

6-12-2011



EUROPEAN COMMISSION
Justice

Brussels, 06/12/2011

President of the civil rights foundation Vrijbit J.M.T. WIJNBERG
Kruisweg 32
3513 CT Utrecht
NETHERLANDS
bestuur@vrijbit.nl

Dear Madam

With reference to your letter of 08/11/2011, I am pleased to inform you that the complaint you sent to the Commission has been registered under reference number CHAP(2011)03500 (please quote this reference in any further correspondence). It should be noted that the assignment of an official reference number to your complaint does not necessarily mean that infringement proceedings will be opened by the Commission.

The Commission's services will consider your complaint in the light of the applicable European Union law. You will be informed directly of the findings and of the course of any infringement proceedings opened. In the meantime you can contact Justice, by e-mail at the following address JUST-CHAP@ec.europa.eu.

You will not be requested to contribute to the procedural costs, even where the Commission decides to open infringement proceedings.

Lastly, it is in your interest also to make use of means of redress available at national level, which as a rule enable you to assert your rights more directly and more personally. Where you have suffered damage, for example, only the national courts can award you reparation from the Member State concerned. Furthermore, since there is a time-limit on national means of redress, unless you use them quickly, you may lose your rights at national level.

You are advised to read the annex for further information on the procedure for non-compliance with European Union law.

Yours faithfully,

Marie-Hélène BOULANGER
Head of Unit

Annex 1: Explanation of procedure for non-compliance with European Union law
Annex 2: Specific privacy policy statement

Explanation of procedure for non-compliance with European Union law

1. Principles

Each Member State is responsible for the implementation (transposition by the deadline, conformity and proper application) of European Union law in its internal legal system. The European Commission ensures that European Union law is properly applied. Consequently, where a Member State fails to comply with European Union law, the Commission has powers of its own (action for non-compliance) which it may use in an attempt to terminate the infringement and, if necessary, it may refer the case to the Court of Justice. The Commission takes whatever action it deems appropriate whether in response to a complaint or after detecting indications of infringements itself.

Non-compliance means failure by a Member State to fulfil its obligations under European Union law. It may consist either of action or omission. The term State is taken to mean the Member State which infringes European Union law, irrespective of the authority - central, regional or local - to which the non-compliance is attributable.

2. Admissibility of complaints

Anyone may lodge a complaint with the Commission against a Member State for any measure (law, regulation or administrative action) or practice attributable to a Member State which they consider incompatible with a provision or a principle of European Union law. You do not have to demonstrate a formal interest in bringing proceedings. Nor do you have to prove that you are principally and directly concerned by the infringement complained of. To be admissible, a complaint has to relate to an infringement of European Union law by a Member State. It cannot therefore concern a private dispute.

It is very important for the complaint papers to be complete and accurate, particularly as regards the facts complained of in relation to the Member State in question, any steps which you have already taken at any level and, as far as possible, the provisions of European Union law which you consider to have been infringed and any involvement of a European Union funding scheme.

3. Stages of infringement proceedings

In infringement proceedings, a case may be handled in the following stages:

3.1 Research phase

In response to your complaint, it may be necessary to gather further information to determine the points of facts and of law concerning your case. Should the Commission contact the authorities of the Member State against which you have made your complaint, it will not disclose your identity unless you have given it your express permission to do so (see below point 5). If necessary, you will be asked to supply further information.

After examining the facts and in the light of the rules and priorities established by the Commission for opening and pursuing infringement proceedings, the Commission's services will decide whether further action should be taken on your complaint.

3.2 Opening of infringement proceedings: formal contacts between the Commission and the Member State concerned

If the Commission considers that there may be an infringement of European Union law which warrants the opening of infringement proceedings, it addresses a "letter of formal notice" to the Member State concerned, requesting it to submit its observations by a specified date. The Member State has to adopt a position on the points of fact and of law on which the Commission bases its decision to open the infringement proceedings.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "reasoned opinion" to the Member State, clearly and definitively setting out the reasons why it considers there to have been an infringement of European Union law and calling on the Member State to comply with European Union law within a specified period (normally two months).

The purpose of those formal contacts is to determine whether there is indeed an infringement of European Union law and, if so, to resolve the case at this stage without having to take it to the Court of Justice.

In the light of the reply, the Commission may also decide not to pursue the infringement proceedings any further, for example where the Member State provides credible assurances as to its intention to amend its legislation or administrative practice. Most cases can be resolved in this way.

