



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Brussels, 16 June 2008.

SG(2008) D/659

Mr Denis Sylvester
English Leasehold Reform
128 Tollington Park Road
N4 3RB
United Kingdom

London

Dear Sir,

With reference to your letter of 23 April 2008, I am pleased to inform you that your complaint has been registered under reference number 2008/4553, SG(2008) A/3776/3 (please quote this reference in any further correspondence). It should be noted that the assignment of an official reference number to your complaint does not necessarily mean that an infringement procedure will be opened by the Commission.

The Commission's services will consider your complaint in the light of the applicable Community law. You will be informed direct of the findings and of the course of any infringement procedure opened. In the meantime you can contact the Secretariat-General, Unit SG-R-2, which will forward your mail, by fax on +32-2 296 43 35 or at SG-PLAINTES@ec.europa.eu.

You may opt for confidential or non-confidential treatment of your complaint. Non-confidential treatment means that the Commission's services have your permission to disclose your identity in any representations they make to the authorities of the Member State against which you have made your complaint. Where you have not indicated your choice in this respect by means of the complaint form or by letter, the Commission's services will presume that you have opted for confidential treatment. It should be borne in mind, however, that the disclosure of your identity by the Commission's services may in some cases be indispensable to the handling of the complaint.

You will not be requested to contribute to the procedural costs, even where the Commission decides to open an infringement procedure.

Lastly, it is in your interest also to make use of means of redress available at national level, which as a rule enable you to assert your rights more directly and more personally. Where you have suffered damage, for example, only the national courts can award you reparation from the Member State concerned. Furthermore, since there is a time-limit on national means of redress, unless you use them quickly, you may lose your rights at national level.

You are advised to read the annex for further information on proceedings concerning cases of non-compliance with Community law.

Yours faithfully,

A.F. POOLEY
Head of Unit SG-R-2

Annex

Explanation of proceedings for non-compliance with Community law

1. Principles

Each Member State is responsible for the implementation of Community law (adoption of implementing measures before a specified deadline, conformity and correct application) within its own legal system. Under the Treaties¹, the Commission of the European Communities is responsible for ensuring that Community law is correctly applied. Consequently, where a Member State fails to comply with Community law, the Commission has powers of its own (action for non-compliance) to try to bring the infringement to an end and, where necessary, may refer the case to the Court of Justice of the European Communities. The Commission takes whatever action it deems appropriate in response to either a complaint or indications of infringements which it detects itself.

Non-compliance means failure by a Member State to fulfil its obligations under Community law. It may consist either of action or omission. The term State is taken to mean the Member State which infringes Community law, irrespective of the authority - central, regional or local - to which the compliance is attributable.

2. Admissibility of complaints

Anyone may lodge a complaint with the Commission against a Member State for any measure (law, regulation or administrative action) or practice attributable to a Member State which they consider incompatible with a provision or a principle of Community law. You do not have to demonstrate a formal interest in bringing proceedings. Neither do you have to prove that you are principally and directly concerned by the infringement complained of. To be admissible, a complaint has to relate to an infringement of Community law by a Member State. It cannot therefore concern a private dispute.

It is very important for the complaint papers to be complete and accurate, particularly as regards the facts complained of in relation to the Member State in question, any steps which you have already taken at any level and, as far as possible, the provisions of Community law which you consider to have been infringed and any involvement of a Community funding scheme.

3. Stages of infringement proceedings

In infringement proceedings, a case may be handled in the following stages:

3.1 Information gathering

In response to your complaint, it may be necessary to gather further information to determine the points of facts and of law concerning your case. 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 it your express permission to do so. If necessary, you will be asked to supply further information.

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

3.2 Opening of an infringement procedure: formal contacts between the Commission and the Member State concerned

If the Commission considers that there may be an infringement of Community 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. The Member State has to adopt a position on the points of fact and of law on which the Commission bases its decision to open the infringement procedure.

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, clearly and definitively setting out the reasons why it considers there to have been an infringement of Community law and calling on the Member State to comply with Community law within a specified period (normally two months).

The purpose of those formal contacts is to determine whether there is indeed an infringement of Community law and, if so, to resolve the case at this stage without having to take it to the Court of Justice.

¹ Article 226 of the EC Treaty; Article 88 of the ECSC Treaty; Article 141 of the Euratom Treaty.

In the light of the reply, the Commission may also decide not to proceed with the infringement procedure, for example where the Member State provides credible assurances as to its intention to amend its legislation or administrative practice. Most cases can be resolved in this way.

3.3 Referral to the Court of Justice of the European Communities

If the Member State fails to comply with the reasoned opinion, the Commission may decide to bring the case before the Court of Justice of the European Communities. On average, it takes about two years for the Court of Justice to rule on cases brought by the Commission.

Judgments of the Court of Justice differ from those of national courts. At the close of the procedure, the Court of Justice delivers a judgment stating whether there has been an infringement. The Court of Justice can neither annul a national provision which is incompatible with Community 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 Community law.

It is up to a Member State against which the Court of Justice has given judgment to take whatever measures are necessary to comply with it, particularly to resolve the dispute which gave rise to the procedure. If the Member State does not comply, the Commission may again bring the matter before the Court of Justice seeking to have periodic penalty payments imposed on the Member State until such time as it puts an end to the infringement.

4. National means of redress

It is national courts and administrative bodies that are primarily responsible for ensuring that the authorities of the Member States comply with Community law.

Therefore, if you consider a particular measure (law, regulation or administrative action) or administrative practice to be incompatible with Community law, you are invited, either prior to or in parallel with your complaint to the Commission, to seek redress from national administrative or judicial authorities (including national or regional ombudsmen) and/or through the arbitration and conciliation procedures available. The Commission advises you to use those national means of redress because of the advantages they may offer for you.

By using the means of redress available at national level you should, as a rule, be able to assert your rights more directly and more personally than you could following infringement proceedings successfully brought by the Commission which may take some time. Only national courts can issue orders to administrative bodies and annul a national decision. It is also only national courts which have the power, where appropriate, to order a Member State to make good the loss sustained by individuals as a result of the infringement of Community law attributable to it.

5. Administrative guarantees

The following administrative guarantees exist for your benefit:

- (a) Following registration by the Commission's Secretariat-General, your complaint has been assigned an official reference number (as set out in this acknowledgment), which should be quoted in any correspondence. However, the assignment of an official reference number does not necessarily mean that an infringement procedure will be opened against the Member State in question.
- (b) Where the Commission's services make representations to the authorities of the Member State against which the complaint has been made, they will abide by the choice you have made regarding disclosure of your identity. Where you have not indicated your choice, the Commission's services will presume that you have opted for confidential treatment.
- (c) The Commission will endeavour to take a decision on the substance (either to open infringement proceedings or to close the case) within twelve months of registration of the complaint with its Secretariat-General.
- (d) You will be notified in advance by the relevant department if it plans to propose that the Commission close the case. The Commission's services will keep you informed of the course of any infringement procedure.