Beslut i ärende OI/1/2014/PMC - Endast två EU-institutioner har antagit de obligatoriska reglerna om visselblåsning

Beslut
Ärende OI/1/2014/PMC - **Undersökning inledd den** 24/07/2014 - **Beslut den** 26/02/2015 - **Berörda institutioner** Europaparlamentet (Inga ytterligare undersökningar motiverade) | Europeiska unionens råd (Inga ytterligare undersökningar motiverade) | Europeiska kommissionen | Europeiska unionens domstol | Europeiska revisionsrätten | Europeiska datatillsynsmannen (Inga ytterligare undersökningar motiverade) | Europeiska ekonomiska och sociala kommittén (Inga ytterligare undersökningar motiverade) | Europeiska regionkommittén | Europeiska avdelningen för yttre åtgärder (Inga ytterligare undersökningar motiverade) |

Sedan den 1 januari 2014 har det funnits krav på att EU-institutionerna ska införa interna regler om visselblåsning, som ska omfatta skydd för visselblåsare, tillhandahållande av information till visselblåsare och förfaranden för hantering av klagomål som framförts av visselblåsare om hur de har behandlats. För att se till att EU-förvaltningen gör allt i sin makt för att uppmuntra individer som får kännedom om allvarliga missförhållanden eller felaktigt agerande att rapportera detta har ombudsmannen inlett en undersökning på eget initiativ som riktar sig till Europaparlamentet, Europeiska kommissionen, Europeiska unionens råd, EU-domstolen, Europeiska revisionsrätten, Europeiska utrikestjänsten, Europeiska ekonomiska och sociala kommittén, Regionkommittén samt Europeiska datatillsynsmannen.

Ombudsmannen har till sin besvikelse konstaterat att bara två av de nio institutionerna hittills har antagit de regler som krävs. Institutionernas svar visar att det återstår mycket att göra för att visa allmänheten och potentiella visselblåsare att EU-institutionerna välkomnar visselblåsning och uppmanar visselblåsare att träda fram, att de kommer att skyddas mot negativa åtgärder från den institution de arbetar för och att deras rapportering kommer att leda till ordentliga undersökningar. Ombudsmannen avslutar därför ärendet med riktlinjer för ytterligare förbättringar. Institutionerna uppmanas att försöka avsluta sina diskussioner på interinstitutionell nivå så fort som möjligt och att i denna process följa ombudsmannens exempel och interna regler om visselblåsning. Ombudsmannen välkomnar också de framsteg kommissionen och revisionsrätten hittills gjort på detta område.

The background to the inquiry
1. Since 1 January 2014, EU institutions have been obliged [1] to introduce internal whistleblowing rules covering the protection of whistleblowers [2] , the provision of information to them, and the procedure for handling complaints made by whistleblowers concerning the way they were treated as a result of reporting serious irregularities.

2. The Ombudsman's view is that such rules should enable whistleblowers to fulfil their duty to speak up if they become aware of serious misconduct or wrongdoing, thus serving the public interest, by fostering integrity, transparency, accountability, and ultimately legitimacy in and of the EU administration. Mindful, also, of the role that whistleblowers play in exposing corruption [3] , she decided to open an own-initiative inquiry [4] to ensure that the EU institutions give effect to the new provisions in the EU Staff Regulations.

The scope of the inquiry

3. The Ombudsman wrote to the European Parliament, the European Commission, the Council of the European Union, the Court of Justice of the European Union, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the Committee of the Regions, and the European Data Protection Supervisor [5] , asking them to inform her of the steps they had taken, or intended to take, to give effect to the new Article 22(c) of the Staff Regulations (hereinafter 'SR') [6] . She asked them, in particular, to provide her with (i) information on whether they had already adopted, or intended to adopt, the *internal rules* required by Article 22(c) SR; (ii) information on the procedure for adopting the said internal rules (notably whether staff and/or the general public had given their views); (iii) a copy of the said rules or a preliminary draft thereof; and (iv) any other useful information. In particular, given that the management of public funds concerns not only the staff of EU institutions, but also third parties, such as contractors and subcontractors, the Ombudsman invited the EU institutions to reflect on how external whistleblowers, while falling outside the scope of an institution's internal rules, could be encouraged to report serious irregularities and how they might best be protected if they do so.

