

Report on the European Ombudsman's meeting with the Commission in own-initiative inquiry OI/5/2016/AB concerning the Commission's handling of infringement complaints under the 'EU Pilot'

Correspondence - 02/05/2017

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

Institution concerned: European Commission

Date and time: 16 March 2017, 10:00-11:00

Location : BERL, Rue de la Loi 200, 1000 - Brussels

Ombudsman

represented by: Ms Rosita Hickey, Head of Strategic Inquiries Unit

Ms Alice Bossière, Strategic Inquiries Unit

Ms Diana Riochet, Inquiries Unit 3

European Commission

represented by: 5 persons (SG)

1. Introduction and procedural aspects

The Ombudsman representatives introduced themselves and explained that the purpose of the meeting was to discuss the implications of the Commission's Communication 'EU law: Better results through better application' (C(2016)8600) published on 19.01.2017 [1] (hereinafter, the Communication), in order to help determine the next step in the Ombudsman's inquiry. The intention is to publish the present report on the Ombudsman's website.

The Ombudsman representatives outlined the legal framework applicable to the meeting,



notably that the Ombudsman will not disclose any information or documents identified by the Commission as confidential without the prior agreement of the institution [2] .

2. The Commission's Communication

The exchange of views concerned, in particular, the following parts of the Commission's Communication:

- *" Members of the public, businesses and civil society contribute significantly to the Commission's monitoring by reporting shortcomings in the application of EU law by the Member States. **The Commission acknowledges the crucial role of complaints in detecting infringements of EU law** " .*
- *" Infringements must be dealt with promptly. The Commission and the Member States need to proceed expeditiously in investigating breaches of the law. The structured problem-solving dialogue between the Commission and Member States, known as EU Pilot, was set up to quickly resolve potential breaches of EU law at an early stage in appropriate cases. It is not intended to add a lengthy step to the infringement process, which in itself is a means to enter into a problem-solving dialogue with a Member State. **Therefore, the Commission will launch infringement procedures without relying on the EU Pilot problem-solving mechanism, unless recourse to EU Pilot is seen as useful in a given case** . "*
- *" The Commission **will strengthen its cooperation with the European Network of Ombudsmen** , which is coordinated by the European Ombudsman and brings together national and regional Ombudsmen to promote good administration in the application of EU law at national level . "*

The discussions also focused on the following **changes made to the existing administrative procedures for the handling of relations with complainants regarding the application of EU law** [3] , annexed to the Commission's Communication:

- *"5. Methods of submitting a complaint **Complaints must be submitted by using the standard complaint form** . They must be submitted online, or in writing by letter to the Commission Secretariat-General at the address '1049 Brussels, Belgium' or lodged with one of the Commission's offices in the Member States []." .*
- *"8. Time limit for investigating complaints: As a general rule, the Commission will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than 1 year from the date of registration of the complaint, **provided that all required information has been submitted by the complainant**. Where this time limit is exceeded, the Commission **will inform the complainant in writing** . "*

3. Exchange of views

1. The Commission's objectives

The Commission provided general information on the context of the Commission's



Communication. The 'EU Pilot' procedure was launched in 2008 to quickly resolve potential breaches of EU law at an early stage and to reduce recourse to formal infringement procedures. It is based on an online database and communication tool to facilitate exchanges with Member States.

The Commission explained that the EU Pilot has been used in nearly all cases by the Commission before deciding on whether or not to open an infringement procedure. In some cases, the EU Pilot has not proven effective in solving problems quickly. The effective application, implementation and enforcement of EU law is a high priority for the Commission. The Commission will focus its enforcement action on systemic and serious breaches of EU law. At the same time, the Commission will proceed expeditiously in investigating potential breaches of EU law. Therefore, EU Pilot will no longer be used as a default procedure before launching an infringement procedure. The Commission will rely on EU Pilot when it is deemed useful in a given case.

The Commission explained that infringement action is not always the most appropriate vehicle to address and solve citizens' individual problems. For individual cases of incorrect application of EU law, when appropriate problem-solving mechanisms are available at EU or national level, the Commission will guide, advice and encourage complainants to use them. To this end, the Commission will strengthen its cooperation with relevant bodies at European and national level.

For complaints related to serious and systemic breaches of EU law, the Commission will strive to act promptly, without having recourse to the EU Pilot as a matter of course.

The Commission also explained that its Secretariat General will provide guidance to the Directorates General and that the working arrangements with the Member States on EU Pilot will be adjusted accordingly. The Commission's Secretariat General expects consistent application of the Communication by the Commission services within a few months.

When it decides to use EU Pilot, the Commission will continue to apply the standard benchmark of 10 weeks for the Member State to submit its answer to the Commission, and for the Commission to assess the Member States' responses [4], respectively.

The Commission stressed that the one year timeframe for taking a decision on a complaint is being maintained, as this is in line with the principles of good administration. Furthermore, many cases are closed within this period.

The Commission also pointed out that it intends to enhance cooperation with national ombudsmen through the European Network of Ombudsmen. The national ombudsmen have a wide mandate and are sometimes better placed to solve problems related to the correct implementation of EU law at national level.

2. Most recent improvements in communicating with complainants



The Commission provided an update on the latest improvements concerning communication with complainants regarding the application of EU law:

- complaints must be submitted to the Commission using a standard form;
- the acknowledgment of receipt sent by the Commission after it receives a complaint clearly outlines the limits of the Commission's action;
- when the Commission exceeds the one-year timeframe to take a decision, complainants are informed automatically (they were previously informed upon request).

The Commission offered to provide the Ombudsman with the new template-letters to complainants prepared by the Secretariat General.

The Ombudsman representatives thanked the Commission representatives and expressed the view that the meeting had been useful in clarifying the implications of the Commission's Communication for the future use of EU Pilot.

Brussels, 02 May 2017

Ms Alice Bossière Strategic Inquiries Officer Strategic Inquiries Unit

Ms Diana Riochet Legal Officer Inquiries Unit 3

[1]

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN)
[Link]

[2] Article 4(8) of the European Ombudsman's Implementing Provisions.

[3] Previously set out in the Commission's Communication 'Updating the handling of relations with the complainant in respect of the application of Union law', COM(2012) 154 of 2.4.2012.

[4] European Commission, Second Evaluation Report on EU Pilot, COM (2011) 930 final.
Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2011:0930:FIN> [Link]