



**Corina CREȚU**

Member of the European Commission  
B-1049 Brussels

Brussels, **23 NOV. 2015**

Dear Ms O'Reilly,

**Subject: Own-initiative inquiry,  
ref. OI/8/2014/AN**

Thank you for your letter of 11 May 2015 addressed to President JUNCKER about the above-mentioned case.

I am pleased to enclose the comments of the Commission regarding this inquiry.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,

Corina CREȚU

Enclosure

Ms Emily O'REILLY  
European Ombudsman  
1, avenue du Président Robert Schuman  
B.P. 403  
F-67001 STRASBOURG Cedex

**Comments of the Commission in reply to further remarks from the European Ombudsman in her closing decision  
– Ref. OI/8/2014/AN**

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**I. SUMMARY OF THE FACTS**

On 19 May 2014, the European Ombudsman opened an own-initiative inquiry to clarify the means the European Commission has at its disposal to ensure that fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (the Charter) are complied with at all stages of the implementation of the cohesion policy in the Member States.

On 29 October 2014, the Commission replied to the Ombudsman's investigation, highlighting the regulatory changes introduced by Regulation (EU) No 1303/2013<sup>1</sup> as regards respect for the rights enshrined in the Charter and explaining the regulatory framework as regards additional conditionalities or Member State commitments in this respect. The Commission detailed the means it has at its disposal if the Charter is not respected by Member States when adopting national measures of implementation of EU law and explained the new system for handling complaints following the Regulation's entry into force. The Commission also undertook to:

- formally write to Member States to remind them of their obligations as regards respect for the Charter when implementing EU law;
- draw Member States' attention to the possibility of using technical assistance from the European Structural and Investment Funds (ESI Funds) to support arrangements for handling complaints;
- disseminate good practices on effective arrangements for dealing with complaints;
- issue a guidance document addressed to the Member States as regards respect for the Charter when Member States implement EU law in the context of the disbursement of ESI Funds; and
- follow the guidance up with training in the Member States on the Charter, its applicability and its relevance in the context of the disbursement of ESI Funds.

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<sup>1</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 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 (OJ L 347, 20.12.2013, p. 320).

The European Ombudsman informed the Commission on 18 December 2014 that she had invited several interested third parties to submit observations on the Commission's opinion by 28 February 2015 at the latest.

On 11 May 2015, the European Ombudsman, after having analysed the feedback received from the consulted organisations, informed the Commission of her decision to close the inquiry, while making recommendations and asking the Commission to inform her by 30 November 2015 of any action it has taken in relation to her findings.

## **II. THE RECOMMENDATIONS**

The European Ombudsman made the following recommendations.

The Commission should:

- 1) Proactively define, by applying the criteria established by the Court of Justice, which of the Member States' actions in the context of EU cohesion policy are understood to implement EU law and apply to those actions the strictest standard of scrutiny in terms of compliance with the Charter.
- 2) Use every means at its disposal to raise awareness of the fact that the Charter applies to every Member State action taken in the implementation of EU law.
- 3) Focus its guidance, support and enforcement efforts on preventive measures, to ensure that Member States comply with the Charter from the outset.
- 4) Include, in its assessment of the success of programmes and actions financed through ESI Funds, consideration of how they have contributed to the promotion of respect for the fundamental rights enshrined in the Charter.
- 5) Apply strictly and without exception the obligation to verify that the management and control systems, including complaint-handling arrangements, are adequate and efficient, that they remain so for as long as programmes are implemented and that weaknesses are duly corrected. This includes systematically requiring that Member States inform the Commission of the results of all complaints concerning ESI Funds, whether they were initially submitted to the Commission or not.
- 6) Apply strictly and consistently its sanctioning prerogatives when applicable *ex ante* conditionalities are not complied with within the deadlines.
- 7) Consider maintaining, in addition to the new system of complaint-handling, the practice of initiating infringement proceedings against a Member State if its actions in the framework of cohesion policy amount to a violation of EU law, including the Charter.

8) Create a clear and transparent framework in which civil society can contribute to the Commission's supervisory role, in addition to the existing working and expert groups and committees.

