

Decision of the European Ombudsman in case 1229/2014/ZA on OLAF's handling of allegations concerning mismanagement of EU funds in Greece

Decision

Case 1229/2014/ZA - **Opened on** 06/08/2014 - **Decision on** 12/10/2015 - **Institution concerned** European Anti-Fraud Office (Settled by the institution) |

The complainant informed OLAF of alleged mismanagement of EU funds in Greece. OLAF failed to acknowledge *the complainant's correspondence and failed also to inform the complainant of whatever action it had taken and of the outcome. Following the Ombudsman's intervention, OLAF acknowledged the procedural shortcomings in its handling of the case and apologised. It also took steps to avoid similar situations in the future. Finally, OLAF informed the complainant of the steps it had taken as regards the substance of its case. The Ombudsman concluded that OLAF had settled the complaint. However the Ombudsman made a further remark with a view to improving OLAF procedures as regards its monitoring of closed cases transmitted to competent national authorities.*

The background to the complaint

1. On 4 January 2012, the complainant informed OLAF of alleged mismanagement of EU funds granted to a Greek institute (the 'beneficiary') in the context of a project financed under the Operational Programme Competitiveness 2002-2006. Specifically, the complainant referred to an allegedly irregular decision in 2004 of the Greek national authorities to retrospectively fund the beneficiary's project, as well as to irregularities in the actual implementation and management of the funded project (the 'OLAF complaint').
2. In support of its arguments, the complainant sent OLAF further detailed information by registered mail in May 2012, April 2013, May 2013 and January 2014. The only reply the complainant received from OLAF was an acknowledgment of receipt of its letter of May 2012.
- 3 . In May 2014, the complainant asked OLAF for an update on the case. Having received no reply, the complainant lodged a complaint with the Ombudsman on 3 July 2014.

The inquiry



5 . The Ombudsman opened an inquiry and identified the following allegation and claim:

- 1) OLAF failed to inform the complainant about the investigation of its complaint concerning the alleged mismanagement of EU funds.
- 2) OLAF should inform the complainant about the investigation of its complaint concerning the alleged mismanagement of EU funds.

6. Initially, the Ombudsman asked OLAF to send the complainant a reply to its allegation and claim. After OLAF did so, the Ombudsman invited the complainant to submit observations on OLAF's reply. Subsequently, the Ombudsman inspected OLAF's file on the complainant's case. A copy of the inspection report was sent to the complainant with an invitation to submit observations, which it did. [1]

In conducting the inquiry, the Ombudsman has taken into account the arguments and information put forward by the parties, which are summarised below.

Alleged failure to inform the complainant properly about the investigation of its complaint

Arguments presented to the Ombudsman

7 . In its reply to the Ombudsman, OLAF apologised for the way it had handled the complainant's case. It stated that the failure to acknowledge receipt of most of the complainant's letters, as well as the considerable delay in informing the complainant about the outcome of OLAF's investigation, was due to an unfortunate technical oversight which meant that the complainant's subsequent correspondence was registered but not brought to the attention of the investigators. It therefore remained unanswered. OLAF confirmed, however, that the information sent by the complainant had been received and reassured both the Ombudsman and the complainant that "*steps have been taken to make absolutely sure that [such a mistake] does not happen again*". Finally, OLAF committed itself to informing the complainant as soon as there were developments in the case.

8. As regards the substance of the OLAF complaint, OLAF stated that, on the basis of the information contained in the complainant's letter of 4 January 2012, it opened a coordination procedure in February 2012, according to Article 1 (2) of Regulation (EC) 1037/99. [2]

9. This procedure focused on two main issues: (i) the 2004 decision taken by the Greek authorities by means of which they retroactively allocated funds to the beneficiary and (ii) the alleged irregularities in the beneficiary's activities which did not appear to be in line with the technical and legal requirements of the specific project.



10. As regards the first issue, OLAF contacted the Commission in November 2012 to check whether the contested decision of the Greek authorities was in compliance with the relevant rules. The Commission confirmed that the retroactive effect of the decision was in line with the then applicable rules and, therefore, did not constitute an irregularity.

11 . As regards the second issue, OLAF examined the information submitted by the complainant and considered that the competent national authority (EDEL) [3] would be better placed to investigate the matter. Consequently, OLAF closed the case and transmitted its Final Report (without recommendations) to EDEL in January 2013.

12. In its observations, the complainant thanked the Ombudsman for her vital role in obtaining a reply after 32 months of being kept in the dark. However, it expressed its dissatisfaction about OLAF's handling of its correspondence and the OLAF complaint as a whole.

13. In the complainant's view, OLAF appeared to consider the retroactivity of the funding decision as the main issue. However, according to the complainant, the issue was broader in that the beneficiary has been receiving EU funding over the years without carrying out any of the required activities. In support of this statement, the complainant referred to two letters from Greek authorities which confirmed, in its view, the deficient and irregular character of the beneficiary's activities.

14 . Regarding OLAF's decision to transfer the case to EDEL, the complainant doubted whether OLAF had transmitted to the Greek authority the entirety of the evidence the complainant had enclosed with its letters. [4] The complainant further maintained that the supplementary information it had submitted to OLAF in 2013 and 2014 proved that the Greek authorities were trying to conceal the alleged irregularities committed by the beneficiary. The complainant argued that only an investigation by OLAF itself and a surprise on-the-spot check by OLAF experts could reveal the irregularities committed. The complainant noted that two years had passed since the referral to EDEL without OLAF being informed about progress on, or the eventual outcome of, the investigation carried out by the Greek authorities.

