



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Brussels, 24 April 2007.

SG(2007) D/335

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Dear Sirs,

With reference to your letter of 9 March 2007 concerning your client, Alpha Learning Ltd., I am pleased to inform you that the complaint has been registered under reference number 2007/4306 SG(2007) A/2389/2 (please quote this reference in any further correspondence). It should be noted that the assignment of an official reference number to the 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](mailto:SG-PLAINTES@ec.europa.eu).

Your client may opt for the confidential or non-confidential treatment of the complaint. Non-confidential treatment means that the Commission's services have permission to disclose your client's identity in any representations they make to the authorities of the Member State against which the complaint has been made. Failure by you or your client to notify us of your client's choice in this respect by means of the complaint form or by letter will be taken by the Commission services as an indication that your client has opted for confidential treatment. It should be borne in mind, however, that the disclosure of your client's identity by the Commission's services may in some cases be indispensable to the handling of the complaint.

Your client 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 client's interest also to make use of means of redress available at national level, which as a rule enable him/her to assert his/her rights more directly and more personally. As regards compensation, for example, only the national courts can award your client damages against the Member State concerned. Furthermore, since there is a time-limit on national means of redress, your client may lose his/her rights at national level unless he/she uses them quickly.

You are advised to read the annex, which describes important aspects of the 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 Treaties<sup>1</sup>, 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 compliance is attributable.

### **2. Admissibility of complaints**

Anyone may lodge a complaint with the Commission against a Member State about 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. Your client does not have to demonstrate a formal interest in bringing proceedings. Neither does your client have to prove that he/she is 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 file to be complete and accurate, particularly as regards the facts complained of in relation to the Member State in question, any steps which your client has already taken at any level and, as far as possible, the provisions of Community law which your client considers to have been infringed and any involvement of a Community funding scheme.

### **3. Stages of infringement proceedings**

Under infringement proceedings, a complaint may be handled in the following stages:

#### **3.1 Information gathering:**

In response to your client's complaint, it may be necessary to seek further information to determine the points of fact and of law concerning the case. Should the Commission contact the authorities of the Member State against which the complaint is made, it will not disclose your client's identity unless given express permission to do so. If necessary, your client 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 or not further action should be taken on the 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 conform within Community law within a specified period (normally two months).

The purpose of these formal contacts is to determine whether there is indeed an infringement of Community law and, where there is an infringement, to resolve the case at this stage without having to resort to the Court of Justice.

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<sup>1</sup> 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 are 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.

Rulings by the Court of Justice differ from those of the 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 judgement 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.

Anyone who considers a particular measure (law, regulation or administrative action) or practice to be incompatible with Community law, is invited, either prior to or in parallel with a 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 to use those national means of redress because of the advantages they may offer.

By using the means of redress available at national level your client should, as a rule, be able to assert his/her rights more directly and more personally than he/she 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 the Member State in question to repair the loss sustained by individuals as a result of the infringement of Community law attributable to it.

### **5. Standard administrative procedures**

The following administrative guarantees exist for the benefit of your client:

Having been registered with the Commission's Secretariat-General, your client's complaint has been assigned an official reference number (as set out in this acknowledgement), which should be quoted in any correspondence. However, the assignment of an official reference number to a complaint does not necessarily mean that an infringement procedure will be opened against the Member State in question.

If the Commission sees fit to make representations to the authorities of the Member State against which the complaint has been made, it will, in so doing, abide by your client's choice as to whether or not his/her identity may be disclosed. Failure by your client to indicate his/her choice will be taken as an indication that the complaint is to be treated confidentially.

The Commission strives to take decisions on the substance of complaints (opening of an infringement procedure or termination of proceedings) within twelve months of their registration with its Secretariat-General.

You will be notified in advance by the relevant department of any recommendation it intends to make to the Commission for the termination of the proceedings. You will similarly be kept informed of the progress of any infringement procedure.