### III. THE COMMISSION'S COMMENTS ON THE RECOMMENDATIONS

#### General comment

The Commission has noted with interest the European Ombudsman's recommendations for improvement closing her own-initiative inquiry concerning respect for fundamental rights in the implementation of EU cohesion policy, and more widely in the implementation of ESI Funds.

#### **As regards the Commission's role in ensuring respect for fundamental rights under shared management.**

The Commission is fully aware of its role in ensuring respect for fundamental rights under shared management, and would like to stress the importance it attaches to respect for fundamental rights in general and in the context of cohesion policy implementation. The Commission is of the opinion that, besides the general obligation for Member States to ensure respect for fundamental rights when implementing EU law, the importance attached to fundamental rights is reflected in a series of obligations imposed on Member States by the new legislative framework for the 2014-2020 programming period and the means that the Commission has at its disposal to respond to violations of rights enshrined in the Charter as explained in its response to the Ombudsman of 29 October 2014.

The Commission understands shared management as defined in Article 59 of Regulation (EU, Euratom) No 966/2012 (Financial Regulation)<sup>2</sup> **as the Member States administering Union funds on a decentralised basis**, with an obligation on both the Commission and the Member States to fulfil their respective control and audit obligations.

In response to the Ombudsman's requirement that the Commission must seek to dissuade Member States from ignoring violations of fundamental rights on the grounds that an action taken by a Member State is not undertaken in 'implementing EU law', the Commission wishes to draw attention to the fact that it is bound by the powers granted to it by the Treaties. In this context, paragraph 2 of Article 51(1) of the Charter provides that the Charter does not extend the field of the application of Union law beyond the powers of the Union or establish any new power or task, or modify powers and tasks as defined in the Treaties.

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<sup>2</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

Concerning the scope of the Charter, the Commission refers to the interpretation provided by the European Court of Justice as regards the national measures of implementation of EU law. According to the Court of Justice's interpretation in settled case-law, and as recently confirmed<sup>3</sup>, the financing by the ESI Funds is not sufficient, in itself, to support the conclusion that the measure involves the implementation of EU law in the meaning of Article 51(1) of the Charter. Therefore, it is necessary to examine whether or not in an individual case national measures are intended to implement a provision of EU law.

Article 6 of Regulation (EU) No 1303/2013 requires operations supported by ESI Funds to comply with applicable Union law and the national law relating to its application. In this context the Commission will, where appropriate, make use of the means it has at its disposal to ensure that EU Funds are used in compliance with the Charter, including interruptions of payment deadlines, suspensions of payments and financial corrections, as well as infringement proceedings under Article 258 TFEU.

The Commission's obligation to respect the Charter cannot be understood as extending the scope of application of the Charter as regards Member State activities that are not national measures of implementation of EU law, when implementing projects under shared management.

However, the Commission is aware of its responsibility to promote the application of the rights and principles enshrined in the Charter. In order to raise awareness among Member States and to underline the importance it attaches to respect for fundamental rights, and taking into account the fact that within the scope of the interpretation provided by the Court of Justice the Charter applies to numerous actions in the implementation of cohesion policy, the Commission has sent a letter to all Member States pointing out the importance of ensuring respect for the Charter by national, regional and local authorities and the need to comply with the provisions of the Charter.

The Commission is currently preparing guidelines addressed to Member States concerning respect for the Charter when Member States implement cohesion policy. The guidance will be followed up with training in the Member States on the Charter. The Commission considers that both will contribute to raising awareness of the need to respect the rights enshrined in the Charter in general and more particularly when implementing EU law in the context of cohesion policy.

Furthermore, as regards the exclusion of specific categories of the population, an issue raised by respondents during the Ombudsman's targeted consultation, the Commission is working on a guidance note aimed at providing recommendations on the efficient use of European Structural Funds in tackling educational and spatial segregation. The note provides guidance to Member States on designing desegregation actions in order to support more effective calls for proposals in the 2014-2020 period.

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<sup>3</sup> Grima Janet Nisttahuz Poclava v Jose María Ariza Toledano, C-117/14 of 5 February 2015, paragraph 42.

