

Proposal of the European Ombudsman for a friendly solution in his inquiry into complaint 363/2011/KM against the European Anti-Fraud Office (OLAF)

Solution - 11/03/2011

Case 363/2011/JAS - **Opened on** 11/03/2011 - **Decision on** 07/04/2016 - **Institution concerned** European Anti-Fraud Office (No maladministration found) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

The background to the complaint

1. The complainant is a former Commission official. In late 2008, he complained to OLAF about practices in the Commission's Directorate-General for Trade ("DG Trade"). In particular, he argued that the procedures for investigating antidumping complaints, during which turnover figures and other business data were kept strictly secret, meant that the investigations could easily be manipulated. In April 2009, OLAF informed him that it had opened an inquiry into the functioning of the trade defence instruments directorate of DG Trade. In January 2010, the complainant e-mailed OLAF to ask whether the investigation had been closed and if so, whether he could receive a report.

2. In February 2010, OLAF replied that the investigation was still ongoing and thus no Final Case Report could be made available to the complainant. It added that there was no specific right of access to OLAF's file. However, the general rules laid down in Regulation 1049/2001 [2] applied, and therefore, the complainant could ask for access once the investigation was closed. The letter also included a reference to the OLAF manual according to which it is good administrative practice to briefly inform a complainant once a case triggered by his complaint is closed and provide him with the main results, without revealing any confidential information.

3. By e-mail sent in August 2010, OLAF informed the complainant that the investigation had been closed in July, without any further follow-up. In his reply in September 2010, the complainant asked OLAF to send him "the reports concerning the investigation". He stated that he was interested, in particular, in the names and nationalities of the investigators, the amount of time dedicated to the investigation, which anti-dumping, anti-subsidy and safeguard cases were covered by the investigation and in which cases OLAF checked the calculations made by the Commission. He underlined that in case he considered the investigation flawed, he would consider submitting the case to one of the entities



mentioned in Article 22(b) of the Staff Regulations of officials of the EU (the 'Staff Regulations'). [3]

4. In October 2010, OLAF replied to this request for access to the Final Case Report. First of all, it noted that by virtue of Article 339 TFEU, Article 8(1) of Regulation 1073/99 [4] , and Article 17 of the Staff Regulations, it was bound to treat information obtained during an investigation as confidential, but that information disclosed under Regulation 1049/2001 was available to the public.

5. OLAF found that the Final Case Report was covered by four of the exceptions provided for by Article 4 of Regulation 1049/2001:

- Article 4(2) 3rd indent (purpose of inspections and investigations): The report had been prepared in the course of the investigation and contained information on the strategy and the direction of the investigation, as well as on the interviews with witnesses. According to OLAF, the "disclosure of such information could seriously impede the effectiveness of [its] investigations";

- Article 4(1)(b) (privacy and protection of personal data): The document contained names and other information on individuals, the disclosure of which could be harmful to their privacy;

- Article 4(2) 1st indent (commercial interests): The document contained the names of persons and legal entities the public disclosure of which would affect their reputation and their commercial interests solely by linking them to an OLAF investigation;

- Article 4(3) 2nd sub-paragraph (protection of internal deliberations even after the decision is made): The information which OLAF collected in the investigation and which was contained in the Final Case Report included internal opinions and consultations, as well as possible positions to be followed or rejected. The disclosure of the document would undermine OLAF's decision-making process, even now that the investigation was closed.

6. OLAF also stated that no overriding public interest had been identified and informed the complainant that he could make a confirmatory application.

7. The complainant did so by e-mail sent in October 2010, underlining that OLAF's position would make it impossible for anyone ever to have access to documents concerning its investigations, thus placing OLAF beyond scrutiny. He therefore asked OLAF to review its decision not to grant him access to the report.

8. OLAF replied in January 2011, confirming its initial refusal to grant access on the basis of the previously stated reasons.

9. In particular, with regard to its reliance on the protection of the purpose of inspections and investigations, OLAF explained that the Final Case Report contained the strategy and



direction of the investigation. If the report were to be published, "potential fraudsters" could use it in order to learn about OLAF's methods and strategy, and potential witnesses could be deterred if they knew that reports referring to their statements could be published. Furthermore, OLAF had to do everything in its power to protect its investigators from external pressure, since such pressure would undermine possible future investigations by impairing the investigators' ability to conduct such investigations independently, for example by facilitating and encouraging criticism directed against them. As a result, OLAF would not publish their names.

