



European
Commission

Justice and Consumers

Brussels, 06/06/2019

Homo Digitalis
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Dear Sir,

Thank you for your letter of 30/05/2019, which has been registered as a complaint under reference number CHAP(2019)01564 (please quote this reference in any further correspondence).

The Commission's services will consider your complaint in the light of the applicable European Union law. You will be informed of the findings and of any steps taken concerning your complaint by JUST-CHAP@ec.europa.eu.

You may opt for confidential or non-confidential treatment of your complaint. If you have not done so in the complaint form, the Commission's services will by default treat your complaint confidentially. If you choose non-confidential treatment, the Commission departments may disclose both your identity and any of the information submitted by you to the authorities of the Member State against which you have made your complaint. The disclosure of your identity by the Commission's services may in some cases be indispensable to the handling of the complaint.

Please note that, if the Commission decides to act following your complaint, including by launching a formal infringement procedure, its general aim is to ensure that Member State laws are compliant with EU law and correctly applied. The submission of a complaint to the Commission may thus not resolve your specific and individual situation. In order to obtain redress, including compensation if warranted, you should take action at national level in the Member State concerned. Submitting a complaint to the Commission does not suspend the time limits for starting legal action under national law. The Commission may also decide not to open formal infringement procedures, even if it considers that a breach of EU law has occurred.

You can find further information on infringement procedures for breaches of European Union law in the annex to this letter.

Yours faithfully,

Olivier MICOL
Head of Unit

Annex 1: Explanation of infringement procedures launched by the European Commission for breaches of European Union law

Annex 2: Specific privacy policy statement

Explanation of infringement procedures launched by the European Commission for breaches of European Union law

1. Principles

Each Member State is responsible for the transposition, application and implementation of European Union law in its internal legal system. Only national courts can, where appropriate, order a Member State to compensate individuals for infringements of European Union law attributable to it. They have the power to issue orders to administrative bodies and annul a national decision. Therefore, by using the means of redress available at national level (national administrative or judicial authorities) you should, as a rule, be able to assert your rights more directly and more personally than infringement procedures brought by the Commission could.

The European Commission is entrusted with the task of overseeing the application, implementation and enforcement of European Union law. Where a Member State fails to comply with European Union law, the Commission may initiate infringement procedures and if necessary, refer the case to the Court of Justice. It is up to the Commission to decide whether or not to act, and how to act, in response to a complaint concerning a breach of European Union law.

A breach of European Union law means the failure, either by action or omission, of a Member State to fulfil its obligations under the Treaties. Any breach of European Union law by an authority of a Member State, irrespective of the level of the authority involved (at central, regional or local level) is attributable to the Member State to which that authority belongs.

Anyone may lodge a complaint with the Commission free of charge against any Member State about any measure (law, regulation or administrative action) or the absence of such measure or practice which they consider incompatible with 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. A complaint about a breach of European Union law has to relate to an infringement of European Union law by a Member State. It cannot therefore concern a private dispute.

2 Handling of your complaint by the Commission's services

After examining the facts and in the light of the rules and priorities established by the Commission for opening and pursuing infringement procedures¹, the Commission services will decide whether further action should be taken on your complaint.

It may be necessary to gather further information to determine the factual and legal situation of your case. If necessary, you will be asked to supply further information. 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 your express permission to do so (see below point 3).

If the Commission considers that there may be an infringement of European Union law which warrants the opening of an infringement procedure, it addresses a "letter of formal notice" to the Member State concerned, requesting it to submit its observations by a specified date.

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, calling on the Member State to comply with European Union law within a specified period.

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. The Commission may decide whether or not to pursue the infringement procedures any further.

¹ Communication from the Commission - EU law: Better results through better application (C(2016)8600 final).

If the Commission brings the case before the Court of Justice of the European Union, it may take several years for the Court of Justice to hand down its judgment. Judgments of the Court of Justice differ from those of national courts. The Court of Justice delivers a judgment stating whether there has been an infringement of European Union law. The Court of Justice cannot 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 financial sanctions imposed on the Member State until the latter puts an end to the infringement.

