



Council of the
European Union

Brussels, 9 February 2017
(OR. en)

5743/17
ADD 1 REV 1

INST 42
POLGEN 7
CO EUR-PREP 7
COMPET 53
CODEC 116

COVER NOTE

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

date of receipt: 8 February 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2016) 8600 final/2 ANNEX 1

Subject: ANNEX to the COMMUNICATION FROM THE COMMISSION EU law:
Better results through better application

Delegations will find attached a new version of the document C(2016) 8600 final/2 ANNEX 1.

Encl.: C(2016) 8600 final/2 ANNEX 1



Brussels, 9.1.2017
C(2016) 8600 final/2

ANNEX 1

This document corrects the annex to the document C(2016) 8600 final of 21.12.2016.
Concerns the EN version only.
The title of the annex was added on page 2.
The text should read as follows:

ANNEX

to the

COMMUNICATION FROM THE COMMISSION

EU law: Better results through better application

Annex

Administrative procedures for the handling of relations with the complainant regarding the application of European Union law

1. Definitions and scope

‘Complaint’ means a written approach made to the Commission pointing to a measure or the absence of a measure or practice in a Member State contrary to European Union law.

‘Complainant’ means any person or body who files a complaint with the Commission.

‘Infringement procedures’ means 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 applies to relations between complainants and the Commission in connection with measures or practices which could fall under the scope of Article 258 TFEU. They do 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 (EU) 2015/1589¹ and complaints which concern exclusively Articles 101 and 102 TFEU.

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 the absence of a measure or practice in the Member State which they consider incompatible with Union

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 complaint according to the indications of its author as they appear from the form.

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

3. Recording of complaints

A complaint about the application of Union law by a Member State must be recorded by the Commission in a special register.

¹ OJ L 248, 24.9.2015, p. 9-29.

Correspondence should not be investigable as a complaint by the Commission, and should therefore not be recorded in the special register, 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 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 must 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 must 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 must issue an acknowledgement of all complaints within 15 working days of receipt. This acknowledgement must state the registration number, which must be quoted in any correspondence.

Where a number of complaints are lodged about the same grievance, individual acknowledgements may be replaced by publication of a notice on the European Union's website, *Europa*.²

Where the Commission decides not to register the complaint, it must 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

Complaints must be submitted by using the standard complaint form. They must be submitted online, or in writing by letter to the Commission Secretariat-General at the address '1049 Brussels, Belgium' or lodged with one of the Commission's offices in the Member States.

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

² http://ec.europa.eu/atwork/applying-eu-law/multiple_complaint_form_en.htm .

The complaint form is available from the Commission on request or online from the *Europa* website.³ Where the Commission considers that the complainant does not comply with the requirements of the complaint form, it must inform the complainant thereof and invite him/her to complete the form within a prescribed period which must not normally exceed 1 month. If the complainant fails to respond within the prescribed period, the complaint will be deemed to have been withdrawn. In exceptional circumstances, where the complainant's inability to use the form is apparent, this requirement may be waived.

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.⁴

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 procedures are launched on the basis of a complaint, the Commission will inform complainants in writing of each procedural step (letter of 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, this written correspondence may be replaced by publication of a notice on *Europa*.

At any point during the procedure complainants may ask to explain or clarify to the Commission, at its premises and at the complainants' 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 1 year from the date of registration of the complaint, provided that all required information has been submitted by the complainant.

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

9. Outcome of the investigation of complaints

³ https://ec.europa.eu/assets/sg/report-a-breach/complaints_en

⁴ OJ L 8, 12.1.2001, p. 1.

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

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

10. Closure of the case

Unless there are exceptional circumstances requiring urgent measures, where it is envisaged that no further action will 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 4 weeks. Where a number of complaints are lodged in relation to the same grievance, this written correspondence may be replaced by the publication of a notice on the *Europa* website.

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 closure.

11. Publicising infringement decisions

Information on Commission decisions on infringement cases is published on *Europa*.⁵

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, Euratom.⁶

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.

⁵ http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en.

⁶ OJ L 345, 29.12.2001, p. 94.