



Pat Swords <pat.swords.chemeng@gmail.com>

Acknowledgement of receipt - CHAP(2010)00645

Pat Swords <pat.swords.chemeng@gmail.com>

Fri, Mar 19, 2010 at 7:17 PM

To: Liam-Joseph.Cashman@ec.europa.eu

To: Liam Cashman
Head of Unit
European Commission
Directorate-General Environment
Directorate A - Legal Affairs and Civil Protection
ENV.A.2 - Compliance promotion, governance and legal issues

Thank you for your reply. As regards 'National means of redress' as you well know there are major problems with regard to Access to Justice in Ireland and I note with pleasure that this is finally been acknowledged with the Press Release yesterday in which the Commission sent a final warning over breeches of environmental law to Ireland, the principle one being Access to Justice.

As you may know I have been highlighting these issues for some time, such as the Submission I made to the Joint Oireachtas Committee on Climate Change and Energy Security, available at: [http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate Change/Submissions/document1.htm](http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate%20Change/Submissions/document1.htm) . This included a book "Ireland's Choice: EU Environmental Policy or Green Economy". It has always been my intention that this matter be treated in a non-confidential manner, in fact given the widespread and systematic dissemination of false information on the environment by officials of the Irish State and State bodies, not to mention the Irish Media, I percieve it as very important to present a rational and reasoned approach to Environmental matters highlighting the significance of the Environmental Acquis. I therefore welcome the widest possible dissemination of my case.

With regard to the summary of non-compliances with Directive 2003/4/EC, which I sent to your colleague Patrick Wegerdt on the 24th February 2010, these addressed non-compliance with Directive 2003/4/EC on Access to Information on the Environment (Pillar 1 of the Aarhus Convention). However, the extensive list of information requests that had been refused by the Irish Administration, some of which are now going through the appeals / investigative process with the Commissioner for Environmental Information, do have a purpose with regard to systematic non-compliances with other Directives.

For instance Chapter 6 of my book referenced above clearly outlines some of the major irregularities that were then occurring in the approval process for industrial projects. The information requests outstanding relate to systematic breeches by the Planning Appeals Board (An Bord Pleanala) with Directives 2003/4/EC and 2003/35/EC, in which oral hearings are conducted without (a) the public being informed of the legislative basis and (b) decisions being made outside the legislative basis in which there is a failure to publish the main reports and advise issued to the competent authority which determine the basis of these decisions. As regards the Government Policy of a 40% target of electricity from renewable sources and its implementation of Directive 2001/77/EC, then not only has Directive 2003/4/EC been systematically breached with regard to dissemination of false information on the environment but there has been a total failure to comply with Directive 2001/42/EC on Strategic Environmental Assessment.

As you undoubtedly already know there has been a total non-compliance of the Irish State with the Landfill Directive 1999/31/EC. This can be directly traced to the action of the Planning Appeals Board (An Bord Pleanala) and senior elected and non-elected officials in obstructing the development of projects in the Waste to Energy sector. Indeed so widespread is this blatant corruption that I have personally gone and lodged a formal complaint with the Garda Bureau of Fraud Investigation, handing them a file at the end of December (attached correspondence). I have followed up with additional information since, such as the attached document relating to Department of the Environment and their publication on waste. Indeed Dublin City Council, whose Waste to Energy project is also being obstructed by the same elected and non-elected officials, also commissioned a report relating to the problems with waste policy and the approach being taken in Ireland (see attached).

To me it is simply completely unacceptable that these issues are occurring on a regular basis in Ireland. Furthermore these senior elected and non-elected officials continue to act for personal gain with total disregard for the law. The situation will of course result that the Irish State will have financial penalties imposed upon it for systematic non-compliances, which myself and other taxpayers will have to fund, as well as suffer the lost benefits from the proper implementation of the Environmental Acquis. As I have stated in previous documentation to representatives of the Commission, it is these individuals who systematically operate outside the law that should be penalised and not the solely the State.

As I received the documentation relating to the investigations being completed by the Commissioner for Environmental Information I will update yourselves with this and other relevant information. If there is any other means in which I can offer yourselves or your Unit assistance please don't hesitate to contact me.