10. On the exception for opinions created for internal use, OLAF maintained that the Final Case Report had been drafted for internal use. It contained the thought processes and analysis of the investigators in relation to the direction of the investigation. Further, it formed part of the internal deliberations and consultations on the investigation and "*contain[ed] reflections of OLAF regarding the investigation, leading to internal decisions taken with respect to it*". In order to maintain the collective nature of OLAF's decision-making process, investigators had to be given space to think and to exchange ideas and give uncensored advice. Disclosing the report would seriously undermine the ability of staff to give and receive frank opinions, which in turn would undermine "the essential principles" of OLAF's decision-making, namely its collegiate nature and its officials' freedom to put forward all and any opinions and suggestions. Disclosing the document would thus undermine OLAF's ability to adopt final positions in the general interest, and remain free from external influence. OLAF further underlined that this exception continued to apply even after the relevant investigation had been closed, given that the risk of self-censorship remained. [5]

11. The Final Case Report also contained personal data which could not be disclosed under Regulation 45/2001 [6].

12. In this context, OLAF noted that, while it had closed the case referred to by the complainant 'without follow-up', the information contained in the document related to a different OLAF investigation which had been finalised with judicial and disciplinary follow-up, and in relation to which information had been transmitted to the investigation and disciplinary office of the Commission (IDOC) and to the relevant national judicial authorities. The facts in that case had been widely covered by the media. Given this publicity, the disclosure of the name and other personal data related to the person concerned, or other individuals, would show them in a negative light and could give rise to misrepresentations about their behaviour. Especially seeing that OLAF closed its case without follow-up because it could not confirm any of the allegations, the disclosure of personal data in the context of other ongoing follow-up proceedings would breach the presumption of innocence and the right to privacy.

13. Given that other information also clearly identified certain persons, removing their names was insufficient for protecting the privacy of the persons concerned.

14. Moreover, the disclosure of parts of the document would undermine the reputation of



legal entities by virtue of the fact that their names would be linked to an OLAF investigation. Article 4(2) 1st indent (on the protection of commercial interests) therefore applied.

15. OLAF had examined the possibility of granting partial access, but found that all the information contained in the report fell under at least one of the exceptions cited above. It was therefore not possible to grant partial access.

16. Finally, as regards the question of an overriding public interest in disclosure, OLAF noted that the complainant's application did not contain any clear elements to indicate an overriding interest in putting the sensitive information contained in the Final Case Report in the public domain. Rather, it was in the public interest to protect OLAF's investigations and its decision-making process as well as the commercial interests at stake.

17. In his complaint to the Ombudsman, the complainant maintained his view that OLAF's interpretation of Regulation 1049/2001 made it impossible for citizens to have access to documents concerning OLAF investigations, and would put these beyond public scrutiny. It also meant that in the case of access to OLAF's documents, reliance on Regulation 1049/2001 was purely cosmetic. In this context, he suggested that the Ombudsman ask OLAF how many requests for access to documents it received and how many of those it accepted.

The subject matter of the inquiry

18. The Ombudsman opened an inquiry into the following allegation and claim identified in the complaint.

Allegation

OLAF wrongly rejected the complainant's request for access to the Final Case Report in case OF/2008/1048.

Claim

OLAF should give the complainant access to the Final Case Report in case OF/2008/1048.

19. In his opening letter, the Ombudsman also informed the complainant that he did not consider it useful in the context of the present inquiry to ask OLAF how many requests for access to documents it had received and how many it had granted. Instead, he advised the complainant to approach OLAF and ask for the information in question himself.

The inquiry

20. The complainant submitted his complaint in February 2011. In March 2011, the Ombudsman opened an inquiry by asking OLAF to submit an opinion on the complaint.

21. In May 2011, the Ombudsman's services inspected OLAF's file. A report on the



inspection was forwarded to the complainant for observations.

22. OLAF submitted its opinion on in July 2011. The Ombudsman forwarded it to the complainant with an invitation to submit observations.

