

Commission communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law

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(2002/C 244/03)

In its annual reports on monitoring the application of Community law, the Commission has regularly acknowledged the vital role played by the complainant in detecting infringements of Community law, compliance with which it ensures on the basis of, *inter alia*, the infringement procedure laid down by Article 226 of the Treaty establishing the European Community and Article 141 of the Treaty establishing the European Atomic Energy Community.

In 1999 the Commission published a notice ⁽¹⁾ containing a standard form for complaints to be submitted to it where a Member State fails to comply with Community law in the context of the infringement procedure laid down by Article 226 of the EC Treaty or Article 141 of the EAEC Treaty.

The notice also set out on the back of the complaint form the administrative measures which are laid down for the benefit of the complainant.

The notice was the result of the European Ombudsman's own-initiative enquiry and the Commission's subsequent undertaking to comply with certain administrative formalities, and in particular to inform the complainant in advance of any decision to close a case.

Finally, in 2001, in its reply to criticisms from the European Ombudsman when the complaint by P.S. Emfietzoglou against the Macedonian Metro Joint Venture (995/98/OV) was shelved, the Commission undertook to publish a consolidated version of

the internal procedural rules applicable to its relations with the complainant in the context of infringement proceedings.

The Commission sets out in the Annex to this Communication the administrative measures for the benefit of the complainant with which it undertakes to comply when handling his/her complaint and assessing the infringement in question.

However, these measures do not alter the bilateral nature of the infringement procedure laid down by Article 226 of the EC Treaty and Article 141 of the EAEC Treaty. In this respect, the Commission must point out that, in accordance with the established case-law of the Court of Justice of the European Communities, it enjoys a discretionary power in deciding whether or not to commence infringement proceedings and to refer a case to the Court ⁽²⁾. The Court has also acknowledged the Commission's power to decide at its own discretion when to commence an action ⁽³⁾.

Finally, in the area of infringement proceedings, the Commission applies the rules on access to documents laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on public access to European Parliament, Council and Commission documents ⁽⁴⁾, as implemented by the provisions set out in the Annex to Commission Decision 2001/937/EC, ECSC, Euratom of 5 December 2001 amending its rules of procedure ⁽⁵⁾.

⁽¹⁾ OJ C 119, 30.4.1999, p. 5.

⁽²⁾ See, in particular, judgment of 6 December 1989 in Case C-329/88, *Commission v Greece* [1989] ECR 4159; judgment of 27 November 1990 in Case C-200/88, *Commission v Greece* [1990] ECR I-4299; judgment of 21 January 1999 in Case C-207/97, *Commission v Belgium* [1999] ECR I-275; judgment of 25 November 1999 in Case C-212/98 *Commission v Ireland* [1999] ECR I-8571.

⁽³⁾ Judgment of 1 June 1994 in Case C-317/92, *Commission v Germany* [1994] ECR I-2039; judgment of 10 May 1995 in Case C-422/92, *Commission v Germany* [1995] ECR I-1097.

⁽⁴⁾ OJ L 145, 31.5.2001, p. 43.

⁽⁵⁾ OJ L 345, 29.12.2001, p. 94.

ANNEX

RELATIONS WITH THE COMPLAINANT REGARDING INFRINGEMENTS OF COMMUNITY LAW**1. Definitions and scope**

'Complaint' shall mean any written approach made to the Commission pointing to measures or practices contrary to Community law. Investigation of a complaint may lead the Commission to open infringement proceedings.

'Infringement proceedings' shall mean the pre-litigation phase of the procedures for non-compliance lodged by the Commission on the basis of Article 226 of the Treaty establishing the European Community (EC Treaty) or Article 141 of the Treaty establishing the European Atomic Energy Community (Euratom Treaty).

The measures described here shall apply to relations between complainants and Commission departments in connection with infringement proceedings. They shall not apply to complaints relating to other Treaty provisions, particularly complaints regarding state aid covered by Articles 87 and 88 of the EC Treaty or by Council Regulation (EC) No 659/1999⁽¹⁾.

2. General principles

Anyone may file a complaint with the Commission free of charge against a Member State about any measure (law, regulation or administrative action) or practice by a Member State which they consider incompatible with a provision or principle of Community law.

Complainants do not have to demonstrate a formal interest in bringing proceedings; neither do they have to prove that they are principally and directly concerned by the infringement complained of.

The Commission may decide whether or not further action should be taken on a complaint.

3. Recording of complaints

Any correspondence which is likely to be investigated as a complaint shall be recorded in the central registry of complaints kept by the Secretariat-General of the Commission.

Correspondence shall not be investigable as a complaint by the Commission, and shall therefore not be recorded in the central registry of complaints, if:

- it is anonymous, fails to show the address of the sender or shows an incomplete address,
- it fails to refer, explicitly or implicitly, to a Member State to which the measures or practice contrary to Community law may be attributed,
- it denounces the acts or omissions of a private person or body, unless the measure or complaint reveals the involvement of public authorities or alleges their failure to act in response to those acts or omissions. In all cases, the Commission shall verify whether the correspondence discloses behaviour that is contrary to the competition rules (Articles 81 and 82 of the EC Treaty),
- it fails to set out a grievance,
- it sets out a grievance with regard to which the Commission has adopted a clear, public and consistent position, which shall be communicated to the complainant,
- it sets out a grievance which clearly falls outside the scope of Community law.

Where there is doubt as to the nature of an item of correspondence, the Secretariat-General of the Commission shall consult the department(s) concerned within 15 calendar days of receipt. If the department(s) fail to reply within 15 working days, the complaint shall be formally recorded at the central registry of complaints.

