



Safeguarding, International and Immigration Group
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Mr Ian Rogers

Our Reference: 24517

request-132002-f0a5677f@whatdotheyknow.com

Date: 25 October 2012

Dear Mr Rogers,

Thank you for your e-mail of 3 October 2012, in which you ask for information regarding Directive 2004/38/EC on the free movement of EEA citizens. Your request has been handled as a request for information under the Freedom of Information Act 2000.

The Home Office does not hold the information which you have requested.

Your email says *"On 26 April the European Commission gave the UK two months in which to comply with European rules on the free movement of EEA citizens (Directive 2004/38/EC).....It is almost six months from when the Commission has requested the UK to comply with the Directive on free movement..."*

Your questions then ask what steps are being taken to implement the Commission's decision into the *Immigration (EEA) Regulations 2006* and what advice/information is being given to Border Control Officers, in light of the Commission's decision...

The UK is not yet under any obligation to amend the *Immigration (European Economic Area) Regulations 2006*. On 26th April the European Commission issued the UK with a 'Reasoned Opinion', which is the penultimate stage in the infraction process before a Member State may be referred to the Court of Justice of the European Union ('the ECJ') by the Commission. The Reasoned Opinion sets out the Commission's opinion and as the Commission itself has said, its position does not mean that the UK has breached provisions of Directive 2004/38/EC. Only the Courts can rule that there has been a violation of EU law and oblige a Member State to amend their implementation. This has not happened, and may not happen.

I have set out below some further information on the infraction proceedings which the European Commission can initiate if it considers that a Member State has either failed to implement European law fully, has incorrectly implemented it into national legislation or is not enforcing it correctly. This process ends in referral to the ECJ if the Commission considers that the issue has not been resolved. I hope this will be helpful.



Infraction proceedings

- The first stage is called an **Article 258 letter** in which the Commission informs a Member State that it considers that the Member State is not fully or correctly transposing an EU Directive. The Member State normally has two months to respond.
- If a Member State does not respond to an Article 258 letter or if the Commission does not accept the response then the Commission will issue a **Reasoned Opinion**. This will set out the Commission's views in more detail.
- If the Member State does not accept the Commission's points in the Reasoned Opinion, or if the Commission does not accept the Member State's response to the Reasoned Opinion and considers the Member State still to be in breach then it will refer the Member State to the ECJ. (The Member State does not have to comply at this stage; Member States are only legally required to change their implementation if they are referred to the ECJ and the ECJ rules against them).
- If the case is referred to the ECJ and the Court rules against the Member State then the Member State must take action to amend their implementation and comply or face financial penalties.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 23498/23696-700/23702. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
e-mail: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

Lyndon Pereira
Safeguarding, Immigration and International Group