### **As regards the approval of Partnership Agreements.**

As regards the adoption of the Partnership Agreements, Article 16 of Regulation (EU) No 1303/2013 states that: ‘the Commission shall adopt a decision, by means of implementing acts, approving the elements of the Partnership Agreement falling under Article 15(1) and those falling under Article 15(2) in the event that a Member State has made use of the provisions of Article 96(8), for the elements requiring a Commission decision under Article 96(10), no later than four months after the date of submission by the Member State of its Partnership Agreement, provided that any observations made by the Commission have been adequately taken into account’.

With regard to the Charter, the Commission considered the list of elements that the Partnership Agreement must cover ‘exhaustive’, since the legislator explicitly mentions in it a number of horizontal principles, referred to in Articles 5, 7 and 8 of Regulation (EU) No 1303/2013, that cover a range of rights and principles enshrined in the Charter without explicitly referring to the Charter as a whole.

The Commission did not consider it necessary to make its approval subject to a general reference to the Charter in the Partnership Agreement as: (i) the Partnership Agreement is a document that presents the overall strategy at national level for using ESI Funds in line with the Common Strategic Framework as well as the priorities and arrangements for using ESI Funds in an effective and efficient way so as to pursue the Union strategy for smart sustainable and inclusive growth and (ii) Article 6 of Regulation (EU) No 1303/2013 explicitly refers to the fact that all operations supported by ESI Funds have to comply with applicable Union law. The Commission considers that the guidance and training will serve to remind national authorities of the legal value of the Charter and its effects in the context of cohesion policy.

### **As regards the consequences of breaches of provisions which specifically refer to fundamental rights enshrined in the Charter.**

The Commission outlined the means it has at its disposal. If a Member State does not apply the Charter properly when taking actions or measures when implementing EU law, this could constitute an irregularity by an economic operator (Article 2(36) of Regulation (EU) No 1303/2013) or a serious deficiency in the effective functioning of the management and control system of operational programmes by the Member States’ authorities (Article 2(39) of Regulation (EU) No 1303/2013), which may trigger a suspension of payments or a financial correction, in accordance with Articles 142 and 144 of Regulation (EU) No 1303/2013<sup>4</sup>.

The Commission may interrupt the payment deadlines or suspend payments where there is clear evidence to suggest a significant deficiency in the functioning of the management and

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<sup>4</sup> For the ‘Funds’ within the meaning of second sub-paragraph of Article 1 of Regulation (EU) No 1303/2013.

control system. According to Article 85(1) of Regulation (EU) No 1303/2013, the Commission shall make financial corrections to exclude from Union financing expenditure which is in breach of applicable law. The criteria and procedures are laid down in the Fund-specific rules, but apply in a similar way to all funds.

In the case of the ‘Funds’,<sup>5</sup> this would apply where a Member State, which, in accordance to Article 143 of Regulation (EU) No 1303/2013 is in the first instance responsible for investigating irregularities and for making the financial corrections required, has not complied with this obligation (Article 144(1)(b) of that Regulation). The Commission may also make financial corrections in cases where Member States do not comply with their obligation set out in Article 74(3) of Regulation (EU) No 1303/2013, to ensure effective arrangements for the examination of complaints, including those alleging violations of the Charter. The failure to ensure effective arrangements for the examination of complaints, which are part of the management and control system, could lead national authorities to select operations for funding which might be in breach of the Charter without having proper means to identify such violations. This would constitute a serious deficiency within the meaning of Article 144(1)(a) of Regulation (EU) No 1303/2013, read in conjunction with Article 30 of Commission Delegated Regulation (EU) No 480/2014<sup>6</sup> setting out criteria for determining serious deficiencies in the effective functioning of management and control systems.

Paragraph 2 of Article 30 provides that: ‘the main types of serious deficiency in the effective functioning of the management and control system shall be cases where any of the key requirements referred to in points 2, 4, 5, 13, 15, 16 and 18 of Table 1 of Annex IV, or two or more of the other key requirements in Table 1 of Annex IV are assessed as falling into categories 3 or 4 set out in Table 2 of Annex IV’. The appropriate selection of operations is listed as one of the key requirements of the management and control system under point 2 in Table 1 of Annex IV, which includes a selection of operations that must comply with applicable Union and national law (Article 6 of Regulation (EU) No 1303/2013), including the Charter.