23. The complainant submitted his observations in September 2011. The Ombudsman's analysis and provisional conclusions

Preliminary remarks

24. In reaction to the inspection report, the complainant stated that, while it was clearly important for the Ombudsman to inspect the Final Case Report in case OF/2008/1048, he had also requested in his complaint that, in case the Commission decided not to commence disciplinary proceedings against a former Director of DG Trade, the Final Case Report in relation to an OLAF investigation into the actions of this former official be made public. Since this other Final Case Report was not mentioned in the inspection report, he considered that the inspection was incomplete.

25. In a letter addressed to the complainant on 15 September 2011, the Ombudsman explained that the present inquiry related only to OLAF's rejection of the complainant's request for access to the Final Case Report in case OF/2008/1048. He therefore asked the complainant to clarify whether he intended to add a new allegation and claim to the present investigation, and whether this was to be understood as being directed against the Commission or OLAF. He also reminded the complainant that, according to the documentation available to him, the complainant had not made any administrative approaches to OLAF about access to any other Final Case Report prior to submitting his complaint.

26. In his observations, the complainant referred to his correspondence with the Commission in which he had asked it to commence disciplinary proceedings against the abovementioned former Director. These aspects that involve the Commission were the object of the Ombudsman's inquiry into complaint 362/2011/KM. The complainant added that in his letters to the Commission, he had asked it to explain, in case it did not intend to open disciplinary proceedings against the said former Director, the reason for this decision, and to also "*send [him] the inquiry finished by OLAF [...] and forwarded to the Belgian authorities [...]*".

27. The complainant stated that he considered that this report, which concerns the above-mentioned former Director, is relevant for both the present case and case 362/2011/KM. He could not, therefore, understand the reasons why the Ombudsman decided to open an inquiry towards OLAF as distinct from the Commission, given in particular that, according to the mission statement published on its website, OLAF was a Commission department.

28. With regard to this issue, the Ombudsman notes that, according to Article 2.1 of the



Commission decision establishing OLAF (Decision 1999/352/EC), the latter exercises the Commission's powers to carry out external administrative investigations for the purposes of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the EU's financial interests, as well as any other act or activity that is in breach of EU provisions ("in complete independence" and should "neither seek nor take instructions from the Commission". Moreover, OLAF's operational independence is protected and reinforced by a Supervisory Committee consisting of five independent outsiders appointed by common agreement of the European Parliament, the Council and the Commission. Furthermore, if the Director of OLAF considers that a measure taken by the Commission calls his independence in question, he is entitled to bring an action against it before the Court of Justice [7] . For these reasons, the Ombudsman's established practice is to address OLAF directly when he inquires into matters that fall within the scope of OLAF's operational independence. It should also be noted that the Commission's Rules of Procedure delegate to the Director of OLAF the power of decision on confirmatory applications for access to documents relating to OLAF's activities referred to in Article 2(1) and (2) of Decision 1999/352/EC.

29. In the present case, the complainant made a request for access to the Final Case Report in case OF/2008/1048. He did not request OLAF to give him access to any other document at any point. Nor did he challenge OLAF's understanding of his request for access to documents as being limited only to that Final Case Report. Therefore, in the absence of any prior administrative approaches vis-à-vis OLAF concerning access to another final case report, namely the one concerning the above-mentioned former Director of the Commission, this allegation is inadmissible.

30. Secondly, the complainant reported that he had complied with the Ombudsman's suggestion, made in the letter informing him of the opening of the inquiry, to ask OLAF how many requests for access to documents it had received and dealt with. However, he had only been provided with a confusing table which he had difficulties to understand despite having asked for and received some explanations. He therefore considered that the information he had been given was probably false. In particular, the complainant did not believe that, as the information provided appeared to suggest, OLAF gave partial access to some documents. He therefore considered that the Ombudsman should carry out an inspection to determine whether the information which OLAF had provided to him was correct. Such an inspection was further warranted since OLAF had provided "incorrect and misleading statements in its submissions to the Ombudsman", as the latter had noted in his special report to the Parliament in case 2485/2004/GG of 12 May 2005.

31. The Ombudsman notes that the complainant has not furnished any evidence to support his suspicion that OLAF provided false data to him. In these circumstances, there are insufficient grounds for the Ombudsman to take any action with regard to the complainant's suggestions. The Ombudsman also points out that should the complainant wish to submit a new allegation or claim in this regard, it would be necessary to make prior administrative approaches to OLAF as required by Article 2(4) of the Ombudsman's statute.