Regards

Pat Swords BE CEng FIChemE CEnv MIEMA

On Thu, Mar 18, 2010 at 3:07 PM, <Liam-Joseph.Cashman@ec.europa.eu> wrote:



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

ENVIRONMENT

Directorate A - Legal Affairs and Civil Protection

ENV.A.2 - Compliance promotion, governance and legal issues

Brussels, 18th March 2010

Mr. Pat Swords

pat.swords.chemeng@gmail.com

Dear Mr. Swords,

With reference to your e-mail of 17.02.2010, I am pleased to inform you that the complaint you sent to the Commission has been registered under reference number CHAP(2010)00645 (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 directly of the findings and of the course of any infringement procedure opened. In the meantime you can contact us, by e-mail at the following address ENV-CHAP@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 both your identity and your communication sent to the Commission 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 to make use of means of redress available at national level, which as a rule enables 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,

Liam
Cashman

(signed)

Head of

Unit

Annex 1: Explanation of proceedings for non-compliance with Community law

Annex 2: Specific privacy policy statement

ANNEX 1

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 fulfill 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 (see below point 5). 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.

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

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.

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 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, 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.
- 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.

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 - relations with the public, accessible on the EUR-Lex website (<http://eur-lex.europa.eu>) with the reference of its publication in the Official Journal of 2000.10.20, L serie, n°267, p. 63.

- Commission Communication on relations with the complainant in respect of infringements of

Community law, accessible on the EUR-Lex website (<http://eur-lex.europa.eu>) with the reference of its document number COM final - year 2002 - number 0141. Regulation 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, article 5, accessible on the EUR-Lex website (<http://eur-lex.europa.eu>) with the reference of its publication in the Official Journal of 2001.01.12 L serie n°008 p. 0001-0022.

ANNEX 2

Specific privacy policy statement

Complaints Handling - Accueil des Plaignants (CHAP)

1. The CHAP database

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

2. Controller

The controller of the processing is Arthur Pooley, head of unit SG-R-2, mail and document management in the Commission Secretariat General (SG).

3. Purpose

The purpose of collecting the information in the CHAP database is to enable the Commission to learn about infringements of Community law and thus carry out its task under Article 211 of the EC Treaty 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 person or a legal entity, their telephone and fax numbers and email address, their area of activity, their preferred language, and (possibly) the name of their representative. The full text of the enquiry or complaint may however contain other data of a very diverse nature the correspondent supplies.

5. Compulsory information

Certain information must be supplied in the CHAP database in order to allow the Commission to examine the enquiry or complaint (your name and address, subject of correspondence, Member State concerned, facts showing how the Member State is in infringement of Community law). Failure to supply such information will mean the correspondence is anonymous and inadmissible, or the Commission cannot communicate with the correspondent or the Commission is unable to see, in case of a complaint, if it is justified.

6. Protection and safeguard

The collected personal information and all information related to the above-mentioned activities are stored on the European Commission servers in the Data Centre in Luxembourg, the operations of which are covered by the Commission's security decisions and provisions established by the Security Directorate for this kind of server and service.

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, the access to the personal information is only granted through USER ID + 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 or an enquiry to the Commission, the personal information they give is kept in the CHAP database for three years. After that period, the information enabling the person to be identified is deleted. Information given by a legal entity complaining to the Commission is not deleted.

9. Accessing, checking, correcting or deleting your information

You have no direct access to the information stored. A person who wishes to verify the personal information stored about them by the controller of the processing, or who wishes to check, correct or delete such personal information, should write an email message to sg-plaintes@ec.europa.eu giving full details of their request.

10. Contact information

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-R-2), European Commission, B 1049 Brussels.

11. Recourse

Complaints about the processing of information in CHAP can be addressed to the European Data Protection Supervisor, Rue Wiertz 60 (MO 63), 1047 Brussels, Belgium.

3 attachments



Reply from Garda Bureau of Fraud Investigation 8-12-09.pdf

233K



Department of Environment International Review of Waste Management Policy and actual Legislation - 30-12-09.pdf

305K



An Economic Approach to Muncipal Waste management in Ireland - ESRI Feb 2010.pdf

906K
