



Follow-up to my own-initiative inquiry OI/15/2014/PMC concerning alleged irregularities affecting EULEX Kosovo

Correspondence - 27/04/2016

Case OI/15/2014/PMC - **Opened on** 14/11/2014 - **Decision on** 04/12/2014 - **Institution concerned** European External Action Service (No further inquiries justified) |

Ms Federica Mogherini High Representative for Foreign Affairs and Security Policy

Strasbourg, 27/04/2016

Subject: Follow-up to my own-initiative inquiry OI/15/2014/PMC concerning alleged irregularities affecting EULEX Kosovo

Dear Madam High Representative,

As you may recall, in the context of my own-initiative inquiry regarding the above matter, I found that (i) EULEX had not followed its standard procedure for investigating the allegations, and that (ii) the disappearance of the original report about alleged irregularities in EULEX, submitted in 2012 by an EULEX prosecutor, was an issue of concern in itself. I also found that (iii) the EULEX Code of Conduct and Discipline does not provide for any sort of external reporting channel which would allow persons who wish to report potential irregularities within EULEX to turn to a person or authority outside EULEX itself (such as the EEAS), and that (iv) the way in which the external prosecutor was recruited raised certain concerns.

Given that the external expert reviewing the mandate of the EULEX Kosovo Mission had made it clear that the concerns that I had identified would form part of his review, I took the view that there was no need for further action on my part at that particular point in time. However, I reserved the right to revisit the matter once the criminal investigation team in Kosovo and/or the external expert had presented their conclusions.

Thank you for having provided me, in April 2015, with the external expert report as well as a copy, in February 2016, of the EEAS' newly adopted 'Standard Operating Procedure (SOP) on Whistleblowing'. I have carefully examined this material and concluded that the EEAS has dealt satisfactorily with the procedural and systemic issues that I identified during my own-initiative inquiry. I will not, therefore, inquire further into the matter. **I trust that the EEAS will implement the suggestions for improvement made by the external expert in due time .**



I wish to take this opportunity to thank your services for the good cooperation shown during and after my own-initiative inquiry.

I enclose a follow-up analysis of the issues of concern identified during my inquiry in light of the expert's report.

Yours sincerely,

Emily O'Reilly

Annex:

· Follow-up analysis of the issues of concern to the Ombudsman in light of the expert's report on the handling of serious allegations of corruption affecting top EULEX judicial staff

Annex

The Ombudsman's follow-up analysis, on the basis of the expert's report, of the concerns about:

- (i) EULEX not having followed its standard procedure for investigating the allegations;
- (ii) the original report about alleged irregularities in EULEX, submitted in 2012 by an EULEX prosecutor, having disappeared;
- (iii) the EULEX Code of Conduct and Discipline not providing for any sort of external reporting channel which would allow persons who wish to report potential irregularities within EULEX to turn to a person or authority outside EULEX itself (such as the EEAS); and
- (iv) the way in which the external prosecutor was recruited.

As regards (i) , the expert's view is that an investigation should have been opened already in 2012 into the allegations raised, and he concluded that the initial handling of the matter was vitiated by certain shortcomings. He also proposed that, **as regards future similar cases, an investigation in accordance with standard procedure should be opened** and a reasoned decision be issued. Moreover, he also proposed to **establish an independent external body** to conduct investigations into allegations related to judges and prosecutors.

These proposals made by the external expert appropriately address the procedural shortcoming identified by the Ombudsman and would, if implemented, constitute a significant improvement of how to deal with allegations of serious misconduct by senior EULEX judicial staff.

In relation to (ii) , the expert concluded that the report **was not 'lost'** in the strict sense; it was **inappropriately kept rather than being properly recorded** . This was seemingly due



to an administrative error. The Ombudsman is not in a position to doubt the explanations obtained by the external expert for the "disappearance" of the report. Nor is there any reason to believe that the expert's conclusion is flawed. What matters most is whether the allegations brought forward in the report have been properly investigated. Moreover, the expert concluded that **appropriate measures have been taken so that, as from now on, documents are properly registered by EULEX**, eliminating the possibility of a similar situation occurring again.

Consequently, it is clear that the Ombudsman's concern in this regard has been properly addressed.

Concerning (iii), the expert noted that a **procedure has been set up within EULEX for reporting cases of corruption and that it is possible to do so anonymously**. On 4 February 2016, the EEAS provided the Ombudsman with a copy of this newly adopted 'Standard Operating Procedure (SOP) on Whistleblowing'.

By adopting the new SOP on whistleblowing, the EEAS has complied with two key suggestions previously made by the Ombudsman :

(a) In the context of the Ombudsman's own-initiative inquiry (OI/1/2014/PMC) concerning whistleblowing, the EU institutions (including the EEAS) were invited to reflect on how external informants (such as the whistleblower in the present case), while falling outside the scope of an EU institution's internal rules on whistleblowing applicable to EU civil servants, could be encouraged to report serious irregularities. **The new EEAS' SOP on whistleblowing applies to all Mission members** (local or international), **irrespective of their contractual status**. This improvement is welcome.

(b) In the framework of the present own-initiative inquiry about the handling of certain alleged serious irregularities affecting EULEX, the Ombudsman expressed the concern that there was no possibility to report irregularities *externally*, that is, outside of the mission, even to the EEAS itself. In its **SOP** on whistleblowing, the EEAS' Missions **now offer to whistleblowers**, as an option of last resort, the **explicit possibility of bringing their concerns to the attention of the EEAS' Civilian Operations Commander**, the Chair of the Political and Security Committee of the Council, the High Representative, **OLAF, and the Ombudsman**. This also constitutes a great improvement.

In view of the foregoing, it can be concluded that the EEAS has adequately addressed this issue following the Ombudsman's intervention.

As to (iv), the expert acknowledged that the recruitment of the special EULEX prosecutor, who is investigating the allegations concerned, deviated from the standard procedure. However, the expert also found that the recruited prosecutor had previously been declared **qualified** by EULEX for similar posts and that there were **no conflicts of interest**. The Ombudsman acknowledges that, in light of the severity of the allegations put forward, EULEX decision to apply a **special recruitment procedure**, which would avoid including in the decision-making process certain top EULEX judicial staff affected by the allegations, **was**



appropriate . However, an **external body** , as proposed by the external expert, would be much **better suited** to deal with this kind of allegation than applying an *ad hoc* solution, which risks raising suspicions about the procedure chosen.