

Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of European Union (EU) law

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ANNEX

**RELATIONS WITH THE COMPLAINANT REGARDING INFRINGEMENTS OF EU LAW**

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1. Definitions and scope

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"Complaint" shall mean any written approach made to the Commission alleging that measures or practices of a Member State are contrary to EU law. Investigation of a complaint may lead the Commission to open infringement proceedings.

"Enquiry" shall mean written requests for information made to the Commission which question whether measures or practices of a Member State are contrary to EU law.

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"Infringement proceedings" shall mean the pre-litigation phase of the procedures for non-compliance lodged by the Commission on the basis of Article 258 of the Treaty on the Functioning of the European Union (TFEU) or Article 106a of the Treaty establishing the European Atomic Energy Community (Euratom Treaty).

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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 107 and 108 of the TFEU or by Council Regulation (EC) No 659/1999<sup>1</sup>.

2. General principles

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

Complainants or persons making an enquiry do not have to demonstrate a formal interest in bringing proceedings; neither do they have to prove that they are directly and individually concerned by the infringement complained of.

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

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3. Registration and acknowledgement of complaints and enquiries

<sup>1</sup> OJ L 83, 27.3.1999, p 1

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4. Acknowledgement of receipt¶

The Secretariat-General of the Commission shall issue an initial acknowledgement of all correspondence within fifteen working days of receipt.¶  
Correspondence registered as a complaint shall be acknowledged again by ... [1]

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Complaints and enquiries shall be registered in a central registry kept by the Secretariat-General of the Commission.

Correspondence shall not be registered as a complaint or enquiry if it is anonymous, fails to show the address of the sender or shows an incomplete address.

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 fifteen calendar days of receipt. If the department(s) fail to reply within fifteen working days, the correspondence shall be registered as a complaint or enquiry.

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

Correspondence shall be acknowledged again by the Secretariat-General within one month from the date of dispatch of the initial acknowledgement. This acknowledgement shall specify whether the correspondence has been registered as a complaint or as an enquiry and shall provide a reference number, which must be quoted in any correspondence.

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

#### 4. Actions with respect to complaints and enquiries

A complaint or enquiry shall not be followed up by the Commission if:

- it fails to refer, explicitly or implicitly, to a Member State to which the measures or practice contrary to EU law may be attributed;
- it refers to 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 101 and 102 TFEU);
- 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 EU law.

The author of the complaint or enquiry shall be informed accordingly, in writing. Where appropriate, the Commission will provide information about 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.

By way of further action, the Commission may decide that a complaint should be dealt with in accordance with a rapid and informal system of resolving complaints in partnership with the Member State concerned (the EU Pilot system). However, where urgency or another overriding interest exists, the Commission may immediately launch an infringement procedure without previous contacts through the EU Pilot.

Enquiries shall be dealt with through the EU Pilot.

## 5. Methods of submitting a complaint or an enquiry

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Complaints and enquiries must be submitted in writing, by letter, fax, e-mail, or by using the electronic complaint form available at the link mentioned below.

They shall be written in one of the official EU 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 Union*<sup>3</sup> and available from the Commission on request or on the European Union's Europa server at the following address:

[http://ec.europa.eu/eu\\_law/your\\_rights/your\\_rights\\_forms\\_en.htm](http://ec.europa.eu/eu_law/your_rights/your_rights_forms_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 and enquiries may be sent to the Commission Secretariat-General (B-1049 Brussels, fax: +32.2.295.39.13; e-mail: SG-PLATNTES@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 European Parliament and Council Regulation (EC) No 45/2001 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<sup>4</sup>, and with European Parliament and Council Regulation (EC) No

<sup>3</sup> OJ C 119, 30.4.1999, p. 5.

<sup>4</sup> OJ L 8, 12.1.2001, p. 1.

1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>5</sup>.

### 7. Communication with complainants

The Commission departments will contact complainants and inform them in writing, after each Commission decision (submission of the case to the Member State through the EU Pilot, analysis of the Member State's reply received through the EU Pilot, 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 Union* and on the European Union's Europa server.

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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, the Commission will: arrive at a decision to launch an EU Pilot process within 10 weeks from the date of registration of a complaint; request the Member State concerned to provide comments in relation to a complaint or enquiry within 10 weeks from the date of the launch of the EU Pilot process; and examine and assess a Member State's reply within 10 weeks from the date of the receipt of that reply.

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.

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Where any of these time limits are exceeded, the Commission department responsible for the case will inform the complainant or the person submitting the enquiry 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.

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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 the allegations.

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<sup>5</sup> OJ L 145, 31.5.2001, p. 43.

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 Union* and on the European Union's Europa server.

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#### 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 Union* and on the European Union's Europa server.

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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 the following address:

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[\[new internet link to be provided\]](#)

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 Commission Decision 2001/937/EC, ECSC, Euratom<sup>6</sup>.

### 14. Complaint to the European Ombudsman

Where a complainant considers that, in handling his/her complaint or enquiry, 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 24 and 228 TFEU.

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<sup>6</sup> OJ L 345, 29.12.2001, p. 94.

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

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