As regards the European Agricultural Fund for Rural Development (EAFRD), it is to be noted that the Member States are in the first instance responsible for recovering from the beneficiary any sums unduly received (Article 54(1) of Regulation (EU) No 1306/2013<sup>7</sup>). Moreover,

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<sup>5</sup> Within the meaning of second sub-paragraph of Article 1 of Regulation (EU) No 1303/2013.

<sup>6</sup> Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council 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.

<sup>7</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.

there is also the possibility to reduce or suspend payments to the Member States as mentioned above (see the specific rules of Article 41 of Regulation (EU) No 1306/2013). Article 52 of Regulation (EU) No 1306/2013 provides for financial corrections with, in particular, the possibility to use flat-rate corrections in line with Article 12 of Commission Delegated Regulation (EU) No 907/2014<sup>8</sup>). The rules relating to the EAFRD apply wherever there is a loss, or a risk of loss, to the Fund.

**As regards the recommendations for improvement.**

**1) Proactively define, by applying the criteria established by the Court of Justice, which of the Member States' actions in the context of EU cohesion policy are understood to implement EU law, and apply to those actions the strictest standard of scrutiny in terms of compliance with the Charter.**

With respect to the Ombudsman's opinion that situations in which the level of protection of fundamental rights varies according to the national law involved in such a way as to undermine the unity, primacy and effectiveness of EU law, as set out by the Court of Justice of the European Union,<sup>9</sup> need to be avoided, the Commission would like to underline that different levels of protection of fundamental rights may exist between Member States for two reasons:

First of all, as the Charter only sets a 'minimum standard', a Member State is not prevented from applying a stricter level of protection to the rights and principles enshrined in the Charter within its scope of application. Should a Member State go beyond the minimum standard, different levels of protection might exist among Member States. Secondly, the Charter only applies when EU law applies, so for those areas where EU law does not apply, there will be different levels of protection of fundamental rights under national law.

The Commission is preparing a guidance document addressed to the Member States to support a common understanding of the actions required under Regulation (EU) No 1303/2013 to implement cohesion policy, and thus falling within the scope of the applicability of the Charter. The guidance document may, among other things, provide examples of Member States' actions falling within the scope of EU law, applicable EU provisions, as well as examples of fundamental rights and principles liable to be affected by those actions. As a result, the guidance document will help national authorities in identifying which of their actions throughout the implementation of the ESI Funds are understood to implement EU law by applying the criteria established by the Court of Justice.

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<sup>8</sup> Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.

<sup>9</sup> *Víctor Manuel Julian Hernández and Others v Reino de España (Subdelegación del Gobierno de España en Alicante) and Others*, C-198/13 of 10 July 2014, paragraph 47.

**2) Use every means at its disposal to raise awareness of the fact that the Charter applies to every Member State action taken in the implementation of EU law.**

In order to raise Member States' awareness, the Commissioners of the Directorates-General in charge of the management of the ESI Funds and Justice sent a letter to Member States in March 2015, highlighting the applicability of the Charter when Member States adopt legislative or non-legislative measures on the basis of a provision of Union law applicable to cohesion policy under the conditions defined by the Court of Justice.<sup>10</sup>

The Commission is currently preparing a guidance document addressed to Member States on respecting the Charter when implementing EU law (referred to above), which will raise the awareness of Member States and will, in particular, target the authorities directly involved in the management and control of the implementation of cohesion policy, such as managing authorities, intermediate bodies, audit authorities as well as the monitoring committees. The guidance will be followed up with training and, in the case of the ERDF, Cohesion Fund and European Maritime and Fisheries Fund, the dissemination to Member States of best practices on the effective arrangements for handling of complaints. These actions will serve to raise awareness and stress the importance of respect for fundamental rights in the context of cohesion policy.

The Commission will also inform the relevant Committees of these actions and raise awareness of the Charter and its remit of application, and remind them of the importance of monitoring respect for the Charter by the managing authorities.

Furthermore, the Commission is working on a guidance note aimed at providing recommendations on the efficient use of ESI Funds in tackling educational and spatial segregation under the European legislative framework in order to support more effective calls for proposals in the 2014-2020 programming period.

