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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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Subject: COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND
THE EUROPEAN PARLIAMENT
Updating the handling of relations with the complainant in respect of the
application of Union law

Delegations will find attached Commission document COM(2012) 154 final.

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EUROPEAN COMMISSION

Brussels, 2.4.2012
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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
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**Updating the handling of relations with the complainant in respect of the application of
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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Updating the handling of relations with the complainant in respect of the application of Union law

INTRODUCTION

The European Union is sustained by respect for the rule of law. Its success in achieving its many goals as set out in the Treaties and in legislation depends on the effective application of Union law in the Member States. As guardian of the Treaties, the Commission acknowledges the vital role played by the complainant in helping the Commission to detect infringements of Union law. In 2002 the Commission set out the procedures governing its relations with complainants in respect of infringement of Union law¹. Since then, the Commission has improved and expanded its methods of registering and treating correspondence from complainants concerning the application of Union law by the Member States. To reflect these changes, the Commission has decided to revise and update its 2002 Communication.

A new IT tool CHAP ("Complaint handling/Accueil des plaignants"), set up in September 2009, allows the Commission to respond more directly to the interests of citizens, business and civil society. All complaints are registered in this application. An acknowledgement of receipt is sent within fifteen working days of receipt, indicating that the correspondence has been registered as a complaint. Previously, correspondence was registered only after an assessment of its content. The follow-up given to the complaint continues to be guided by the nature of the issue raised, the grounds on which it is based, its likely impact and the priorities laid down by the Commission in its Communication "A Europe of results – Applying Community law" [COM(2007)502 final].

The entry into force of the Treaty on the functioning of the European Union (TFEU) makes it necessary to update certain terms of the previous Communication which have been modified by the Treaty. There is also a need to clarify divergences in different linguistic versions of the previous Communication².

The Commission sets out in 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 alleged infringement in question.

These measures for the benefit of the complainant that are the subject of this Communication do not alter the bilateral nature of the infringement procedure laid down by Articles 258 and 260 TFEU and Article 106a of the EURATOM Treaty. In this respect, the Commission must point out that, in accordance with the established case-law of the Court of Justice of the

¹ COM (2002) 141 final of 20.3.2002.

² In the amended text, the words "le cas échéant" in point 4 which had wrongly been translated by the words "where necessary" in the EN version, are replaced by the words "in such cases". The words "upon his request" in point 8 which were not translated into the EN and SE versions are brought back in the text.

European Union, it enjoys a discretionary power in deciding whether or not³ and when⁴ to commence infringement proceedings and whether or not and when⁵ to refer a case to the Court. Furthermore, the Commission has a discretion which excludes the right for individuals to require it to adopt a specific position⁶.

As the Court has had occasion to point out, "damage caused by national institutions (...) can only give rise to liability on the part of those institutions, and the national courts retain sole jurisdiction to order compensation for such damage"⁷. It is appropriate in this context to underline the importance and possibly strengthen the means of redress available at national level, which enable the complainants to assert their rights more directly and more personally⁸.

Finally, in the area of infringement proceedings, the Commission applies the rules on access to documents laid down by Parliament and Council 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 documents⁹, 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 procedure¹⁰ and as interpreted by the Court¹¹.

³ 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; Judgment of 6 July 2000 in Case C-236/99, *Commission v Kingdom of Belgium*, [2000] ECR I-05657. Judgment of 14 May 2002 in Case C-383/00, *Commission v Federal Republic of Germany*, [2002] ECR I-04219.

⁴ See 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.

⁵ See judgement of 6 October 2009 in Case C-562/07, *Commission v Spain* [2009] ECR I-9553.

⁶ See judgement of 14 September 1995 in Case T- 571/93; *Lefebvre and others v Commission* [1995] ECR II 2379.

⁷ See judgement of 26 February 1986 in Case 175/84, *Krohn & Co. Import – Export GmbH & Co. KG v Commission* [1986] ECR 753.

⁸ See also further proposals in this context in Communication "Improving the delivery of benefits from EU environmental measures: building confidence through better knowledge and responsiveness," [COM(2012)95 final] of 7.3.2012.