A. Allegedly wrongful rejection of the complainant's request for access

Arguments presented to the Ombudsman

32. The complainant reiterated the arguments submitted in his confirmatory application. He added that OLAF's rejection of his application for access to the Final Case Report rendered Regulation 1049/2001 devoid of any meaning, and was clearly an instance of maladministration.

33. In its opinion, OLAF argued that it had correctly applied the exceptions provided for in Regulation 1049/2001, and referred to the arguments that it had put forward in its reply to the complainant's confirmatory application.

34. In his observations, the complainant criticised OLAF's reply as a mere repetition of the arguments put forward in its reply to his applications for access to documents. OLAF's refusal to grant him access to the Final Case Report meant that he would never know whether it properly investigated the complaint he had submitted to it.

The Ombudsman's preliminary assessment

35. OLAF justified its refusal to grant access to the Final Case Report by relying on (i) Article 4(2) 3rd indent (purpose of inspections and investigations), (ii) Article 4(1)(b) (privacy and protection of personal data), (iii) Article 4(2) 1st indent (commercial interests) and (iv) Article 4(3) 2nd sub-paragraph (protection of internal deliberations even after the decision is made). Having inspected the document at issue, the Ombudsman will proceed to examine these exceptions in turn.

36. In relation to the protection of the **purpose of inspections and investigations** (Article 4(2) 3rd indent), OLAF argued that the report gave insights into OLAF's investigative strategy, which, if made public, could be exploited by "potential fraudsters". Moreover, rendering public statements referred to in reports might deter witnesses from coming forward. Finally, OLAF had to protect its investigators from external pressure, and therefore, could not publish their names.

37. With regard to OLAF's argument that disclosure of the content of the Final Case report might be "exploited by fraudsters", the Ombudsman notes that OLAF has limited itself to a pure assertion without explaining how the disclosure in general of the content of a Final Case Report could be "exploited by potential fraudsters". On the contrary, one would expect that, in principle, rendering public such reports could have a further deterrent effect on potential "fraudsters", thus strengthening further the public's faith in the ability of OLAF



successfully to use its investigative powers to combat fraud and corruption and protect the financial interests of the Union.

38. The Ombudsman agrees with OLAF that, as a matter of principle, it needs to protect its witnesses from being identified. However, he considers that the rules on the protection of personal data should afford witnesses the necessary protection. Thus, references to the title or job description of some witnesses could be redacted under Regulation 45/2001. This does not seem to be necessary where, for instance, the Final Case report simply refers to "the source of information" rendering thus the identification of that source almost impossible. In that regard, OLAF's unqualified reliance on Article 4(2) 3rd indent does not appear convincing.

39. As regards the argument that investigators have to be protected from external pressure, the Ombudsman would like to underline that, as he has stated before, [8] transparency can help officials to work better and may ultimately contribute to a culture of service. In fact, the knowledge that a report may be published may (i) lead investigators to be more thorough and help ensure that they remain independent by resisting any external pressure and (ii) raise the institution's interest in ensuring that investigators are seen to act in this way. As the Court of Justice pointed out in *Turco* [9], institutions must "put a stop" to any undue pressure and cannot use this risk as an argument not to grant access to a document.

40. As regards OLAF's reliance on Article 4(1)(b) (**privacy and protection of personal data**), it is settled case law [10] that, when a document regarding which a request for access has been made contains personal data, Regulation 45/2001 on the protection of personal data [11] becomes fully applicable. This means that in the absence of consent by the data subject, personal data can only be legally transferred (in other words, access to the personal data contained in the documents can only be given) to an applicant if the latter has established the necessity of having the data transferred to him, so as to allow OLAF to weigh up the various interests concerned and consider whether there is any reason to assume that the data subject's legitimate interests might be prejudiced by the disclosure. However, the Ombudsman points out that the complainant did not submit any arguments to this effect, and as a result, the Ombudsman is not in a position to assess whether OLAF carried out the required balancing exercise in weighing up the various interests involved when deciding whether to grant the complainant access to the Final Case Report. Nor is it clear how OLAF could have been in a position to carry out that exercise in the absence of any submissions from the part of the complainant to establish the necessity of having the data in question transferred to him. Thus, it cannot be excluded that in the present case, OLAF has indeed validly withheld the personal data relating to OLAF's investigators, witnesses or persons under investigation.

