



## European Ombudsman

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European Ombudsman

To the members of the European Network of  
Ombudsmen

Strasbourg, 17/12/2015

Respect for the human rights of asylum seekers and resettled persons in the  
context of the Asylum, Migration and Integration Fund (AMIF)

Dear colleague,

The European Network of Ombudsmen has been discussing, for a number of months and in different fora and bilaterally, the actions that competent members of the Network are undertaking, or considering undertaking, to improve the human rights situation of asylum seekers and resettled persons. Many members of the Network are concerned that, despite national authorities' significant efforts, much remains to be done in the area of reception and resettlement.

In a press statement issued on 8 September 2015 in relation to the refugee crisis,<sup>1</sup> I signalled the need for the EU institutions and Member States to live up to our stated 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. I mentioned that, given the magnitude of the problem facing the EU, I would seek to make whatever useful contribution I can, in co-ordination with members of our Network.

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<sup>1</sup> European Ombudsman, Press Release 11/2015, "EU refugee crisis - The time has come for the EU to act as one", 8 September 2015,  
<http://www.ombudsman.europa.eu/en/press/release.faces/en/60876/html.bookmark>



The present letter to the Network, and the letter that I am sending today to the President of the European Commission, seek to give effect to this public statement in a concrete area, that of the Asylum, Migration, and Integration Fund. Operational from 1 January 2014 and managed jointly by the Member States and the Commission, the AMIF (and its predecessors, the European Refugee Fund and the European Integration Fund) support, to a limited extent, national authorities' efforts in this area<sup>2</sup>. The AMIF Regulation provides that the Fund should be implemented in full respect for the rights and principles enshrined in, among other instruments, the Charter of Fundamental Rights of the European Union.<sup>3</sup>

From March 2015 to date, the Commission has been approving national multi-annual programmes for AMIF funding covering the period 2014-2020. The programmes contain strategies identifying the objectives to be pursued and examples of actions envisaged to meet these objectives, including the provision of housing, education, social assistance and alternatives to detention.

As there is little information publicly available on the national programmes already approved by the Commission,<sup>4</sup> or on the approval process itself, I have asked the Commission to impress upon national authorities the importance of making these programmes available for public scrutiny in the very near future. Without knowing what has been agreed between the Commission and Member States, it is difficult for ombudsmen to play their role of scrutinising human rights compliance by national authorities when they use EU funds. 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 your Office, such as failure to abide by what has been agreed between the Commission and the Member State in question. While

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<sup>2</sup> The Asylum, Migration, and Integration Fund (AMIF) makes funds available to Member States to support actions such as decent housing for asylum seekers and resettled refugees, social and medical assistance and integration measures, with particular attention paid to vulnerable groups. For the budget period 2014-20, the EU has approved a total of EUR 3.1 billion for the AMIF.

<sup>3</sup> 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. *"The Fund should be implemented in full respect for the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and for the fundamental rights enshrined in the relevant international instruments, including the relevant case-law of the European Court of Human Rights. Eligible actions should take account of the human rights-based approach to the protection of migrants, refugees and asylum seekers and should, in particular, ensure that special attention is paid to, and a dedicated response is provided for, the specific situation of vulnerable persons, in particular women, unaccompanied minors and other minors at risk."*

<sup>4</sup> So far no national programmes have been made public, only some drafts. Similarly, the Commission did not publish any details of the fundamental rights compliance assessment it presumably carried out prior to approval.



I have asked the Commission to pursue this matter, any effort on your part to bring about publication of these programmes would be most useful.

I know that some national ombudsmen are already in the process of checking national authorities' compliance with human rights standards when national authorities use EU funds for:

- accommodation centres and other housing facilities for asylum seekers (in particular, reception conditions for migrant children and vulnerable persons),
- transit and processing centres for resettled persons,
- the establishment of alternatives to detention,
- if detention is unavoidable and justified in law, the improvement of detention conditions<sup>5</sup>,
- integration measures,
- cooperation with NGOs involved in migration matters,
- any similar purposes.

If you are in the process of conducting such an inquiry or intend to do so, I would be grateful if you would share this information, as well as relevant outcomes. My office will collate the information received and, if you agree, inform the Commission and publish it on the dedicated ENO site of the European Ombudsman website. As such, all ombudsmen offices conducting such inquiries in parallel can draw on the work of their colleagues.

Should your services require any further information or clarifications concerning this initiative, please do not hesitate to contact Mrs Marta Hirsch-Ziembinska (+33 388 17 27 46), Head of Inquiries and ICT Unit 1, who is responsible for legal cooperation with the Network.

Yours sincerely,

Emily O'Reilly

Enclosure: European Ombudsman letter to the European Commission

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<sup>5</sup> The (recast) Reception Conditions Directive does not envisage a time limit for the detention of asylum seekers. However, under the Directive, the detention of asylum seekers is a measure of last resort and can take place under strict conditions only. The Directive introduced an exhaustive list of detention grounds in order to avoid arbitrary detention practices in relation to asylum seekers and limits detention to as short a period of time as possible. The Directive restricts detention of vulnerable persons, in particular minors, ensures access to free legal aid when lodging an appeal against a detention order and introduces specific reception conditions for detention facilities (access to fresh air, communication with lawyers, NGOs and family members).