



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Jean-Claude Juncker
President
European Commission

Strasbourg, 17/12/2015

Re: Asylum, Migration and Integration Fund (AMIF) – role of national Ombudsmen

Dear Mr President,

I note the significant efforts being made by the European Commission to deal with the refugee crisis, a crisis which, by its magnitude and complexity, poses many difficult challenges. Amongst these is the need to ensure respect for our commitment to human rights, now set out in several European and international treaties, and most recently in the Charter of Fundamental Rights of the EU. Another key requirement is that public authorities work, at EU and Member State level, in a coordinated, effective and meaningful way. In a press statement issued on 8 September 2015¹, I signalled that I would seek to make whatever useful contribution I can, in co-ordination with members of the European Network of Ombudsmen.

Having consulted a range of national Ombudsmen, I can confirm that one area where they feel they have a useful contribution to make concerns national implementation of the EU funds for migration policies, notably the Asylum, Migration and Integration Fund (AMIF) and its predecessors, the European Refugee Fund and the European Integration Fund. Their specific contribution will be to focus on how national authorities ensure human rights compliance when utilising these funds.²

The Commission as the 'Guardian of the treaties' can, via the infringement procedure, investigate allegations that a Member State is failing to

¹ Press Release No11/2015, The EU Refugee crisis – The time has come for EU to act as one, 8.9.2015 <http://www.ombudsman.europa.eu/en/press/release.faces/en/60876/html.bookmark>

² Point 33 of the Preamble, Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150, 20.5.2014, p 168–194.



fulfil its obligations under EU law.³ However, enforcement from the EU level is not always the best way to deal with disputes about what is happening on the ground, a drawback of the infringement procedure in this context being that the Commission has limited capacity to examine *factual* issues.

Ombudsmen at national level have such capacity and are, moreover, well placed to provide individual remedies when public administrations fail to apply EU law correctly. They may also identify systemic problems, including areas that require the Commission's attention, for instance as regards resettlement operations or the practical implementation of the partnership principle set out in Regulation 514/2014⁴. A further example in the present context is the role national Ombudsmen might play in ensuring proper implementation of the Reception Conditions Directive⁵.

To realise their full potential, however, Ombudsmen at national level must be in possession of all necessary information. In the present context, I note that this may not be the case in that AMIF national programmes seem not to be publicly accessible. This is notwithstanding the clear wording of Regulation 514/2014, Article 53(1) (a) of which provides that "*Member States and Responsible Authorities shall be responsible for: (a) a website or a website portal providing (...) access to the national programmes in that Member State*". While most national Ombudsmen could obtain access to these programmes, by exercising their power to do so, I believe it would be more efficient if the programmes were made publicly accessible. This would also enable interested members of the public and organisations active in this area to signal potential problems to national Ombudsmen, such as failure to abide by what has been agreed between the Commission and the Member State in question. I would therefore urge you to impress upon national authorities the importance of complying with Article 53(1)(a) of Regulation 514/2014 so that national Ombudsmen and other interested parties can take account of what has been approved at EU level. I would appreciate your reply on this matter by 29 February 2016.

I am today writing to the national Ombudsmen and similar bodies within the European Network of Ombudsmen to inform them of this letter so that those

³ See recent examples in this area: http://europa.eu/rapid/press-release_IP-15-6276_en.htm

⁴ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112–148.

⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L 180 p.96.



offices that are keen to act can begin to assess how their national authorities are complying with their human rights obligations when using EU migration policy funds. I attach my letter to members of the Network and will keep you informed of their actions which I trust will prove useful to the Commission.

Should your services require any further information or clarifications, they may contact Mrs Marta Hirsch-Ziembinska (+33 388 17 27 46), Head of Inquiries Unit.

Yours sincerely,

A handwritten signature in black ink that reads "Emily O'Reilly".

Emily O'Reilly

Enclosure: European Ombudsman letter to members of the European Network of Ombudsmen