41. However, the Ombudsman cannot accept OLAF's further argument that it could not grant partial access without breaching the exception in Article 4 (1)(b) because the Report



in question contained data other than names which might allow such persons to be identified.

In this regard, reference should be made to the definition of personal data in Article 2 of Regulation 45/2001 which provides that "*personal data' shall mean any information relating to an identified or identifiable natural person*". It is thus clear that the notion of personal data is not limited to names, and that the application of Regulation 45/2001 in accordance with the Bavarian Lager [12] case-law allows institutions to redact other information relating to a person. OLAF could therefore have granted access to the document while redacting any information that could allow the persons concerned to be identified. Having inspected the document, the Ombudsman considers that OLAF could best keep the document readable by replacing references to a person with an appropriate alphabet letter throughout the document, rather than simply redacting the information. [13]

42. OLAF also argued that the publication of the documents might undermine the **commercial interests of companies** concerned by the investigation (Article 4(2) 1st indent). It based itself on the risk to the reputation of a company by virtue of the mere fact that the latter was associated with an investigation, irrespective of its final outcome. The Ombudsman considers that there is indeed a risk that the reputation of a company associated with or involved in an OLAF investigation may be adversely affected if its identity is made public. In the present case, the Final Case Report does indeed contain information in relation to businesses or business associations in connection with the investigation which could be covered by the obligation of professional secrecy. According to the jurisprudence [14], the term professional secrecy refers to information which is known only to a limited number of persons (in the present case, the companies themselves and any witnesses/complainants if relevant, as well as the OLAF case team), and disclosure of which is liable to cause serious harm to the person to which it relates. Moreover, the interests liable to be harmed should be objectively worthy of protection. In the present case, the Ombudsman takes the view that it is indeed in the legitimate interest of companies whose behaviour was investigated by OLAF and found not to amount to corruption or fraud to have their identity protected from any such disclosure which could risk unduly harming their commercial reputation.

43. However, as in relation to the exception for personal data, the Ombudsman does not consider that reliance on this exception could justify refusing access to the entire document. Rather, OLAF should have given more consideration to the possibility of granting partial access by replacing the names and other information that may lead to the identification of the businesses concerned with appropriate alphabet letters to ensure that the document remains readable. This would have allowed OLAF, in the Ombudsman's view, to grant access to the substance of the document while at the same time respecting the exception provided in Article 4(2) 1st indent of Regulation 1049/2001.

44. As regards OLAF's argument that the document ought to be protected in accordance with **Article 4(3) 2nd paragraph (documents for internal use)**, it should be recalled that Article 4(3) reads as follows:



Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

45. It results clearly from the second paragraph of Article 4(3) that the above mentioned exception is of narrower application in cases where a decision has already been taken by the institution concerned, as is the case here, and only covers documents which contain "*opinions for internal use as part of deliberations and preliminary consultations within the institution*". [15]

46. In this regard, OLAF argued that the Final Case Report referred to "working hypotheses", regardless of whether the latter turned out to be founded, and that the "reflections" contained in it formed the basis of OLAF's "*internal decisions taken with respect to [the investigation]*."

47. The Ombudsman is not convinced that the Final Case Report falls within the category of documents which can be protected after a decision has been taken because they contain internal opinions which are used in internal "*deliberations and preliminary consultations*", disclosure of which would seriously undermine the institution's decision-making process. It is clear that the Final Case Report, as its name indicates, is not a preliminary draft or "opinion", but the final decision as to whether, based on the conclusions drawn by the investigators on the facts collected in the course of the investigation carried out, any follow-up is recommended.

48. It should be recalled that the Court underlined that "[t]he reasons invoked by an institution and capable of justifying refusal of access to such a document of which communication has been requested before the closure of the administrative procedure might not be sufficient for refusing disclosure of the same document after the adoption of the decision, without that institution explaining the specific reasons why it considers that the closure of the procedure does not exclude the possibility that that refusal of access may remain justified having regard to the risk of a serious undermining of its decision-making process". [16]

49. The Ombudsman does not consider that OLAF's argument that "the risk of self-censorship remained" constitutes a specific reason, within the meaning of the above mentioned case-law, with regard to the alleged risk that disclosure of the Final Case Report would undermine its decision-making process.