⁹ OJ L 145, 31.5.2001, p. 43.

¹⁰ OJ L 345, 29.12.2001, p. 94.

¹¹ See in that respect: judgment of 5 March 1997 in Case T-105/95, *Commission v WWF UK*, [1997] ECR II-313; judgment of 11 December 2001 in Case T-191/99, *Commission v Petrie and others* [2001] ECR II-3677; judgment of 21 September 2010, *Sweden and others / API and Commission* (C-514/07 P, C-528/07 P and C-532/07 P).

1. Definitions and scope

“Complaint” shall mean any written approach made to the Commission pointing to measures, absence of measure or practices of a Member State contrary to Union law.

"Complainant" shall mean any person or body who files a complaint with the Commission.

“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).

The approach described here shall apply to relations between complainants and the Commission in connection with measures or practices which could fall under the scope of article 258 TFEU. They shall not apply to complaints relating to other Treaty provisions, particularly complaints regarding state aid covered by Articles 107 and 108 TFEU or by Council Regulation (EC) No 659/1999¹².

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), absence of measure or practice by a Member State which they consider incompatible with Union 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 measure, absence of measure or practice complained of.

Subject to the exceptions listed under point 3, the Commission will register the correspondence as a complaint according to the indications of its author as they appear from the correspondence.

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

3. Recording of complaints

Any complaint about the application of Union law by a Member State shall be recorded in the central application for the registration of complaints on the application of Union law by a Member State (hereafter referred to as "the application").

Correspondence shall not be investigable as a complaint by the Commission, and shall therefore not be recorded in the application, if:

- it is anonymous, fails to show the address of the sender or shows an incomplete address;

¹² OJ L 83, 27.3.1999, p. 1.

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

4. Acknowledgement of receipt

The Commission shall issue an acknowledgement of all complaints within fifteen working days of receipt. This acknowledgement shall state the registration number, 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 Union* and on the Union's *Europa* server.

Where the Commission decides not to register the correspondence in the application, it 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.

In such a case, 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

In order to be registered in the application, complaints must be submitted in writing, by letter, fax or email.

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

To speed up the processing of complaints, it is recommended to use the standard complaint form, as published in the *Official Journal of the European Union*¹³ and available from the Commission on request or on the Commission's website, on the European Union's server (EUROPA) at the following address:

http://ec.europa.eu/eu_law/your_rights/your_rights_forms_en.htm.

¹³ OJ C 119, 30.4.1999, p. 5.

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.

Written complaints about the application of Union law by a Member State may be sent to the Commission Secretariat General by post at the address "1049 Brussels, Belgium" or by email at SG-PLAINTES@ec.europa.eu, 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 data¹⁴.

7. Communication with complainants

Following registration, a complaint can be examined further in cooperation with the Member State concerned. The Commission will inform the complainant thereof in writing.

If subsequently infringement proceedings are launched on the basis of a complaint, the Commission will contact complainants and inform them in writing, of each procedural step (formal notice, reasoned opinion, referral to the Court or closure of the case).

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

At any point during the procedure complainants may ask to explain or clarify to the Commission, 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 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.

Where this time limit is exceeded, the Commission will inform the complainant in writing upon his request.

9. Outcome of the investigation of complaints

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

¹⁴ OJ L 8, 12.1.2001, p. 1.

The Commission will decide within its margin of discretion on opening or terminating an infringement procedure.

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 letters may be replaced by a publication in the *Official Journal of the European Union* and on the European Union's *Europa* server.

10. Closure of the case

Unless there are exceptional circumstances requiring urgent measures, where it is envisaged that no further action shall be taken on a complaint, the Commission 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 letters may be replaced by a publication in the *Official Journal of the European Union* and on the European Union's *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 Commission to reconsider its position, the case will be closed.

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

The complainant will be informed in writing of the decision of closure taken by the Commission.

11. 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:

http://ec.europa.eu/eu_law/infringements/infringements_decisions_en.htm

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.

12. 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, Euratom¹⁵.

13. 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 24 and 228 TFEU.

¹⁵ OJ L 345, 29.12.2001, p. 94.