Besides measures specific to the ESI Funds, the Commission has published an annual report on the application of the Charter since 2010, including its application within the context of cohesion policy. The report helps to raise awareness of the applicability of the Charter, underlining the importance the Commission attaches to the implementation of fundamental rights enshrined in the Charter, and promote its application. The report monitors progress in the areas where the EU has powers to act, and demonstrates how the Charter has been taken into account in actual cases. The report also puts particular emphasis on the applicability of the EU Charter in Member States on the basis of recent case-law from the Court of Justice. The report aims to help EU citizens and NGOs determine where they need to turn when they believe that their fundamental rights have been violated by an EU institution or by a national authority implementing EU law.

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<sup>10</sup> Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee, C-562/12 of 17 September 2014, paragraphs 60-66.

**3) Focus its guidance, support and enforcement efforts on preventive measures, to ensure that Member States comply with the Charter from the outset.**

As regards the measures that should be taken to ensure respect for the Charter when implementing cohesion policy, the Commission intends to make use of both preventive and corrective measures. With respect to the Ombudsman's reminder that the Commission should prevent discrimination, the Commission would like to point out that it is well aware of its obligation under Article 7 of Regulation (EU) No 1303/2013 to promote non-discrimination.

The aim of the letter sent to Member States in March 2015 was to prevent violations of the Charter in the implementation of cohesion policy by reminding them of the importance of ensuring respect for the Charter at national, regional and local level. The guidance and training which will be provided to Member States are also aimed at preventing violations of rights enshrined in the Charter and will contribute to the capacity-building of Member States in this respect.

Assessing the applicability and fulfilment of the thematic and general *ex ante* conditionalities under Article 19(1) of Regulation (EU) No 1303/2013 should also be considered as a preventive measure in ensuring compliance with the respective objectives of EU policies.

General *ex ante* conditionalities, which are set out in Part II of Annex XI of Regulation (EU) No 1303/2013, include the existence of administrative capacity for the implementation and application of Union law and policy in respect of non-discrimination, gender equality and disability in the field of ESI Funds. The Commission assesses applicability and fulfilment on the basis of the information provided by the Member State in the programmes and, where appropriate, the Partnership Agreements.

As regards the fulfilment of *ex ante* conditionalities, Article 19(2) of Regulation (EU) No 1303/2013 provides that: 'the Partnership Agreement shall set out a summary of the assessment of the fulfilment of applicable *ex ante* conditionalities at national level and for those which, pursuant to the assessment referred to in paragraph 1 of that Article, are not fulfilled at the date of submission of the Partnership Agreement, the actions to be taken, the bodies responsible and the timetable for the implementation of those actions. Each programme shall identify which of the *ex ante* conditionalities laid down in the relevant Fund-specific rules and the general *ex ante* conditionalities set out in Part II of Annex XI are applicable to it and, which of them, pursuant to the assessment referred to in paragraph 1 of Article 19 are fulfilled at the date of submission of the Partnership Agreement and programmes. Where the applicable *ex ante* conditionalities are not fulfilled, the programme shall contain a description of the actions to be taken, the bodies responsible and the timetable for their implementation'.

As regards the time limits, Member States must fulfil these *ex ante* conditionalities no later than 31 December 2016 and report on their fulfilment no later than in the annual implementation report and/or progress report to be submitted in 2017.

With respect to the Ombudsman's remark concerning the Commission's involvement in the 'choice of applicable preconditions relating to the specific objectives of national programme priorities', the Commission would like to underline that *ex ante* conditionalities were defined by the legislator in Annex XI of Regulation (EU) No 1303/2013 and that Article 19(4) of that Regulation does not allow for a choice of applicable preconditions. It does impose the burden of proof on the Commission in the event of disagreement with a Member State on applicability or fulfilment of the regulatory 'pre-defined' list of *ex ante* conditionalities.

However, as regards the fulfilment of *ex ante* conditionalities, Article 19(5) of Regulation (EU) No 1303/2013 allows the Commission 'when adopting a programme, to suspend all or part of interim payments to the relevant priority of that programme, pending the completion of actions referred to in paragraph 2 [see above] where necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives of the priority concerned'.

Ultimately, failure to complete the actions to fulfil an applicable *ex ante* conditionality by 31 December 2016 will constitute grounds for suspending interim payments by the Commission to the priorities affected of the programme concerned.

