



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES
Goods in the Single Market and Enforcement
Free Movement of Goods

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Lilli Steingraeber
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Netherlands
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Subject: Chap(2020)01530 - Blockage of certain products at UK customs border – Pre-closure letter

Dear Ms Lilli,

I refer to your complaint of 21 April 2020 relating to certain products not being allowed through the United Kingdom customs/ border force, registered under number ‘CHAP(2020)01530’ on 2 June 2020.

The Commission services have completed the examination of your complaint. Based on the information provided, we are not planning to propose that the Commission initiates infringement proceedings for failure to comply with Union law by the United Kingdom or other Member States, for example Poland, which is also referenced in the complaint.

1. Subject of your complaint

In your complaint, you provide that the United Kingdom border force in some cases have prevented your products from reaching your customers in the United Kingdom. You outline that the UK authorities has confused your product with illicit substances and that this is the reason for the product not reaching the concerned customers.

In addition, you provide that you have been unable to get in contact with the relevant United Kingdom authorities to rectify this situation.

Moreover, you highlight that you have faced similar situations in other Member States, in particular in Poland, where customers supposedly have been wrongfully detained for receiving your product.

You argue that excluding your products from reaching the end-users in the concerned Member States go against relevant Single Market principles and thus infringes European Union law.

2. Assessment of your complaint

As your complaint refers mainly to the authorities in the United Kingdom, which is no longer an EU Member State, please note that in accordance with the Withdrawal Agreement concluded between the European Union and the United Kingdom, a transition period began on 1 February 2020, which is foreseen to last until 31 December 2020. During the transition period all EU laws and rules continues to apply in the UK.¹

Although it is not entirely clear from the complaint what type of products has been subject to the confiscation at UK customs or elsewhere in the EU, checking the company website, which is linked in the complaint form, it seems that these products are micro dosing substances intended for recreational use. In this regard, the Commission notes that such products are not harmonised under EU law through secondary EU legislation and thus should be assessed on the basis of the Treaty Functioning of the European Union (TFEU), particularly Articles 34 and 36, which enshrines the free movement of goods principle. Article 34 TFEU states that quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States. According to established case-law of the Court of Justice of the European Union, measures having equivalent effect to a quantitative restriction are considered "*all trading rules enacted by Member States, which are capable of hindering, directly or indirectly, actually or potentially, intra-EU trade*".² An exception to the principle may only be justified on the grounds of Article 36 TFEU or the mandatory requirements developed by the case-law of the Court, provided that the measure is proportionate.

From the information provided, however, the Commission services have not been able to identify any legislation in the United Kingdom, Poland or other Member States, which could explain why the relevant authorities decided to take such action described in the complaint.

As such, the situation described above does not result into a clear breach of EU law. However, it could appear to be a matter of incorrect application and interpretation of EU law by the United Kingdom or Polish authorities. Therefore, the complaint would be best addressed by SOLVIT, as the national SOLVIT centres may contact each other in order to better understand the prevailing situation and the legal basis it may have.

SOLVIT is an EU network of national administrations that resolves cross-border problems related to the EU's Single Market. The network enables EU Member States to work together — without recourse to legal proceedings and free of charge — and offer real solutions to problems caused by breaches of EU law by public authorities.³

Hence, on the basis of the information submitted so far, we will close your complaint in light of the principles set out in Commission Communication "better results through better application"⁴, except if you provide us with any new information that might be relevant for the re-assessment of your case within four weeks of receiving this letter.

¹ More information can be found on https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement_en.

² Case 8/74 Dassonville (1974) ECR 837, par.5.

³ More information can be found on www.solvit.eu.

⁴ Communication from the Commission — EU law: Better results through better application C/2016/8600, OJ C 18, 19.1.2017, p. 10–2

3. Conclusion

If you agree to have your complaint handled by SOLVIT, we can transfer it to this network on your behalf. We will not proceed with the transfer unless you provide us with your formal agreement to this end. You are therefore invited to send us the attached form duly completed and signed.

In the absence of the receipt of your agreement within **four weeks** of receiving this letter, we will have to proceed with closing your complaint on the grounds mentioned above, except if you provide us with any new information that might be relevant for the re-assessment of your case.

If you agree with the transfer of your complaint to SOLVIT, the case will be closed by the Commission and the responsible SOLVIT centre will contact you to inform you of the follow-up to your case.⁵

Yours sincerely,

(e-signed)
Hans Ingels
Head of Unit

⁵ Please note that the handling of your complaint by SOLVIT does not suspend any formal or administrative deadlines of national means of redress.