50. OLAF further argued that it could not disclose the document because it had to protect the collective nature of its decision-making process, which was an 'essential principle' of OLAF.

51. In that regard, the Ombudsman would like to underline that the "collective nature" of a decision-making process is not, as such, protected under Regulation 1049/2001, since otherwise access could be denied to documents produced in any decision-making process involving more than one person. [17]

52. OLAF argued that its investigators had to be given space to think and to exchange ideas and give uncensored advice. Disclosing the Final Case Report would seriously undermine the ability of staff to give and receive frank opinions and, with it, OLAF's ability to adopt final positions in the general interest and free from external influence. OLAF underlined that this exception continued to apply even after the relevant investigation had been closed, given that the risk of self-censorship remained.

53. The Ombudsman has already dealt with the argument that giving access to the document would undermine the ability of investigators to give their opinions frankly (see paragraph 39 above). He further notes that OLAF's reliance on this argument in the present respect is based on mere assertions and not supported by any specific explanations as to why, in the present case, and having regard to the actual content of the Final Case Report in question, the latter's (full or partial) disclosure would seriously undermine OLAF's decision-making process. It should also be recalled that, as already mentioned above, the document in question is the Final Case Report itself, not preliminary drafts through which the investigators may have exchanged ideas and developed their thinking. The Ombudsman therefore concludes that OLAF has failed to show that disclosure of the document would seriously undermine the decision-making process.

54. In view of the above, the Ombudsman arrives at the preliminary conclusion that OLAF has not provided a sufficiently convincing reasoning for refusing to grant at least partial access to the Final Case Report in question. This could be an instance of maladministration. The Ombudsman will therefore make a proposal for a friendly solution below.

B. The proposal for a friendly solution

Taking into account the Ombudsman's findings, OLAF could consider granting partial access to the document.

P. Nikiforos Diamandouros

Done in Strasbourg on 26/06/2013



[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[3] In summary, Article 22(a) of the Staff Regulations provides that an official who becomes aware of potentially illegal activity detrimental to the EU must inform his superiors or OLAF and shall not suffer any negative consequences for having communicated the relevant information provided that that he did so in good faith. Article 22(b) deals with the further disclosure of such information to " *the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, or to the European Ombudsman*" in case OLAF has not taken " *appropriate action* " within a reasonable time.

[4] Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ 1999 L 136, p. 1.

[5] In that regard , OLAF referred to paragraph 98 of the judgment of the then Court of First Instance in Case T-403/05 *MyTravelGroup plc v Commission* . This judgment has since been reversed by the Court of Justice in Case C-506/08 P *Sweden v MyTravel and Commission* , not yet reported.

[6] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

[7] Article 12.3 of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136 p.1, 31.5.1999.

[8] The Ombudsman's decisions on complaints 876/2012/RT, available on the Ombudsman's website, paragraphs 54 et seq. Following the same logic, albeit in relation to Commission officials in state aid/competition proceedings, see also 2073/2010/AN paragraphs 76 to 80 and 1735/2010/MHZ paragraph 32.

[9] Joined cases C-39/05 P and C-52/05 P *Kingdom of Sweden and Maurizio Turco v Council of the European Union* , [2008] ECR I-4723, paragraph 64.

[10] Case 28/08 P *Commission v Bavarian Lager* [2010] ECR I-6055.



[11] See footnote 6.

[12] Case C-28/08 P *Commission v The Bavarian Lager Co. Ltd.* [2010] ECR I-6055.

[13] Case T³⁹²/07 *Strack v Commission* not yet reported, paragraph 205.

[14] Case T-198/03 *Bank Austria* [2006] ECR II-1429, paragraph 71.

[15] Case 540/08 P *Sweden v MyTravel and Commission* , not yet reported, paragraph 79.

[16] *ibid.*, paragraph 82.

[17] Decision of the European Ombudsman closing his inquiry into complaint 2781/2008/(TS)FOR against the European Commission, paragraph 31.