



Emily O'Reilly
European Ombudsman

Ms Catherine Day
Secretary-General
European Commission
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Strasbourg, 24/01/2014

Own-initiative inquiry OI/2/2011/OV

Dear Ms Day,

The above-mentioned own-initiative inquiry was begun in 2011 with the aim of encouraging the Commission to revise its Communication of 20 March 2002 to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law¹ ("the 2002 Communication").

On 28 March 2012, the Ombudsman made a draft recommendation on the matter. It included concrete proposals for a revised text taking into account, among other things, the EU Pilot, the CHAP registration system and the experience gathered by the Commission and the Ombudsman over the previous ten years. Some five days later, on 2 April 2012, the Commission adopted a revised Communication² ("the revised Communication"). The timetable makes it obvious that the Commission did not have an opportunity to take into account the Ombudsman's recommendations when adopting the revised Communication.

The revised Communication is available through the EUR-Lex website. Given its importance and general interest not only to citizens but also to national and regional administrations in the EU, I take the view that it would be in the interests of good administration for it also to be published in the Official Journal, as was the case with the 2002 Communication. Such publication would give a clear signal to citizens and to the Member States of the importance the Commission attaches to the correct implementation of EU law. It would also highlight the vital contribution that citizen participation makes to the rule of law by helping the Commission to fulfil effectively and efficiently its role as "Guardian of the Treaties".

I note that the revised Communication does not yet appear to be available in Croatian. Its translation into that language could provide the occasion for publication in the Official Journal. Such publication would also provide an opportunity to remedy the omission of the Ombudsman from the addressees of the revised Communication, thereby avoiding the impression that

¹ COM(2002) 141 final, OJ 2002 C 244, p. 5.

² COM(2012) 154 final, 2 April 2012.



the Commission wishes somehow to downgrade the important role of the Ombudsman remedy as regards the handling of infringement complaints. Moreover, publication in the Official Journal would allow the Commission to take into account the Ombudsman's recommendations which, for the reasons mentioned above, it did not previously have the opportunity to do. In particular, I would welcome the Commission's consideration of the following points:

1) Paragraph 1 of point 7 of the revised Communication commits the Commission to inform the complainant in writing when it cooperates with the Member State concerned in examining the complaint under the EU Pilot. This is a positive development, which I welcome. However, the Commission's webpage on the EU Pilot also says that the Commission will inform the complainant of its evaluation of the Member State's response. I would encourage the Commission to include this clear and precise commitment in point 7 of the Communication.

2) Paragraph 2 of point 8 of the revised Communication deals with the situation where the normal time limit of one year is exceeded. It states that the Commission "*will inform the complainant in writing upon his request*". The meaning and purpose of this provision are unclear. The Commission's own Code of Good Administrative Behaviour already implies the obligation to answer and inform complainants who request information about the state of the inquiry into their complaint, not only after one year, but at any time. What the Commission might mean is that it would take the initiative to inform the complainant if, for some reason, it could not conclude its investigation within one year, and that it would do so in writing upon request. This would allow for a telephone contact (which would be noted in the file), followed up by a letter or e-mail if the complainant so requested. I therefore invite the Commission to consider amending point 8 of the Communication to clarify the intended meaning.

3) The Commission's webpage on the EU Pilot mentions that "*A general 20 week deadline has been set for responses to be provided (10 weeks for the Member State authorities and 10 weeks for the Commission services)*." I propose that the Commission also mention these deadlines in the Communication.

In conclusion, I would like to underline the constructive intention of this letter, which aims to give you the opportunity to address the above points before I decide on the next step in the on-going own-initiative inquiry.

Yours sincerely,

Emily O'Reilly

cc: Maroš Šefčovič, Commissioner for Inter-Institutional Relations and Administration