



Kristalina Georgieva
Vice-President for Budget and Human Resources

28 NOV. 2014
Brussels,

Dear Ms O'Reilly,

Subject: **Own-initiative inquiry**
 ref. OI/1/2014/PMC

Thank you for the letter of 24 July 2014 addressed to the President of the European Commission about the above-mentioned case.

I am pleased to enclose the comments of the Commission regarding this complaint.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kristalina Georgieva".

Kristalina Georgieva

Enclosure

Ms Emily O'REILLY
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F-67001 STRASBOURG Cedex

Rue de la Loi/Wetstraat 200
1049 Bruxelles/Brussel
Tel.: +32-2-298.71.37

FINAL

Comments of the Commission on the European Ombudsman's Own initiative inquiry - Own-initiative inquiry, ref. OI/1/2014/PMC

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

Article 22c of the Staff Regulations ("SR"), which entered into force on 1 January 2014, makes further provision to address the "whistleblowing" issue as regards the EU institutions and their staff. It stipulates that EU institutions shall lay down internal rules covering the protection of whistleblowers and the provision of information to them, as well as the procedure for handling complaints made by whistleblowers concerning the way they were treated as a result of reporting serious irregularities.

To give effect to Article 22c of the SR, the Ombudsman drafted internal rules on whistleblowing, using the Commission's Guidelines on Whistleblowing as a valuable source of inspiration.

The Ombudsman wrote to all the EU institutions and bodies that are represented in the College of the Heads of Administration, asking them to inform her of the steps they have taken, or intend to take, to give effect to Article 22c of the SR.

II. THE OWN-INITIATIVE INQUIRY

The Ombudsman would like the Commission to provide her with:

- (i) information on whether the Commission has already adopted, or when it intends to adopt, the internal rules required by Article 22c of the SR and the form that these rules take, or will take;
- (ii) information on the procedure for adopting the said internal rules, if applicable. In particular, the Ombudsman would like to know if, in the adoption process the staff and/or the general public had the opportunity to give their views and, if so in what way;
- (iii) a copy of the said rules or a preliminary draft thereof, if applicable; and
- (iv) any other useful information on this subject. 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 invites the Commission to reflect on how external informants, while falling outside the scope of an institution's internal rules on whistleblowing, could be encouraged to report serious irregularities and how they might best be protected if they do so.

III. THE COMMISSION'S COMMENTS ON THE OWN-INITIATIVE INQUIRY

The Commission will respond to the Ombudsman's queries in the order in which they are raised.

(i)

The Commission adopted the "Guidelines on Whistleblowing" on 6 December 2012. The Commission considers that with these guidelines, it complies with Article 22c of the SR. The term 'guidelines' was used because the document informs staff members in accessible language of the existing rules on whistleblowing, of the various rights and obligations resulting from relevant case law since 2004, and of other relevant rules that were scattered amongst various legal instruments, such as the protection mechanism included in the Commission decision on appraisals and promotion. The contents of the document are binding.

Following the entry into force of the new SR, the internal rules on complaints have been slightly modified to take account of the first paragraph of Article 22c of the SR on handling complaints from whistleblowers (see link here below).

(ii)

The draft guidelines were the subject of a Commission-wide inter-service consultation in early 2012. The Commission also consulted two external organisations with expert knowledge in the area, Transparency International and Public Concern at Work. Transparency International in fact issued a favourable press release in reaction to the guidelines in December 2012.

The draft guidelines were further discussed with the Central Staff Committee (staff representatives) on 26 October 2012.

(iii)

The Commission is aware that the Ombudsman is in possession of the guidelines, but they are attached for ease of reference.

(iv)

The Commission will review the Guidelines on Whistleblowing in late 2015, in accordance with the revision clause contained therein. As regards external informants it should be noted that, through OLAF and the fraud notification system they benefit from a secure way to introduce complaints, including anonymously. The Commission is not aware of situations where an external informant providing information to OLAF has suffered retaliation. In addition, the Ombudsman will be aware that whistleblower protection is largely a matter of national rules. It may be difficult for the Commission alone to ensure the protection of external informants beyond their identity.

IV. CONCLUSIONS

The Commission considers that with the guidelines issued on 6 December 2012, it fully complies with Article 22c of the SR. The revision of the Guidelines on Whistleblowing (scheduled for late 2015) will provide the occasion to consider further improvements if needed.

List of enclosures

- Guidelines on Whistleblowing

https://myintracomm.ec.europa.eu/hr_admin/en/ethics/Documents/Whistleblowing_EN_SEC_2012_679.pdf

- Update of the arrangements for submitting requests and complaints (Article 90(1) and (2) of the SR) and requests for assistance (Article 24 of the SR)

https://myintracomm.ec.europa.eu/infoadm/en/2013/Documents/ia13079_annexe_en.pdf