Following the examination of your complaint, the Commission may also decide not to open formal infringement procedures, even if it considers that a breach of EU law has occurred.²

3. Administrative procedures for the handling of your complaint

After receiving your complaint, the Commission will:

- a. register your complaint (by assigning to it an official reference number, which should be quoted in any further correspondence) and acknowledge its receipt within 15 working days;
- b. assess your complaint with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year. Where that time limit is exceeded, the Commission will inform you in writing of the status of the file;
- c. where appropriate, propose to transfer it to the most suitable problem-solving mechanism;
- d. inform you about progress on your complaint;
- e. not disclose your identity to the authorities of the Member State concerned, unless you have explicitly chosen non-confidential treatment of your complaint.

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.
- Administrative procedures for the handling of relations with the complainant regarding the application of European Union law, Annex to the Commission Communication "EU law: Better results through better application", accessible on the EUR-Lex website (<http://eur-lex.europa.eu>) under the reference, C (2016) 8600 final.
- Regulation 45/2001 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, available on the EUR-Lex website (<http://eur-lex.europa.eu>) under its publication reference, Official Journal L 8, 12.1.2001, p. 1.

² Communication from the Commission - EU law: Better results through better application (C(2016)8600 final).

Specific privacy statement

CHAP (Complaints Handling / Accueil des Plaignants)

1. The CHAP database

The CHAP database has been set up to manage complaints which the Commission receives about infringements of European Union law by Member States.

2. Identity of the data controller

The controller of the processing is the head of unit SG-F3, 'Implementation and Enforcement of EU Law' in the Secretariat-General (SG), European Commission.

3. Purpose

The purpose of collecting the information in the CHAP database is to enable the Commission to learn about infringements of European Union law and thus carry out its task under Article 17 of the Treaty on European Union to ensure that Member States apply the provisions of the Treaty and the measures taken under it.

4. Information collected

The information collected includes the name and address of the complainant (natural person or legal entity¹), their telephone and fax numbers and email address, their area of activity, their preferred language, and (where applicable) the name of their representative. The full text of the complaint may contain other personal data of a very diverse nature.

5. Mandatory information

Certain information must be supplied in the CHAP database in order to allow the Commission to examine the complaint (your name and address, the national authority you are complaining about, national measure(s) which you think are in breach of EU law, previous action taken to solve the problem, your agreement for disclosing your personal to the national authorities you are lodging a complaint against).

6. Data protection and storage

The personal information collected and all other relevant information are stored on the European Commission servers in the Data Centre in Luxembourg. The server operates under the Commission's decisions and provisions on security established by the Security Directorate for this kind of server and service. The processing of personal data by the European Commission is subject to the provisions of 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

7. Who has access to your information?

The information collected in the CHAP database is not accessible to anyone outside the Commission. Inside the Commission, access to the personal information is granted only through USER ID and

¹ Regulation (EC) No 45/2001 concerns the data protection of individuals. It does not apply to information concerning legal entities unless this information relates to an identified or identifiable natural person.

² OJ L 8, 12.1.2001, p.1.

password to a defined population of users of the CHAP database. The people who have access to CHAP are those in the SG and other Commission services dealing with the Commission mail or infringements.

8. How long is the information kept?

When a person sends a complaint to the Commission, the personal information they give is stored in the CHAP database for three years following the date of closure of the case. After that period, the information enabling the person to be identified is kept in a form which no longer permits identification of the data subject, unless storage for a longer period is necessary for the purpose of the collection.

9. Accessing, checking, correcting or deleting your information

You have no direct access to the information stored. Anyone who wishes to verify the personal information about them that is stored in the system, or who wishes to check, correct or delete such personal information, should write an email to sg-plaintes@ec.europa.eu giving full details of their request. Such requests will be handled forthwith.

10. Contact details

If you have any question or request, please contact the CHAP support team, operating under the responsibility of the controller, either by email to sg-plaintes@ec.europa.eu or by letter to the Secretariat General (SG-F3), European Commission, B 1049 Brussels.

11. Remedies with regard to the processing of personal data

Questions concerning the processing of your personal data can be addressed to the European Commission's Data Protection Officer, e-mail address: data-protection-officer@ec.europa.eu

Complaints related to the processing of personal data by the European Commission can also be addressed to the European Data Protection Supervisor at the following address: Rue Wiertz 60 (MO 63), 1047 Brussels, Belgium, e-mail address: edps@edps.europa.eu. The European Data Protection Supervisor is responsible for monitoring and ensuring the application of the provisions of Regulation (EC) No 45/2001³ and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by an EU institution or body.

³ 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, Official Journal L 8, 12.1.2001, p. 1.