**4) Include, in its assessment of the success of programmes and actions financed through ESI Funds, consideration of how they have contributed to the promotion of respect for the fundamental rights enshrined in the Charter.**

The main aim of the programmes supported by the ESI Funds is economic, territorial and social cohesion. However, some of the thematic objectives which the ESI Funds support, as defined in Article 9 of Regulation (EU) No 1303/2013, are specifically relevant to certain rights enshrined in the Charter, such as promoting social inclusion, and combating poverty and discrimination.

According to Article 27 of Regulation (EU) No 1303/2013, each programme must define priorities setting out specific objectives and each priority must set out indicators and corresponding targets expressed in qualitative or quantitative terms, in accordance with the Fund-specific rules, in order to assess progress in programme implementation aimed at achievement of objectives as the basis for monitoring, evaluating and reviewing performance.

For those programmes which contribute to the thematic objectives relating to rights enshrined in the Charter, monitoring and evaluation will assess the performance of the programmes in this respect.

**5) Apply strictly and without exception the obligation to verify that the management and control systems, including complaint-handling arrangements, are adequate and efficient, that they remain so for as long as programmes are implemented and that weaknesses are duly corrected. This includes systematically requiring that Member States inform the Commission of the results of all complaints concerning ESI Funds, whether they were initially submitted to the Commission or not.**

The handling of complaints is, as set out previously, part of the management and control system at national level. Failure to ensure effective arrangements for examining complaints may constitute a serious deficiency in the functioning of the management and control system, making it possible for the Commission to interrupt payment deadlines, suspend payments and apply financial corrections as set out above under the general comments on the consequences of breaches of provisions which specifically refer to fundamental rights enshrined in the Charter.

In addition, according to Article 75(2) of Regulation (EU) No 1303/2013, Commission officials or authorised Commission representatives may carry out on-the-spot audits or checks. The scope of such audits or checks may include, in particular, verification of the effective functioning of management and control systems in a programme or part of a programme, and in operations, and assessment of the sound financial management of operations or programmes.

In response to the suggestion to involve staff in the Commission's representations in the checks provided in Articles 75(2) and (3) of Regulation (EU) No 1303/2013, it should be noted that the function of the Commission representation offices in Member States is to act as the Commission's voice in the host country and monitor public opinion. They provide information about the European Union through events and the distribution of information, such as brochures, leaflets and other materials. They report back to the Commission on political, economic and social developments. The representations have no competence to undertake controls or audits on behalf of the Commission.

As regards the role of the Commission in supporting and compelling Member States to implement well-functioning and effective complaints and redress systems, it is worth mentioning that, in order to obtain information on arrangements which are already in place in Member States and to disseminate best practices among Member States on what the Commission considers as effective arrangement within the meaning of Article 74(3) of Regulation (EU) No 1303/2013, the Commission is currently launching a study asking for a description for each Member State of the arrangements that are in place at national, regional and/or local level to examine complaints in the context of the implementation of programmes co-financed by the ERDF, the Cohesion Fund for both the 2007-2013 and 2014-2020 programming period as well as the European Fisheries Fund for the 2007-2013 programming period and the European Maritime Fisheries Fund for the 2014-2020 programming period, and an assessment of their effectiveness. The Commission requests a comparison with the arrangements for examining complaints relating to purely national funding, and examples of good practices in examining complaints which could be communicated to the other Member States.

Concerning the Ombudsman's recommendation that Member States should inform the Commission of the results of the examination of complaints carried out at national level, it has to be pointed out that Article 74(3) of Regulation (EU) No 1303/2013 neither requires nor excludes a request for such systematic reporting. In order to allow the Commission to comply with its responsibilities under Article 17(1) TEU and as regards the implementation of the EU

budget, the Commission intends to systematically request Member States to report on the outcome of their examination of complaints submitted to the Commission that reveal:

- a breach of Union law, including the Charter of Fundamental Rights, or of national law related to the application of Union law;
- a possible fraud;
- a systemic irregularity as defined in point (38) of Article 2 of Regulation (EU) No 1303/2013.

In order to verify that the complaints handling arrangements in place in Member States are adequate and function efficiently, the Commission may request a report on the results of all submitted complaints for a certain time period.

