

Planned closure of complaint CHAP (2013)2466

(2013/C 357/04)

1. The European Commission has received and registered under reference CHAP (2013)2466 a series of complaints about the checks made by the Spanish authorities at the border with Gibraltar.
2. Given the significant number of complaints it has received on this subject, the Commission, with a view to responding swiftly and informing those concerned while making the most economical use of its administrative resources, has published an acknowledgment of receipt in the *Official Journal of the European Union*, and on the Internet at:

http://ec.europa.eu/eu_law/complaints/receipt/index_en.htm

3. Following examination of the complaints as well as exchanges with the relevant authorities, the Commission decided to organise a technical visit at the crossing point of La Línea de la Concepción on 25 September 2013.
4. The Commission services have now completed their investigation. On the basis of the observations during the technical visit of 25 September 2013 and of the information provided by both authorities on that occasion, the Commission has not found evidence to conclude that the checks on persons and goods as operated by the Spanish authorities at the crossing point of La Línea de la Concepción have infringed the relevant provisions of Union law.
5. The management of this crossing point is nevertheless challenging, in view of the heavy traffic volumes in a relatively confined space (some 35 000 persons crossing each day on entry and an equal number on exit, around 10 000 cars per day) and the increase in tobacco smuggling into Spain. The Commission therefore believes that the authorities on both sides could take further measures to better address these challenges.
6. As concerns Spain, the Commission invited the Spanish authorities to consider the following actions:

Optimising the physical space available on the Spanish side of the crossing point:

- On entry into Spain, the Commission experts noted during the visit that six vehicular lanes on the Gibraltar side are reduced to two lanes at the level of the Spanish police check-point, then *de facto* one single lane is used by the majority of travellers when approaching the Spanish customs check-point (the green lane for vehicles with no goods to be declared). Additionally, on entry to Spain the road presents a curve of 180° and the vehicular traffic is mixed with motorbikes flow at this level. While the traffic was not extremely heavy at the moment of the visit, the Commission experts could observe the important congestion of vehicles at this point. In Commission's view this constellation creates a bottleneck effect and can be considered as one of the reasons for traffic congestion at this crossing point. The Commission thus recommends to Spain to review the traffic organisation at this point in order to increase the number of vehicular lanes for travellers with no goods to be declared, in particular making use of the free space available in the vicinity of this point.
- On exit from Spain, the experts noted during the visit that there was *de facto* only one lane available for the traffic out of two existing vehicular lanes. Only at the level of the Spanish police check-point, the vehicles were directed into two lanes. The reason for this is that a long stretch of the vehicular lane situated on the left side is used in both directions and it is left free for emergency cases (as explained by the Spanish authorities during the visit). The Commission invites Spain to review this traffic organisation in order to make full use of the two existing vehicular lanes, in particular during peak hours.

- The Commission invites Spain to consider using the EBF/ISF financial support for the above purpose. It also recalls the possibility to include the modernisation of the crossing point in the Partnership Agreement and Operational Programmes of Cohesion Policy Instruments for the 2014-2020 period.

Optimising the risk-based profiling:

- The Commission recommends to the Spanish authorities to improve the risk analysis system to better target in-depth checks of travellers' luggage and vehicles.
- Also, the Spanish authorities have reported that random checks are carried out by Spanish customs on exit from Spain. However, the Commission is of the opinion that the intensity of those checks is not justified and could therefore be reduced, further contributing to smooth travel flows from Spain to Gibraltar.

Developing the exchange of information on tobacco smuggling:

- The Spanish authorities are encouraged to develop greater dialogue with their counterparts in relation to the exchange of intelligence on tobacco smuggling with a view to improving enforcement capabilities on both sides in tackling the problem.

7. As concerns the United Kingdom, the Commission invited the authorities of the United Kingdom to consider the following actions:

Developing the risk-based profiling:

- Although the Gibraltar authorities acknowledged the severe problem related with tobacco smuggling at this crossing point and informed the Commission about existing legislation aimed at combating this phenomenon, the Commission experts noted during their visit that no checks on persons or goods were being carried out on exit from Gibraltar. The Commission thus recommends that Gibraltar ensures non-systematic and risk analysis-based checks on travellers and their belongings upon exit from Gibraltar at the crossing point of La Línea de la Concepción.

Optimising legislation and safeguards in view of contributing to an efficient fight against tobacco smuggling:

- The Gibraltar authorities are invited to consider reviewing the Gibraltar Tobacco Act 1997 with a view to aligning it to EU legislation in respect of the Customs and tax allowances for travellers to the EU and the corresponding quantitative limits for importing tobacco products free of tax.
- The Gibraltar authorities are encouraged to take appropriate measures to ensure that imports of tobacco products into Gibraltar are commensurate with legitimate demand.
- The Gibraltar authorities are encouraged to ensure that all tobacco manufacturers supplying cigarettes to customers in Gibraltar operate adequate supply chain controls.

Developing the exchange of information on tobacco smuggling:

- The Gibraltar authorities are encouraged to develop greater dialogue with their Spanish counterparts in relation to the exchange of intelligence on tobacco smuggling with a view to improving the enforcement capabilities of both sides in tackling the problem.

8. Finally, as for any crossing point, the best results in fighting smuggling and cross-border crime as well as maintaining a smooth flow of traffic can be achieved through daily cooperation between the authorities working on each side of the border. The Commission thus encourages all relevant authorities to strengthen their constructive dialogue with their counterparts for this purpose.

9. Taking into consideration the preceding elements, the Commission services will propose to the Commission that the case be closed.

Should the complainants consider they have new information that may lead the Commission to reconsider the proposal to close the case, this should be submitted to the Commission within a month of the publication of this notice. In the absence of any such new information, the Commission may close the case.

10. However, the Commission will continue to monitor the situation at the crossing point of La Línea de la Concepción and has asked to receive information from both authorities within six months on how the recommendations have been taken into consideration.
 11. Moreover, the Commission reserves the right to reconsider its position should the situation change or evolve and also to pay another visit to the crossing point of La Línea de la Concepción if appropriate in the future.
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