The replies of the EU institutions and bodies [7]

On the adoption of internal rules

4. The European Commission and the European Court of Auditors reported that they had already adopted whistleblowing rules in accordance with Article 22(c) SR. The Commission specified that, while it used the term "guidelines" in its 2012 'Guidelines on whistleblowing' [8] because that term was more accessible, that does not alter their binding character. The European External Action Service (EEAS) explained that it applies the Commission's Internal Control Standards, which include the Commission's 'Guidelines on whistleblowing', though it is also considering drafting its own guidelines.

5. The Council of the EU, the Court of Justice of the EU, the European Economic and Social Committee, and the Committee of the Regions informed the Ombudsman that they had prepared draft internal decisions. The European Data Protection Supervisor (EDPS) explained that it had adopted a new Code of Conduct and had taken some steps to comply with Article 22(c) SR. The European Parliament opted to postpone its reply until the on-going debate on this subject in the inter-institutional Preparatory Committee for Matters relating to the Staff Regulations (CPQS) [9] had ended.

On the procedure for adopting internal rules

6. The Commission informed the Ombudsman that it had consulted two external organisations with expert knowledge and had also held discussions with staff representatives. The Court of Auditors consulted its Staff Committee before adopting its internal rules, while the Council and the EESC stated that they will consult their Staff Committees. The Council, the Court of Justice, the EESC and Parliament replied that the matter is being discussed in the framework of the CPQS.

On the provision of a copy of the rules

7. The Commission, the Court of Auditors, and the EDPS provided a copy of the relevant documents to the Ombudsman. The Committee of the Regions, the Council, the Court of Justice, and the EESC informed the Ombudsman that, although they had prepared draft decisions, they were not yet in a position to forward copies. The EEAS commented that it had started reflection on preparing its own specific guidelines.

On the extension of the internal rules to external whistleblowers

8. The Court of Auditors said that the general provisions of its recently adopted rules apply to economic operators participating in procurement procedures, as well as to contractors and their staff. [10] The Commission observed that external whistleblowers already have a secure way to make reports, including anonymously, through the European Anti-Fraud Office (OLAF) and its fraud notification system. It added that external whistleblower protection is largely a matter for national rules. The Council and the EESC were of the view that it was worth pursuing this aspect further at inter-institutional level.

The Ombudsman's assessment

9. The Ombudsman is disappointed that only two of the nine institutions and bodies contacted have so far adopted internal rules as required by Article 22(c) SR, that is to say, the Commission and the Court of Auditors.

10. The Ombudsman notes that, as from 1 January 2014, Article 22(c) SR obliges the institutions and bodies to adopt internal whistleblowing rules. Even though no deadline is set in that provision, it is obvious that the relevant rules should be adopted as rapidly as possible. By giving full effect to Article 22(c) SR, the EU institutions can send a clear signal that they welcome whistleblowing and encourage whistleblowers to step forward, that whistleblowers will be protected against negative action by the institution for which they work, and that their reporting will lead to a proper investigation and they will be informed of the outcome. It is therefore important that those institutions and bodies that have not yet adopted the rules required by Article 22(c) SR should follow the example set by the Commission and the Court of Auditors as soon as possible.

11. However, the Ombudsman notes that, after she had launched this inquiry, the institutions and bodies in question have intensified their discussions on this issue at an

inter-institutional level in meetings of the CPQS. As the Ombudsman is also represented in the CPQS, she will actively cooperate with the other institutions to help them progress with their task of preparing the relevant rules.