**6) Apply strictly and consistently its sanctioning prerogatives when applicable *ex ante* conditionalities are not complied with within the deadlines.**

As set out above, the Commission intends to make use of all means at its disposal to enforce compliance with EU law, including applying the sanctions for non-fulfilment of *ex ante* conditionalities and failure to complete the implementation of agreed actions by the deadline set out in Article 19(2) of Regulation (EU) No 1303/2013.

If applicable *ex ante* conditionalities are not fulfilled and actions are not taken by 31 December 2016, Article 19(5) of Regulation (EU) No 1303/2013 enables the Commission to suspend interim payments in accordance with the rules set out in Article 142 concerning the Funds and Article 41 of Regulation (EU) 1306/2013 for EAFRD.

**7) Consider maintaining, in addition to the new system of complaint-handling, the practice of initiating infringement proceedings against a Member State if its actions in the framework of cohesion policy amount to a violation of EU law, including the Charter.**

Infringement proceedings under Article 258 TFEU are one of the means the Commission has at its disposal to ensure compliance with EU law in the implementation of cohesion policy, including fundamental rights. The complaints-handling system provided within the framework of Article 74(3) of Regulation (EU) No 1303/2013 will not prevent the Commission from assessing violations of EU law, including those raised by complainants alleging a breach of EU law, and taking the necessary steps in accordance with its responsibilities under Article 17(1) TEU as guardian of the Treaties.

**8) Create a clear and transparent framework in which civil society can contribute to the Commission's supervisory role, in addition to the existing working and expert groups and committees.**

As regards the suggestion that the Commission should launch an online platform where civil society, in particular small organisations which do not come into contact with the Commission, can report abuses of Funds and Charter violations, submit complaints and shadow reports on complaints-handling mechanisms and Member States' compliance with the European Code of Conduct on Partnership, the Commission considers that a variety of tools already exist which are and can continue to be used in this respect.

The Commission's information service for citizens, Europe Direct, comprising a central information service and local information services in every Member State, is a general 'contact point' providing information tailored to local needs. It provides information on general issues and advice on whom to contact to resolve specific requests or complaints.

Furthermore, every citizen or body, including small organisations, can file a complaint with the Commission against a Member State which will be dealt with according to the rules on handling complaints. The Commission's website provides detailed guidance on how to submit a complaint to the Commission and information on available means of redress at national level and other means available such as SOLVIT and FIN-NET, as well as available means at European level, such as the petitions committee of the European Parliament and the European Ombudsman. Such complaints can always be accompanied by annexes providing information in addition to the official reports from Member States, which the Commission will take into consideration when assessing a complaint.

Concerning the proposal that the Commission publish documents setting out the details of its monitoring role in relation to ESI Funds and fundamental rights, the Commission would like to highlight the following publications (all publicly available):

- the annual report on the application of the Charter of Fundamental Rights. It reports on violations of the Charter, including the implementation of the ESI Funds in this respect. It not only covers actions of EU institutions but also highlights examples of Charter implementation by the Member States. It also includes analysis of letters from the general public and information on questions and petitions from the European Parliament.
- the Cohesion Policy open data platform. It provides information on investments made and the results obtained, thereby increasing transparency and promoting the debate on the performance of EU funding.

Finally, as regards the proposal to establish mixed working parties on specific subjects made up of Commission representatives, Member States and civil society, the Commission would like to point out that such arrangements effectively exist. In addition to the involvement of all relevant partners in the preparation of Partnership Agreements and programmes and the reviewing of programmes within the monitoring committees set up for each Operational Programme, the Commission has set up the 'Structured Dialogue' Expert Group to foster open dialogue on issues regarding the implementation of the ESI Funds. The members of the group have been selected following a call for expression of interest from the three categories of partners referred to in Article 5 of Regulation (EU) No 1303/2013: regional, local, urban

and other public authorities; socio-economic partners; civil society organisations. The group meets twice a year — the first meetings took place in November 2014 and April 2015.

The Commission is of the opinion that with the tools at its disposal —the complaints-handling system, the general information tools and the focused dialogue with representatives of all relevant stakeholders and civil society — it is well placed to provide relevant information and encourage all parts of society to contribute to the Commission’s supervisory role.