He noted, however, that he failed to see why OLAF had waited more than a year before proceeding to these corrections. The complainant expressed the view that OLAF had delayed deliberately and that such behaviour by a public authority was absolutely unacceptable.

## **2 Conclusion**

In view of the above, the Ombudsman takes the view that OLAF has accepted his draft recommendation and that the measures taken to implement it are satisfactory.

The Ombudsman notes that the complainant criticises the fact that OLAF has not taken the necessary steps earlier. However, no further allegations and claims appear to be made by the complainant in this context.

The Ombudsman therefore closes the case.



The Director General of OLAF will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) The background of this dispute is set out in detail in the special report that the Ombudsman addressed to the European Parliament on 12 May 2005 in case 2485/2004/GG. The special report is available on the Ombudsman's website ( <http://www.ombudsman.europa.eu> [Link]).

(2) Given that the above result already follows from the interpretation of the article itself, there is no need to consider the affidavit of Mr G. that was submitted by the complainant with his observations on OLAF's opinion (which would in any event confirm this interpretation).