The Ombudsman's assessment

16. The Ombudsman considers that, by omitting to acknowledge receipt of the complainant's correspondence, OLAF failed to respect Article 14.1 of the Code of Good Administrative Behaviour [5] (the 'Code'). Moreover, OLAF failed to inform the complainant of its decision to close the coordination case on 9 January 2013, thus failing to comply with the rules then applicable governing its investigative procedures. [6] These were instances of maladministration.

17. However, in its reply to the complainant OLAF acknowledged the procedural shortcomings in handling the case and apologised for them . Moreover, the inspection confirmed that OLAF had taken administrative steps to avoid similar problems arising in the future. In particular, OLAF changed the parameters of its Case Management System so as to ensure that when



correspondence is received in a closed case, notifications are sent to all relevant persons.

18. Following the Ombudsman's intervention, and as confirmed by the inspection of documents, OLAF contacted the complainant three times. To begin with, OLAF confirmed receipt of all correspondence the complainant had sent it and informed the complainant about the state of play of the OLAF complaint. It also reassured the complainant that it would keep it informed of new developments concerning the case. Subsequently, OLAF informed the complainant about the answers it had received from the Greek investigative authorities up to that point, and provided copies of the replies it had received from Greece. Finally, OLAF informed the complainant that it had notified the Public Prosecutor for Crimes of Corruption about its coordination procedure, enclosing all the complainant's submissions to OLAF.

19. The Ombudsman concludes that, as a result of her intervention, OLAF has taken appropriate corrective measures, both at the individual and the systemic level, to address the procedural shortcomings which gave rise to this complaint. By doing so, OLAF has remedied the maladministration that had occurred. However, the Ombudsman will make a remark on possible further improvements in OLAF's procedures. [7]

20 . As regards the complainant's more specific observations (see paragraph 14) the inspection of the file showed that, besides EDEL, other competent Greek authorities had also carried out administrative checks related to the activities of the beneficiary. Moreover, there were still on-going proceedings directly related to the OLAF complaint. OLAF had contacted the relevant authorities and, when it was informed that part of the file had been transmitted to the Public Prosecutor for Corruption, OLAF informed the latter of its coordination procedure and transmitted to it the entirety of the information and evidence submitted by the complainant. In these circumstances, the Ombudsman considers that it is no longer necessary to ascertain whether the material submitted by the complainant together with the initial complaint was also made available to EDEL along with OLAF's Final Report in February 2013.

21. It is not for the Ombudsman, who can deal with complaints against EU institutions, bodies, agencies and offices only, to examine the complainant's allegation that the Greek authorities were trying to conceal the alleged irregularities. As regards OLAF, the Ombudsman considers that, following her intervention, its approach to the substantive issues raised by the complainant was adequate.

22. As regards the complainant's observation that two years had passed since OLAF referred the case to the Greek authority, the Ombudsman notes that investigations were indeed carried out at the national level. Following her intervention, OLAF also asked to be kept informed about the investigations carried out in Greece. Moreover, the Ombudsman's further remark addresses this specific matter.

23. Finally, in reply to the complainant's observation that OLAF should have investigated the case itself instead of opening a coordination procedure, the Ombudsman considers that there are not sufficient grounds to inquire into this aspect. OLAF had the discretionary power to decide which cases it considered appropriate to investigate [8] and the inspection of documents



did not show that OLAF used this discretion in an inappropriate way.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusions:

The maladministration which occurred has been remedied.

Further remark:

OLAF should further enhance its procedures so as to ensure, where appropriate: (i) consistent monitoring of closed coordination cases which are transmitted to competent authorities without recommendations and (ii) timely assessment and transfer to the competent authorities of information received after the closure of a case.

The complainant and OLAF will be informed of this decision.

Emily O'Reilly

Strasbourg, 12/10/2015

[1] The inspection report was also sent to OLAF.

[2] The relevant provision is worded as follows: "The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the purpose of protecting European Community's financial interests against fraud".

[3] The Financial Audit Committee (EDEL) operates within the General Secretariat of Financial Policy in the Ministry of Finance. EDEL's main functions involve the coordination of audit schedules and methodologies and exchange of audit results with the Commission, approval and finalisation of audit reports providing instructions to the audited bodies, approval and submission to the Commission of the Annual Audit Reports and Opinions, closure statements and partial closure statements and the cooperation with OLAF

[4] For instance, copies of the audit carried out by national auditors on the beneficiary's accounts in 2008, which found that the beneficiary had considerable amounts of non-eligible expenditure.

[5] "Every letter or complaint to the institution shall receive an acknowledgment of receipt within



a period of two weeks, except if a substantive reply can be sent within that period".

[6] "The investigation unit must inform the person concerned and the source of the Director-General's decision to close the case" (article 24.3). It is noted that Regulation 883/2013 as well as OLAF's guidelines on investigation procedures currently in force, are less restrictive in this respect as they require the investigation unit to inform the source when necessary. According to the Regulation, "Where an informant who has provided the Office with information leading or relating to an investigation so requests, the Office may notify that informant that the investigation has been closed. The Office may however refuse any such request if it considers.....".

[7] The Ombudsman noted that it was only after the Ombudsman's intervention in August 2014 that OLAF asked to be informed about the action EDEL had taken on the basis of the information OLAF had transmitted to it in February 2013.

[8] Regulation (EC) No 1073/1999, OLAF instructions to Staff on Investigative Procedures, 1 February 2012, article 5.3