

## **Decision on strategic initiative SI/3/2018/JN: effective complaint mechanisms for matters concerning European Structural and Investment Funds - follow-up to OI/8/2014/AN**

Correspondence - 02/08/2019

**Case SI/3/2018/JN - Opened on 25/09/2018 - Decision on 18/07/2019 - Institution concerned** European Commission |

Mr Jean-Claude Juncker

President of the European Commission

Strasbourg, 18/07/2019

Dear Mr President,

I refer to my letter of 25 September 2018 on effective complaint mechanisms for matters concerning European Structural and Investment Funds (ESI funds) and how Article 74(3) of Regulation 1303/2013 [1] is implemented.

I have now examined the Commission's reply, as well as the information provided by seven national ombudsmen [2], who gave their views on the situation in their respective countries.

I would like to take this opportunity to commend the Commission for the good work it has already done in this area and, in particular, for having carried out a study on complaint-handling arrangements. I also welcome that the Commission decided to make the study publicly available. I am confident that this will help to spread good practices and to make the different complaint mechanisms more effective.

At the same time, I would like to encourage the Commission to step up its monitoring of the situation, where possible.

The Commission should pay particular attention to how it handles complaints it receives directly. In addition, should the Commission discover that there are problems with existing complaint-handling mechanisms in specific Member States, it should make full use of its powers to address the situation.



It is important for all those who benefit or are affected by ESI funds to have at their disposal remedies that are fully effective. The complaint-handling mechanisms available at Member State level also play a crucial role in ensuring that EU funds are spent correctly. This is likely to become increasingly important in view of the Commission's proposed 'Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States' [3] .

In future, the Commission should take account of the reports and replies it has received from Member States and the replies my Office received from national ombudsmen [4] . Additional elements the Commission could bear in mind in this important area are set out in the annex to this letter.

Let me thank you for your reply and for your cooperation on this initiative. The strategic initiative is hereby closed.

Yours sincerely,

Emily O'Reilly European Ombudsman

Enclosure: **Effectiveness of the complaint-handling arrangements**

#### **Annex Effectiveness of the complaint-handling arrangements**

Article 74(3) of Regulation 1303/2013 requires Member States to have in place “ *effective arrangements for the examination of complaints concerning the ESI Funds* ”. The regulation does not specify what this means, and appears to leave a lot of discretion to Member States.

In order to assess the arrangements in the Member States, the Commission could attempt to define the essential features of an adequate complaint mechanism to comply with Article 74(3) of Regulation 1303/2013.

Moreover, to assess the effectiveness of the arrangements in place, the Commission should specifically consider also the following factors [5] :

##### **a) Which body deals with complaints?**

To constitute an effective remedy, the body that deals with complaints should be as independent as possible. In practice, it may be difficult to design administrative remedies that are completely independent, like courts. However, for complaint mechanisms to be effective, national law should provide for adequate guarantees of independence and impartiality. These guarantees should prevent, in particular, any conflicts of interest or interference by third parties (including political interference).

The Commission's study suggests that, in some Member States, complaints are examined by



the same body against which the complaint is made, albeit by a different person. The Commission should consider whether, in such cases, there are sufficient guarantees that the complaints are handled in a truly effective and independent manner.

**b) Who has the right to submit complaints?**

Ideally, complaint mechanisms should be open to as wide as possible a group of those who benefit from or are potentially affected by the ESI funds and the projects they support. However, according to the Commission's study, some Member States authorise only the entities/persons that applied for EU funds to complain. This excludes anybody else, including those who may be affected by how the funds are managed and spent, as well as those seeking to raise matters in the public interest. Thus, people who may have legitimate concerns about ESI-funded initiatives have no recourse.

Article 74(3) seems to indicate clearly the need for broader mechanisms for examining "complaints", and not just administrative appeal procedures for fund applicants.

Therefore, the Commission should carefully consider whether certain Member States' decisions to restrict recourse mechanisms to only funding applicants is compatible with Article 74(3) of Regulation 1303/2013.

**c) What issues can be the subject of complaints?**

The Commission should examine what issues can be the subject of complaints and whether the scope is overly restricted in some Member States. The Commission should examine whether complainants may challenge the action/inaction of a public body, as well as the relevant rules and procedures. It should also assess what type of issues the complaint-handling body can deal with (for example, substantive/procedural issues.). The Commission's study does not seem to have clearly addressed this.

**d) Accessibility of complaint mechanisms**

For a remedy to be effective, it should be sufficiently available and accessible. As the Commission's study makes clear, there are problems with the online accessibility of complaint mechanisms in certain Member States [6] . The Commission should consider what actions could be taken to address this, and to make information on the available complaint mechanisms and remedies easily accessible for the public.

**e) Powers of the complaint-handling body**

The Commission should also examine the powers the different national complaint bodies have, which naturally affects how effective they can be in providing remedies for complainants. It should consider whether the bodies should have the power to examine fully a complaint (both procedural and substantive issues), whether they have power to issue remedial measures and whether their decisions should be binding.

**f) Should funding decisions be suspended if complaints are ongoing?**

The Commission should consider whether a complaint-handling mechanism in this area can be considered "effective" if making a complaint does not lead to the suspension of decisions that are the subject of the complaint (suspensory effect). This is particularly the case for funding decisions, where a complaint could in essence become devoid of purpose if the funds are spent before the complaint-handling body reaches a decision [7] .



[1] Regulation (EU) No 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1303> [Link].

[2] Ombudsmen of Estonia, Iceland, Malta, Poland, Serbia, Slovakia and Spain.

[3] COM(2018) 324 final,

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0324&qid=1562688983875&from=EN> [Link].

[4] A full account of the responses I have received from the national Ombudsmen will be made available shortly on the section 'European Network of Ombudsmen' of my website (

<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/parallel-inquiries> [Link]).

[5] While the Commission's study applied various criteria for assessing whether the complainant-handling arrangements are effective, the Ombudsman considers these specific factors of most relevance.

[6] In particular, for various issues, the study states that there is "no information available". This concerns mainly languages, opportunities to present the position of the complainant, appeals within the complaints system, independence of the complaints review. For some information, the study does not provide clear answers but refers to differing rules for different remedies without specifying them (deadlines).

[7] This matter was raised by the Polish Ombudsman in particular.