



## Letter to the European Commission opening the European Ombudsman's strategic inquiry OI/5/2016/AB regarding the handling of infringement complaints under the "EU Pilot"

Correspondence - 13/05/2016

**Case OI/5/2016/AB - Opened on 13/05/2016 - Decision on 14/09/2017 - Institution concerned** European Commission ( No further inquiries justified ) |

Mr Jean-Claude Juncker

President

European Commission

Strasbourg, 13/05/2016

### **Strategic inquiry [1] (OI/5/2016/AB): The Commission's handling of infringement complaints under the 'EU Pilot'**

Dear Mr President,

I am aware of the serious efforts currently being undertaken by the Commission to uphold the rule of law, a founding principle of the European Union, in many important areas including migration and asylum, the environment, and energy and climate change. I see the present inquiry in that context.

The 'EU Pilot' procedure was designed to ensure the effective application of EU law, to accelerate the handling of complaints and to reduce recourse to formal "infringement procedures". EU Pilot seeks to clarify issues concerning the correct application of EU law or the conformity of national law with EU law. The system is now used in nearly all cases - subject to limited exceptions - as a precursor to the decision as to whether the Commission should start a formal infringement procedure.

Having now completed a range of inquiries [2] in relation to the Commission's handling of infringement complaints under the 'EU Pilot', I have decided to open a strategic inquiry on the systemic issues arising from these inquiries.

My first concern relates to the Commission's duty to reach a *timely* decision under the EU



Pilot, in line with point 8 of the Commission's Communication 'updating the handling of relations with the complainant in respect of the application of Union law' [3] . This provides that "[a] s a general rule, the Commission will investigate complaints with a view to arriving at a decision to issue a formal notice [4] or to close the case within not more than one year from the date of registration of the complaint ."

Please rest assured that it is not my intention to seek to bring about compliance with this one year target *at any cost* . Particularly complex cases may indeed require more time to resolve with the Member State in question; I do not lose sight of the fact that ensuring the correct implementation of EU law in the Member States is, after all, the primary objective. However, certain pilot cases last many years [5] . I believe it is important to understand the reasons for such delays and to identify what steps, if any, could be taken to address any underlying systemic shortcomings.

Second, the Ombudsman has repeatedly noted the importance of good communication with complainants, especially when the Commission needs additional time to take a decision due to the complexity of the case [6] . While, again, I understand that it is not the purpose of the pilot procedure to bring about a resolution of the individual complaint, the Commission has noted that "*[m]embers of the public, businesses, NGOs and other organisations contribute significantly to the Commission's monitoring by reporting shortcomings in the transposition and/or application of EU law by Member State authorities. The Commission fully acknowledges their important role and has committed to giving administrative guarantees when handling complaints, such as informing the complainant of any steps the Commission takes in further processing the complaint, and notifying the complainant before closing the complaint . [7] "*

Any excessive unnecessary delays before taking a decision, and poor communication with complainants, are likely to create frustration, anger and a loss of trust. It also discourages future complaints from citizens. Finally, they reduce the effectiveness of the EU Pilot, the purported aim of which is to solve issues quickly.

I would thus be interested in receiving information on any further steps the Commission may have taken in this regard. It would also be useful to examine the standard information provided to complainants, given that many individuals who subsequently turn to the Ombudsman seem to have expectations of the EU pilot procedure that are difficult to reconcile with what that procedure is designed to deliver.

Finally, I noted with interest the new online database of infringement decisions the Commission created in 2014 and the proactive publication of documents relating to closed infringement cases by certain Directorates General [8] . At first sight, this is an encouraging development. I am interested to know if the Commission intends to develop similar tools and policies for EU Pilot cases, in order to ensure that the public is adequately informed of the full range of Commission action in its role as guardian of the Treaties.

As a first step in this inquiry, **I invite the Commission to arrange for a meeting with my services**, in accordance with Article 3(2) of the Statute of the European Ombudsman, to allow them to carry out an **inspection** of the following documents:



(i) The list of EU Pilot cases open for more than one year at the end of 2015. This list should specify for each case the date the complaint was registered in the system or the date the own-initiative case was created in the EU Pilot application.

(ii) The standard draft letters/templates used to inform complainants about the opening of a Pilot procedure and progress made in the case, as well as at the closing stage.

Please be assured that, in accordance with Articles 5(2), 13(3) and 14(2) of the Implementing Provisions of the European Ombudsman, the Ombudsman's inspection will not result in third parties or any other person obtaining access to any documents which the Commission identifies as confidential during the inspection, or to any information contained in such documents.

The meeting should also provide, at this early stage of the inquiry, an opportunity to enhance my services' understanding of how the EU pilot procedure functions in practice.

With this in mind, I would be grateful if the Commission could prepare the following information to be provided to my services at the meeting:

(iii) The total number of EU Pilot cases open at the end of 2015, specifying the number of cases triggered by complaints, by petitions and own-initiative cases.

(iv) The average time (in days) for Member States taken together to reply to the Commission's questions in 2015; the average time (in days) taken by the Commission to assess the replies.

(v) An explanation of how Commission services prioritise complaints in order to meet the main objective of the EU Pilot, i.e. ensure the effective application of EU law as quickly as possible?

(vi) An explanation of the main reasons why the Commission may find it necessary to extend the one-year target set in the Commission's Communication 'on the handling of relations with the complainant in respect of the application of Union law' when managing a file under the EU Pilot?

(vii) In the case of repeatedly delayed or incomplete answers from a Member State, whether the Commission's Secretariat General provides guidelines to the concerned Directorates General as to how to proceed?

(viii) An explanation of the steps the Commission takes to ensure the complainant is informed when the processing of the file exceeds the one-year target.

(ix) Has the Commission ever considered, in responding to an access to documents request concerning an EU Pilot case, that a public interest in disclosure (such as protection of the environment, public health or human rights) outweighed the harm to the public interest in



the protection of the purpose of investigations.

(x) Why the Commission maintains the name "EU Pilot" now that the system is used in nearly all cases - subject to limited exceptions - before the Commission starts a formal infringement procedure?

I should be grateful if your services could contact Ms Alice Bossière (+ 32 2 283 34 01), Strategic Inquiries Officer, responsible for this inquiry in order to agree on a convenient date for the meeting. Depending on the Commission's availability, I would envisage the meeting taking place in the last week of June .

I will determine the next step in this inquiry, which is likely to include a follow-up inspection as well as a request for an opinion, on the basis of the information obtained at the meeting. I do not, therefore, at this stage, ask the Commission to provide an opinion on the matter. If, however, the Commission is of the view that it would be more appropriate to respond to some of the above information requests in writing, this can be signalled at the meeting.

Yours sincerely,

Emily O'Reilly

[1] The Ombudsman shall conduct strategic inquiries for which she finds grounds. Such inquiries may help to uncover maladministration or to clarify any suspected maladministration. They are intended to be helpful to the public and to the particular institution by promoting good administrative practice.

[2] See, in particular, case 420/2015/EIS which raised issues of general significance in relation to this matter.

[3] COM(2012)154 final.

[4] Issuing a letter of formal notice is the first step in an infringement procedure pursuant to Article 258 TFEU.

[5] A pilot procedure on potential discrimination against Romani people in Italy, which I understand was opened in 2012, has been brought to my attention.

[6] See, in particular, case 1146/2012/AN.

[7] *'Monitoring the application of Union law - 2014 Annual Report'*, p.5.



[8] See for example: [http://ec.europa.eu/environment/legal/law/infrgments\\_docs.htm](http://ec.europa.eu/environment/legal/law/infrgments_docs.htm).