

(NL), 04 November 2002

Mr. [REDACTED]

by email to: [REDACTED]

I have received your reply by e-mail of Wednesday, 30th October, concerning the worries I expressed by on the 26th with regard to the treatment of Mrs. [REDACTED] by you and your services.

- You indicate that Mrs. [REDACTED] is not a whistleblower because she did not follow the procedures and did not raise her concerns with OLAF.

Mr. [REDACTED] you know that she wrote many letters to her superiors, up to and including Mrs. [REDACTED] commissioner charged with [REDACTED] before addressing herself outside the institution. You know that she went through this effort despite the fact that several of these observations have been made already before her arrival by other accounting experts and were not properly addressed by the Commission before. You were advised that the obligation, of a whistleblower to address wrongdoing internally, ceases to exist if this wrongdoing has been reported already before and has not been properly addressed at these occasions by the institution. Therefore, Mrs. [REDACTED] is a whistleblower.

- You indicate that you did not "personally announce" disciplinary procedures or anything else.

In your letter of 2nd July to Mrs. [REDACTED] and in your recent letter to the president of COCOBU you announce disciplinary proceedings. You do this without first hearing Mrs. [REDACTED] and without having the results of an administrative enquiry that precedes the decision to start disciplinary actions.

- You deny that Services advised against any Commission decision and that on the contrary, Services consulted on actions relating to Mrs. [REDACTED] returned positive opinions.

I can only repeat to you that both the Legal Service and the Disciplinary Office had expressed doubts on whether Mrs. [REDACTED] actually committed any act that would merit the opening of a disciplinary enquiry against her. This information is first hand.

- You ask me to withdraw an inference (assumed by you) that the Director General who is Hearing Officer somehow has some connection with the matters that are under investigation by OLAF.

Mr. [REDACTED], in my e-mail I referred to the OLAF investigations in relation to the EU Publications Office and I suggested to you that in such a context the Director general of such a service is not the most appropriate person to be appointed by you as Hearing Officer in Mrs. [REDACTED] case. I do not withdraw my suggestion.

- You refer to a letter that you wrote to the President of COCOBU, [REDACTED] in order to provide legal clarity on the matter of disciplinary procedure. You indicated to Mrs. [REDACTED] that the disciplinary procedure against Mrs. [REDACTED] was opened by your letter of 2 July to her – outlining the allegations against her. You also indicated that from that point on, the case is effectively *sub judice* and the proceedings are confidential.

Mr. [REDACTED] if I am not mistaken, this first phase, where the Hearing Officer (not the Enquiry President as you point out) produces a report to the Appointing Authority

(which in this case is you) is not part of the disciplinary enquiry, but is part of the preceding 'administrative enquiry'. Only after the hearing of the accused person (you accuse Mrs. [REDACTED] and the production of the report by the Hearing Officer, the Appointing Authority (you) may decide to refer the case to a Disciplinary Board. I therefore suspect that your information to Mrs. [REDACTED] may have been misleading to the extent that you suggested to her that your case against Mrs. [REDACTED] did enter already the disciplinary phase and is therefore *sub judice*, but I am not a legal expert. I can only assume that you wanted to prevent the COCOBU to hear Mrs. [REDACTED]

Your persistent mentioning of the *sub judice* status of the procedure does not seem to be acknowledged by everyone (example: article in 'Der Standard' of two weeks ago with observations from Mrs. [REDACTED]).

Therefore, the current on-going procedure concerning Mrs. [REDACTED] may well be in conformity with the Staff Regulations and I did not question this. I questioned the treatment of Mrs. [REDACTED] by you Mr. [REDACTED] and I have the right to question this kind of treatment.

- You indicate that my reference to our exchange of correspondence in 2001 is misinformed and misleading.

You withheld access to witness declarations by me in my case with the argument that my case was closed. I notice that you withhold access to witness declarations by Mrs. [REDACTED] with the argument that correspondence from the Hearing Officer to Mrs. [REDACTED] was circulated. Mr. [REDACTED] you will recall that the reason of our exchange of correspondence in 2001 was the fact that you granted access to witness declarations to a senior Commission official who was under investigation for his role in the [REDACTED] case. As a result, lower ranking staff, which had testified against this official, were unexpectedly cross-examined by the lawyers of this suspected senior official.

Mr. [REDACTED] you write that at present "the Hearing Officer will, in due course, doubtlessly satisfy himself about the degree to which the "strict condition" is likely to be met ... , he will make his own conclusive reasoned judgement." In other words, Mr. [REDACTED], the access of Mrs. [REDACTED] to the relevant documents in her case are left at the mercy of the Hearing Officer, appointed by you, and Director general of OPOCE, which is under OLAF investigation.

Mr. [REDACTED], your response to me contains a lot of fancy legalistic footwork and you will understand that I am deeply disappointed, realizing more and more the way that you treat Mrs. [REDACTED]. She is a true and deeply concerned whistleblower in the European Commission, who risked her career as director. I feel that she is now left at your mercy, with apparently no one in the Commission or any other EU institution having the guts to set the record straight.

Therefore I maintain the assertion that the "treatment" of Mrs. [REDACTED] is "highly questionable".

[REDACTED]

cc:

[REDACTED]
[REDACTED]
[REDACTED]