



REPORT ON THE EUROPEAN OMBUDSMAN'S INSPECTION MEETING

COMPLAINT: 1632/2018/EWM

Case title: The European Commission's refusal to grant access to documents relating to its infringement proceedings against the United Kingdom for the improper implementation of the EU Data Protection Directive 95/46/EC

Date: Thursday, 11 October 2018

Location: European Commission, Berlaymont, 04/A

Present

The European Ombudsman:

Fergal O' Regan, Head of Inquiry Unit 2

Elke Winter-Mes, Inquiry Unit 2

Tessa Harris Hess, Inquiry Unit 2

Una Kadunić, Inquiry Unit 2

The European Commission:

Four representatives of the Secretariat-General

Three representatives of Directorate-General for Justice and Consumers

Purpose of the inspection meeting

The purpose of the inspection was to obtain clarification on the status of the ongoing infringement procedure to enable the Ombudsman to decide which next steps to take in her inquiry into the complaint.

Introduction and procedural information

Prior to the inspection meeting, the Ombudsman's inquiry team had sent a non-exhaustive list of points for discussion to the Commission.

The inspection meeting took place at the Commission's premises on 11 October 2018 from 10:30 to 12:00.

The Ombudsman's inquiry team introduced themselves and presented the purpose of the meeting which concerns complaint 1632/2018/EWM on public access to documents produced by the UK and the Commission in the context of an infringement procedure concerning the UK's compliance with Directive 95/46¹. The Ombudsman's inquiry team also informed the Commission's representatives that the sensitive information exchanged and the documents received shall be subject to confidential treatment.

The Commission's representatives introduced themselves and noted that the Commission's views in relation to this request for access to documents had been presented in the confirmatory application and that therefore the Commission will not submit additional views at this stage of the procedure. The Commission's representatives also asked, by way of a general remark, whether draft inspection reports could be transmitted to the Commission in a timely manner so that participants would have the meeting results fresh in their minds. The Ombudsman participants agreed that delays in the transmission of draft reports should be avoided. Following that, the Commission's representatives addressed the Ombudsman's points and clarified the status of the ongoing infringement procedure.

Information exchanged

The Commission's action since 2011

The Commission's representatives explained the action undertaken recently. In 2011, the preparations for the proposal of a new General Data Protection Regulation (GDPR)² were on-going. In 2012, the proposal was introduced and negotiations were ongoing until adoption in April 2016. In the transition period May 2016 to May 2018, all Member States, including the UK, took part in the work of the Data Protection Expert Group to foster a common understanding of the new rules by all Member States and to ensure the proper application of EU law. In addition to this, bilateral meetings were held between the Commission and the Member States.

The Commission stated that the purpose of this work was to limit as much as possible further infringement procedures. In particular, the Commission stated that the dialogue with the UK consisted of cooperation in the work of the expert group, in which the UK was very active, as well as bilateral contacts as with other Member States.

The Commission stated that the subjects of discussions with the UK and other Member States were mainly legal principles such as lawfulness, transparency and data subject rights, including issues that are also related to ongoing infringement procedure.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31995L0046&from=en>.

² Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>.

Status of the infringement procedure

The Commission stated that most of the ten areas of concern originally raised were resolved, some of them recently in the context of the application of the GDPR. However, the infringement procedure is still open since one of the issues remains unresolved and also constitutes a concern under the GDPR.

Further action

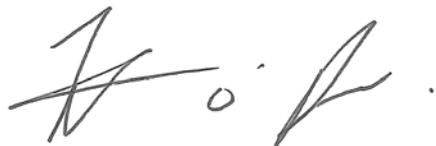
Since May 2018, when the GDPR came into force, the Commission has been analysing the national legislation of all Member States and its compliance with the GDPR. Once the Commission has a sufficient overview of national legislation across the EU, the Commission will aim to identify and group issues arising in the Member States' legislation regarding the compliance with the GDPR and take necessary steps to resolve possible concerns regarding the Member States' compliance with the GDPR. The UK's national legislation is also included in this assessment. The Commission therefore considers that new issues regarding the compliance of UK national legislation with the GDPR may arise and that they may be connected with the issues arising in the ongoing infringement procedure.

Furthermore, the Commission stated that the UK is, at this stage, treated like any other Member State. The withdrawal of the UK from the EU is not relevant at this stage in the context of the ongoing infringement procedure.

Conclusion of the inspection meeting

The Commission provided additional documents included in its infringements database and marked them as confidential.

Brussels, 11 October 2018



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