3.3 Referrals to the Court of Justice of the European Union

If the Member State fails to comply with the reasoned opinion, the Commission may decide to bring the case before the Court of Justice of the European Union. On average, it takes about two years for the Court of Justice to rule on cases brought by the Commission.

Judgments of the Court of Justice differ from those of national courts. At the close of the proceedings, the Court of Justice delivers a judgment stating whether there has been an infringement. The Court of Justice can neither annul a national provision which is incompatible with European Union law, nor force a national administration to respond to the request of an individual, nor order the Member State to pay damages to an individual adversely affected by an infringement of European Union law.

It is up to a Member State against which the Court of Justice has handed down its judgment to take whatever measures are necessary to comply with it, particularly to resolve the dispute which gave rise to the proceedings. If the Member State does not comply, the Commission may again bring the matter before the Court of Justice seeking to have periodic penalty payments imposed on the Member State until such time as it puts an end to the infringement.

4. National means of redress

It is national courts and administrative bodies that are primarily responsible for ensuring that the authorities of the Member States comply with European Union law.

Therefore, if you consider a particular measure (law, regulation or administrative action) or administrative practice to be incompatible with European Union law, you are invited to seek redress from national administrative or judicial authorities (including national or regional ombudsmen) and/or through the arbitration and conciliation procedures available. The Commission advises you to use those national means of redress because of the advantages they may offer for you.

By using the means of redress available at national level you should, as a rule, be able to assert your rights more directly and more personally than you could following infringement proceedings successfully brought by the Commission, which may take some time. Only national courts can issue orders to administrative bodies and annul a national decision. It is also only national courts which have the power, where appropriate, to order a Member State to make good the loss sustained by individuals as a result of the infringement of European Union law attributable to it.

5. Administrative guarantees

The following administrative guarantees exist for your benefit:

- a) Following registration by the Commission, your complaint has been assigned an official reference number (as set out in this acknowledgment), which should be quoted in any correspondence. However, the assignment of an official reference number does not necessarily mean that infringement proceedings will be opened against the Member State in question.

- b) Where the Commission's services make representations to the authorities of the Member State against which the complaint has been made, they will abide by the choice you have made regarding disclosure of your identity. Where you have not indicated your choice, the Commission's services will presume that you have opted for confidential treatment.
- c) The Commission will endeavour to take a decision on the substance (either to open infringement proceedings or to close the case) within twelve months of registration of the complaint.
- d) You will be notified in advance by the relevant department if it plans to propose that the Commission close the case. The Commission's services will keep you informed of the course of any infringement proceedings.

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You are referred to the following Commission documents which explain the Commission's general approach to the management of correspondence and complaints:

- Code of good administrative behaviour for staff of the European Commission in their relations with the public, available on the EUR-Lex website (<http://eur-lex.europa.eu>) under its publication reference, Official Journal L 267, 20.10.2000, p. 63.
- Commission Communication on relations with the complainant in respect of infringements of Community law, accessible on the EUR-Lex website (<http://eur-lex.europa.eu>) under the reference, COM (2002) 141 final.
- Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Article 5, available on the EUR-Lex website (<http://eur-lex.europa.eu>) under its publication reference, Official Journal L 8, 12.1.2001, p. 1.

3. Information collected

The information collected includes the name and address of the person or a legal entity, their telephone and fax numbers and e-mail address, their area of activity, their preferred language, and information on how to reach them electronically. The full text of the inquiry or complaint and relevant correspondence will also give sufficient to start the administrative process.

4. Mandatory information

Certain information must be supplied to the CHAP database in order to allow the Commission to identify the country or countries (your name and address, subject of correspondence, Member State concerned, date starting from the Member State is an infringement of European Union law) relating to supply with information will ensure the correspondence is anonymous and indistinguishable, or the Commission cannot communicate with the correspondent as the Commission is unable to do, in the case of a complaint, if it is possible.

5. Protection and safeguard

The personal information collected and all information related to the administrative activities are stored in the European Commission archive in the Court Centre in Luxembourg. The processing of such data is governed by the Commission's security directives and provisions established by the Security Directorate for the use of personal data.

6. Who has access to your information?

The information collected in the CHAP database is not available to anyone outside the Commission. Inside the Commission, access to the personal information is granted only through USER ID's provided to a defined population of users of the CHAP database. The people who have access to CHAP are those in the DG and other Commission services dealing with the Commission staff or infragroups.