12. The Ombudsman has sought to lead by example in this case. In parallel to launching this inquiry, the Ombudsman drafted internal whistleblowing rules for her Office, using the Commission's 'Guidelines on whistleblowing' as a model. The draft rules were circulated to all the Ombudsman's staff, via the Staff Committee, and were reviewed by the Ombudsman's Data Protection Officer. The Ombudsman then published the draft rules, inviting interested parties to submit feedback. After reviewing the comments submitted by eight interested third parties, the Ombudsman finalised her internal whistleblowing rules, which are now available on her website. [11] She believes that they will serve as useful guidance to the other institutions and bodies. While the Ombudsman appreciates that one set of rules may not fit the needs of each and every EU institution and body, her Office will seek, through the CPQS, to promote awareness of her own recently adopted whistleblowing rules and the transparent and inclusive way in which they were prepared

13. In view of the above, and while progress to date has been disappointing, the Ombudsman concludes that it is now obvious that all the institutions and bodies concerned are currently clearly aware of their duty to adopt internal rules on whistleblowing and have begun to take steps to comply with this duty. Finally, the Ombudsman recalls that the EU institutions, bodies, offices and agencies should seek to safeguard also the rights and interests of external whistleblowers within the limits of their legal and operational capacity to do so [12] . The Ombudsman is encouraged, in this regard, by the confirmation from the Court of Auditors that its internal rules on whistleblowing apply to external informants. In the same vein, a number of institutions explicitly supported the Ombudsman's suggestion of extending, to the greatest extent possible, the rights granted to internal whistleblowers also to external whistleblowers, by pledging to protect their identity and provide them with the same information guarantees.

Conclusion

Against the above background, the Ombudsman closes the inquiry with the following guidelines for further improvement:

The Ombudsman encourages the EU institutions, represented in the Preparatory Committee for Matters relating to the Staff Regulations ('CPQS'), to finalise their discussions aimed at implementing Article 22(c) of the Staff Regulations as soon as possible and, in this process, to draw on the example of the Ombudsman's internal rules on whistleblowing.

The Ombudsman also commends the Commission and the Court of Auditors for their progress thus far on this issue.

The EU institutions covered by the present inquiry will be informed of this decision.

Emily O'Reilly

Strasbourg, 27/02/2015

[1] On the basis of Article 22(c) of the Staff Regulations, available at:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1962R0031:20140101:EN:PDF

[2] The Staff Regulations define a whistleblower as any official who, in the course of or in connection with his or her duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud and corruption, detrimental to the interests of the Union, or of a conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union, and who reports those facts to his institution and/or to OLAF.

[3] See the Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report, Brussels, 3.2.2014, COM(2014) 38 final.

[4] The Ombudsman undertakes inquiries on her own initiative where she finds grounds to do so. As well as inquiring into any possible maladministration, these inquiries are intended to be helpful to the particular institution and to promote good administrative practice.

[5] These EU institutions and bodies - together with the Ombudsman - are represented in the College of the Heads of Administration, an inter-institutional body composed of top officials representing the said institutions' administration. The College of the Heads of Administration aims at ensuring a consistent interpretation and implementation of the Staff Regulations and of other administrative matters, taking decisions at the highest administrative level.

[6] The Ombudsman's letters are available at the following link: http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54615/html.bookmark

[7] As the individual replies are available on the Ombudsman's website, this section includes only the main elements.

[8] See Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing, Brussels, 6.12.2012, SEC(2012) 679 final.

[9] The CPQS is an inter-institutional body in charge of discussing and trying to find harmonised solutions in matters relating to the Staff Regulations. It is composed of representatives of the EU institutions and bodies which are also represented in the College of the Heads of Administration.

[10] In particular, see point VIII of the said Rules.

[11]
http://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/54611/html.bookmark

[12] To give effect to this important principle in her own rules, the Ombudsman provides that: *"Every person who enters into a contract with the Ombudsman's Office shall be informed (i) that it is possible to report serious misconduct or wrongdoing affecting the Ombudsman's Office either to the Ombudsman or to OLAF and (ii) that making use of this possibility will not result in any retaliation, reprisal or other negative action on the part of the Ombudsman's Office, provided that he, she or it reasonably believes the information reported to be true."*