



Emily O'Reilly
European Ombudsman

Mr José Manuel Barroso
President
European Commission
1049 BRUSSELS
BELGIQUE

Strasbourg, 19/05/2014

Own-initiative inquiry OI/8/2014/AN concerning the respect for fundamental rights in the implementation of the EU cohesion policy

Dear Mr President,

According to Article 228 of the Treaty on the Functioning of the European Union, the European Ombudsman is empowered to conduct inquiries on her own initiative in relation to possible instances of maladministration in the activities of the Union institutions, bodies, offices or agencies.

On 1 January 2014, the new legislative package which will frame EU cohesion policy for the period 2014-2020 entered into force. On 7 January, the Commission adopted Delegated Regulation 240/2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds, which aims at facilitating Member States' implementation of the partnership principle.

I fully share the Commission's view that the newly adopted texts significantly modernise the existing legislative framework of EU cohesion policy, rendering it clearer and more efficient.

I was, however, surprised to note that the new legislative package, including the Delegated Regulation, makes no reference to the general applicability of the Charter of Fundamental Rights to the implementation of the cohesion policy both at national and EU level¹. Moreover, nothing in the new regulations appears to allow the Commission to impose any sort of sanction on Member States that fail to comply with fundamental rights when implementing EU cohesion policy. In particular, on the basis of the legislation in question, the Commission appears not to be able to suspend funding or request recovery of amounts spent in breach of such rights. This may imply that the Commission could find itself funding national projects which fall short of due respect for the EU's fundamental values as expressed in the Charter.

¹ Save for references to the equality between men and women, non-discrimination, integration of persons with disabilities and prohibition of forced labour.



Complaints addressed to my Office, over the past years, show significant discontent of citizens with the national application of EU cohesion policy, including on the issue of respect for fundamental rights. With this in mind, I consider it appropriate to seek to clarify, by means of an own-initiative inquiry, a number of issues. These relate to the means which the Commission has at its disposal to ensure that fundamental rights enshrined in the Charter are complied with at all stages of the implementation of the cohesion policy in the Member States. I trust that this own-initiative inquiry will also help the Commission to reflect upon these issues from the very beginning of the application of the new legislative framework of the cohesion policy.

I would therefore appreciate it if the Commission could provide me with its views on the following: *"What means does the Commission have at its disposal to ensure that fundamental rights enshrined in the Charter are complied with at all stages of the implementation of the cohesion policy in the Member States?"*

In particular, the Commission could comment on the following issues:

1. Has the Commission considered introducing, or requesting Member States to introduce, specific provisions regarding compliance with the Charter in the Partnership Agreements it is currently assessing? Does the Commission consider that the existence of such provisions could be a pre-condition to its approval of a Member State's Partnership Agreement?

2. Why has the Commission not introduced specific provisions regarding compliance with the Charter in the Delegated Regulation on the European code of conduct on partnership meant to assist Member States in organising their partnerships with regional and local authorities and civil society?

3. Has the Commission considered asking Member States to include in their programmes a specific commitment to act, and to ensure that their partners and the beneficiaries act, in compliance with the Charter? Does the Commission consider that such a commitment should play a role in its assessment of the programmes?

4. Does the Commission have any means to verify whether the "effective arrangements for the examination of complaints concerning the European Structural and Investment Funds" are indeed effective and allow for the detection and, if necessary, redress of any possible breach of the fundamental rights enshrined in the Charter?

5. Does the Commission intend to assist Member States in putting such arrangements in place?

6. Does the Commission intend systematically to request Member States to examine complaints submitted to the Commission falling within the scope of their arrangements and to inform the Commission of their outcome, particularly when such complaints relate to the respect for the fundamental rights enshrined in the Charter?

7. What means does the Commission have at its disposal to tackle situations in which Member States do not provide the above information, or where the information provided shows that the Member State's examination was flawed?



8. Does the Commission currently have a unified approach towards complaints concerning the national implementation of the European Structural and Investment Funds, for instance by handling them as infringement complaints or by referring complainants to the national means of redress? Is the approach the same in cases concerning possible breaches of fundamental rights enshrined in the Charter?

9. Is the Commission contemplating any changes to the above approach following the entry into force of the new legal framework for the cohesion policy?

I would appreciate it if you would submit an opinion on the above issues by 30 September 2014.

I would also like to inform you that, during my inquiry, I may consider publishing the Commission's opinion and giving interested third parties the opportunity to make observations. To the extent that it is relevant, I will also reflect on the feedback I receive on this own-initiative inquiry to inform my work within the Article 33(2) Framework of the UN Convention on the Rights of Persons with Disabilities.

Finally, since the cohesion policy is based on shared management and reliance on Member States, I am informing the European Network of Ombudsmen about the present own-initiative inquiry and inviting their observations based on the experience they have had so far in handling complaints on this subject.

Should your services require any further information concerning this own-initiative inquiry, please do not hesitate to contact Mrs Alina Nedea (tel. +33 3 88 17 67 84), the legal officer responsible for this case.

Yours sincerely,

Emily O'Reilly