

COMPLAINT

TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW

1. Surname and forename of complainant:
Instytut Spraw Obywatelskich (The Civil Affairs Institute)
2. Where appropriate, represented by:
3. Nationality:
4. Address or Registered Office: ul. Więckowskiego 33/127
90-734 Łódź
e-mail: iso@iso.edu.pl
5. Telephone/fax/e-mail address: tel./fax.: (042) 630 17 49, e-mail: iso@iso.edu.pl
6. Field and place(s) of activity: Instytut Spraw Obywatelskich (The Civil Affairs Institute) is a public benefit organization serving the public interest with representation in numerous spheres, including: environmental protection and sustainable transport.
7. Member State or public body alleged by the complainant not to have complied with Community law: The Republic of Poland
8. Fullest possible account of facts giving rise to complaint:

The Republic of Poland does not comply with the following European Union regulations:

- a) Obligation to monitor and control GMOs which have been released and placed on the market. According to article 4 of directive 2001/18/EC:
(1. Member States shall, in accordance with the precautionary principle, ensure that all appropriate measures are taken to avoid adverse effects on human health and the environment which might arise from the deliberate release or the placing on the market of GMOs. GMOs may only be deliberately released or placed on the market in conformity with part B or part C respectively.) Contrary to the European Union law, the government of the Republic of Poland does not require commercial GMO farms to:
 - Register
 - Inform the land owner of GMO cultivation, in case of leasehold
 - Create buffer zones
 - Inform neighbours of GMO cultivation
 - Take precautionary measures by separating GMO seeds from conventional seeds
 - Meet other conditions for coexistence with conventional crops.

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

- a) Articles 4 i 21 of directive 2001/18/EC
- b) Article 31 of directive 2001/18/EC obliging the European Commission and the member states to keep account of GMO crops. Member states shall establish a public record of locations where GMOs are released (according to part B of the directive), and a record of locations where GMOs are cultivated (according to part C of the directive), allowing monitoring of GMO's environmental impact.
- c) Articles 13 and 25 of regulation No. 1829/2003
- d) *Right of public access to information relating to GMO, Court of Justice ruling regarding case C – 552/07*

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

Letter from Bioekspert Sp. Z O.O. to the Ministry of Environment dated 23/04/2010 No. 347/2010 requesting the location of GMO crops in Poland – copy attached.

11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):

Letter from the Human Rights Defender Janusz Kochanowski to the Ministry of Environment dated 20/04/2009, RPO-606939-IV/09/MM, concerning the non-fulfillment of the legal obligation to appropriately label food products containing GMO, and the lack of control over GMO cultivation – copy attached.

15. Confidentiality (tick one box):

"I authorise the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

"I request the Commission not to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

16. Place, date and signature of complainant/representative:

(Explanatory note to appear on back of complaint form)

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, 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, if 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, whether by action or by 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 non-compliance is attributable.

Anyone may lodge a complaint with the Commission against a Member State about any measure (law, regulation or administrative action) or practice which they consider incompatible with a provision or a principle of Community 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 infringement complained of. To be admissible, a complaint has to relate to an infringement of Community law by a Member State. It should be borne in mind that the Commission's services may decide whether or not further action should be taken on a complaint in the light of the rules and priorities laid down by the Commission for opening and pursuing infringement procedures.

By using the means of redress available at national level, complainants should, as a rule, be able to assert their rights more directly and more personally (e.g. a court order to an administrative body, repeal of a national decision and/or damages) than they would following an infringement procedure successfully brought by the Commission which may take some time. Indeed, before referring a case to the Court of Justice, the Commission is obliged to hold a series of contacts with the Member State concerned to try to terminate the infringement.

Furthermore, any finding of an infringement by the Court of Justice has no impact on the rights of the complainant, since it does not serve to resolve individual cases. It merely obliges the Member State to comply with Community law. More specifically, any individual claims for damages would have to be brought by complainants before the national courts.

The following administrative guarantees exist for the benefit of the complainant:

(a) Once it has been registered with the Commission's Secretariat-General, any complaint found admissible will be assigned an official reference number. An acknowledgment bearing the reference number, which should be quoted in any correspondence, will immediately be sent to the complainant. 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.

(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 made by the complainant in Section 15 of this form.

(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) The complainant 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 the complainant informed of the course of any infringement procedure.