



Jean-Claude JUNCKER
President of the European Commission

Rue de la Loi, 200
B-1049 Brussels
Tel. +32 2 295 50 33
jean-claude.juncker@ec.europa.eu

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Subject: *Decision of the European Ombudsman following the strategic inquiry OI/5/2016/AB*

Dear Ms O'Reilly,

Thank you for your letter of 14 September 2017 regarding the above-mentioned decision.

I am pleased to enclose the comments of the Commission on the suggestions you made when you decided to close your strategic inquiry.

The Commission remains at your disposal for any further information you may require.

Yours sincerely,

Enclosure: Comments of the Commission on the European Ombudsman's suggestions - Strategic own-initiative inquiry on the Commission's handling of infringement complaints under the 'EU Pilot', ref. OI/5/2016/AB

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



Comments of the Commission on the European Ombudsman's suggestions

Strategic own-initiative inquiry on the Commission's handling of infringement complaints under the 'EU Pilot', ref. OI/5/2016/AB

I. Context

On 13 May 2016, the European Ombudsman ('the Ombudsman') launched a strategic own-initiative inquiry (OI/5/2016) into the Commission's handling of infringement complaints under 'EU Pilot'. It was intended to cover systemic issues arising from a range of inquiries already completed by the Ombudsman.

Several meetings between the Ombudsman's services and the Commission's services and several inspections of documents took place in 2016 and 2017. One meeting was dedicated to the Commission's new enforcement policy, under which the Commission will no longer systematically rely on the 'EU Pilot' mechanism in dealing with potential breaches of EU law, but will privilege the use of the procedures provided for in the Treaties. In addition, the Secretariat-General provided the Ombudsman's services with statistics and further clarifications by e-mail. Thus far, the Commission sent no formal written reply to the Ombudsman in the context of this inquiry.

By letter dated 14 September 2017, the Ombudsman communicated to the Commission her decision of closing this strategic inquiry. The Ombudsman concluded that, taking into account the Commission's new enforcement policy, it is appropriate to close this inquiry. The Ombudsman *welcomes the fact that the Commission has made efforts to address the problems that gave rise to this inquiry. She believes, however, that the Commission can make further improvements. The Ombudsman therefore closes her inquiry with 8 suggestions (...)* (detailed below).

The Commission was invited to inform the Ombudsman of any actions taken in relation to these suggestions.

II. The Commission's comments on the Ombudsman's suggestions

Concerning the 'EU Pilot' procedure:

1. Inform complainants of any new significant step in its investigation under 'EU Pilot' if they express an interest in closely following the progress of their case. This could include providing complainants with a summary of the Member State's reply, whenever possible.

The Commission's comments:

The Commission is fully committed to ensuring that adequate information is provided to complainants in the process of handling their cases, in line with the Annex to the Communication 'EU law: Better results through better application'¹, which further strengthens the rights of complainants. However, as concerns the suggestion of providing the complainant with a summary

¹ OJ C 18 of 19.1.2017, p. 10

of the Member State's reply, the Commission should point out that according to case law (C-562/14 P, Spirlea), replies from the Member States should be treated with the appropriate confidentiality.

2. Make publicly available the list of ongoing 'EU Pilot' dialogues and the status of each file.

The Commission's comments:

The Commission attaches great importance to the transparency of its decisions on infringement cases and has recently moved to increasing its press communication on formal infringement procedures to include every step taken in these procedures. However, given the informal nature of the 'EU Pilot' dialogues with Member States on possible infringements of EU law, the Commission is concerned that a systematic publication of the list of ongoing dialogues and their respective status would risk altering the nature of that dialogue, potentially making it less fruitful.

Concerning relations with complainants when handling infringement complaints in general:

3. Provide citizen-friendly information on its website and in the complaint form about the various criteria it takes into account when deciding to close a case.

The Commission's comments:

The Commission welcomes the Ombudsman's suggestion and has recently added more detailed explanations of the administrative procedures for handling complaints on its webpage.

4. Be particularly careful in addressing separately all aspects of the complainant's complaint in the pre-closure letter.

The Commission's comments:

The Commission shares the Ombudsman's views that the pre-closure letter should address all the aspects raised by the complainant in a comprehensive manner. The purpose of the pre-closure letter is to inform the complainant about the Commission's conclusions substantiating its intention to close the case and to allow the complainant to submit new arguments or evidence, if available. The Commission internally monitors the proper implementation of these administrative procedures.

5. Respond adequately to any further arguments from the complainant where the Commission nevertheless decides to close the complaint. This should be done in the letter confirming that the case will be closed.

The Commission's comments:

The Commission confirms that its current practice consists in addressing all arguments raised by the complainant, via the initial complaint or subsequent letter(s). This is in line with the administrative procedures set out in the Annex to the Communication 'EU law: Better results through better application'.

6. Set an indicative deadline for initial analysis of complaints in CHAP and generalise the good practice of sending a holding reply to the complainant when the initial assessment of the complaint cannot be performed within this deadline.

The Commission's comments:

The Commission confirms that it has already set an indicative deadline for the initial analysis of complaints in CHAP, according to which a decision on how to handle a complaint should, in principle, be taken within 50 working days from the date of its registration. Moreover, the Commission has to inform the complainants in writing when the limit of one year for handling complaint-based cases is exceeded, in line with the Annex to the Communication referred to above. The Commission consistently strives to expedite the handling of complaints and monitors these aspects internally.

7. To the extent that the Commission does not already do so, when an individual/organisation submits a complaint on a case which the Commission is already investigating, inform the complainant of the progress of its on-going investigation and of its decision to close that case or to open an infringement procedure.

The Commission's comments:

The Commission confirms that the Ombudsman's suggestion is already reflected in the procedures and practice of its services concerning pending complaints running in parallel with other investigations.

Concerning transparency of the Commission's action:

8. Provide more information on its performance in resolving actual breaches of EU law under pre-infringement procedures - and on the average duration of the process - in its annual report on 'Monitoring the application of EU law'.

The Commission's comments:

In its annual reports, the Commission provides comprehensive and detailed information on monitoring the implementation of EU law and the follow-up given to complaints and parliamentary petitions. The Commission is considering how it can further improve transparency of its actions via these annual reports, while at the same time respecting the need for confidentiality with regard to Member States in infringement procedures, as recognised by the Court of Justice.

III. Conclusion

The Commission welcomes the Ombudsman's suggestions and trusts that its comments address all the points raised by the Ombudsman in a satisfactory manner.