4. Acknowledgement of receipt

The Secretariat-General of the Commission shall issue an initial acknowledgement of all correspondence within 15 working days of receipt.

Correspondence registered as a complaint shall be acknowledged again by the Secretariat-General within one month from the date of dispatch of the initial acknowledgement. This acknowledgement shall state the case number of the complaint, which must be quoted in any correspondence.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

Where a number of complaints are lodged in relation to the same grievance, individual acknowledgements may be replaced by a publication in the *Official Journal of the European Communities* and on the European Communities' Europa server.

Where the Commission departments decide not to register the correspondence as a complaint, they shall notify the author to that effect by ordinary letter setting out one or more of the reasons listed in the second paragraph of point 3.

Where necessary, the Commission will inform the complainant of any possible alternative forms of redress, such as recourse to national courts, the European Ombudsman, a national ombudsman or any other national or international complaints procedure.

5. Methods of submitting a complaint

Complaints must be submitted in writing, by letter, fax or e-mail.

They shall be written in one of the official Community languages.

To speed up the processing of complaints, the Commission will provide complainants with a standard complaint form, as published in the *Official Journal of the European Communities* ⁽¹⁾ and available from the Commission on request or on the European Communities' Europa server at:

http://europa.eu.int/comm/secretariat_general/sgb/lexcomm/form_en.htm

There is an annex to the form which sets out the general principles of infringement proceedings and stresses that any finding of an infringement by the Court of Justice has no effect on the rights of the complainant. Complainants are also invited, in the annex, to use the means of redress available at national level.

Complainants are not obliged to use the form.

Written complaints may be sent to the Commission Secretariat-General (B-1049 Brussels, fax (32-2) 295 39 13, e-mail: SG-PLAINTES@cec.eu.int), or lodged with one of the Commission's offices in the Member States.

6. Protection of the complainant and personal data

Disclosure of complainants' identities and information submitted by them to the Member State concerned is subject to their prior agreement and must comply, *inter alia*, with Regulation (EC) No 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 ⁽²⁾, and with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽³⁾.

7. Communication with complainants

The Commission departments will contact complainants and inform them in writing, after each Commission decision (formal notice, reasoned opinion, referral to the Court or closure of the case), of the steps taken in response to their complaint.

Where a number of complaints are lodged in relation to the same grievance, individual acknowledgements may be replaced by a publication in the *Official Journal of the European Communities* and on the European Communities' Europa server.

At any point during the procedure complainants may ask to explain or clarify to the Commission officials, on the spot and at their own expense, the grounds for their complaint.

8. Time limit for investigating complaints

As a general rule, Commission departments will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year from the date of registration of the complaint by the Secretariat-General.

Where this time limit is exceeded, the Commission department responsible for the case will inform the complainant in writing.

9. Outcome of the investigation of complaints

After investigating the complaint, Commission officials may ask the College of Commissioners either to issue a formal notice opening proceedings against the Member State in question, or to close the case definitively.

⁽¹⁾ OJ C 119, 30.4.1999, p. 5.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

The Commission will decide on the matter at its discretion. This discretion shall cover not only the desirability of opening or terminating an infringement procedure but also the choice of complaint.

Complainants will be informed in writing of the decision taken by the Commission in connection with their complaint and any subsequent Commission decisions on the matter.

Where a number of complaints are lodged in relation to the same grievance, individual acknowledgements may be replaced by a publication in the *Official Journal of the European Communities* and on the European Communities' Europa server.

10. Closure of the case

Unless there are exceptional circumstances requiring urgent measures, where a Commission department intends to propose that no further action be taken on a complaint, it will give the complainant prior notice thereof in a letter setting out the grounds on which it is proposing that the case be closed and inviting the complainant to submit any comments within a period of four weeks.

Where a number of complaints are lodged in relation to the same grievance, individual acknowledgements may be replaced by a publication in the *Official Journal of the European Communities* and on the European Communities' Europa server.

Where the complainant does not reply, or where the complainant cannot be contacted for reasons for which he/she is responsible, or where the complainant's observations do not persuade the department to reconsider its position, a proposal to close the case will be put forward. In that event, the complainant will be informed of the Commission's decision.

Where the complainant's observations persuade the department concerned to reconsider its position, investigation of the complaint will continue.

11. Simplified procedure for closing cases

Infringement cases in which no letter of formal notice has been dispatched may be closed under a simplified administrative procedure that does not involve discussion by the College of Commissioners.

This procedure may be applied in cases where initial examination by the Commission departments has made it quite clear that the complaint is either groundless or irrelevant; or that there is no evidence, or insufficient evidence, to substantiate the complaint. The procedure may also be applied where the complainant shows no further interest in the prosecution of the complaint.

Where a Commission department intends to use this procedure, it will inform the complainant thereof in accordance with the procedure described in point 10.

12. Publicising infringement decisions

Commission decisions on infringement cases are published within one week of their adoption on the Secretariat-General's Internet site at:

http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#infractions

Decisions to deliver a reasoned opinion to a Member State or to refer a case to the Court of Justice will also be publicised by means of a press release, unless the Commission decides otherwise.

13. Access to documents on infringement cases

Access to documents on infringement cases is governed by Regulation (EC) No 1049/2001, as implemented by the provisions set out in the Annex to Decision 2001/937/EC, ECSC, Euratom ⁽¹⁾.

14. Complaint to the European Ombudsman

Where a complainant considers that, in handling his/her complaint, the Commission has been guilty of maladministration by failing to follow any of the above measures, he/she may refer the matter to the European Ombudsman under Articles 21 and 195 of the EC Treaty.

⁽¹⁾ OJ L 345, 29.12.2001, p. 94.