

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 17 September 2013

on the principles governing SOLVIT

(Text with EEA relevance)

(2013/461/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Article 26 of the TFEU defines the internal market as an area without internal borders in which the free movement of goods, persons, services and capital is ensured. Article 4, paragraph 3 of the TEU requires Member States to take any appropriate steps to comply fully with their obligations in accordance with Union law.
- (2) The internal market offers many opportunities to individuals who want to live and work in another Member State and to businesses that wish to expand their markets. While the internal market generally functions well, problems sometimes arise where public authorities do not respect Union law.
- (3) Following Commission Recommendation 2001/893/EC of 7 December 2001 on principles for using 'SOLVIT' – the Internal Market Problem Solving Network⁽¹⁾, SOLVIT was created as a network of centres set up by Member States within their own national administrations, as a fast and informal means of resolving problems individuals and businesses encounter when exercising their rights in the internal market.
- (4) Whilst SOLVIT is informal and pragmatic in nature, its set-up contributes to ensuring that solutions found are compliant with Union law. SOLVIT is based on a transparent problem-solving process involving two Member States. Whilst the Commission is not normally involved in resolving cases, it is in close contact with SOLVIT centres, offers regular legal training and, in some complex cases, provides informal advice. It also monitors SOLVIT case handling and outcomes via the online database and can intervene whenever it considers that solutions proposed by SOLVIT centres are not compliant with Union law. The aforementioned set-up not only contributes to the legality of outcomes in individual cases, but evaluation results indicate that the work of SOLVIT has also led to an overall improved compliance with Union law by national authorities.
- (5) SOLVIT has evolved significantly since its inception. It now handles ten times more cases than it did 10 years ago. It also handles a much wider variety of cases than originally foreseen. The overwhelming majority of cases are resolved successfully, within an average of nine weeks, leading to high satisfaction scores amongst those individuals and businesses that have used SOLVIT.
- (6) Whilst SOLVIT is a success, the increased scale of the service has amplified various challenges. An in-depth evaluation of the network carried out over 2010 indicates that not all SOLVIT centres are equally well resourced or positioned. The take-up of cases and the level of service offered also vary across the network. In addition, too few people and businesses find their way to SOLVIT.
- (7) Based on those findings, it is necessary to take measures to further reinforce SOLVIT and increase its visibility on and off line, as stressed in the Commission Staff Working Document 'Reinforcing effective problem-solving in the Single Market', in the Communication on Better Governance for the Single Market⁽²⁾ and in the EU Citizenship Report⁽³⁾. As a part of this exercise, Recommendation 2001/893/EC should be replaced by a new one. This new Recommendation aims to provide clarity on what SOLVIT should deliver, based on best practice. It sets out targets and standards for both Member States and the Commission to ensure that businesses and citizens receive effective assistance in those situations where Union law is not being respected. It also aims to guarantee that SOLVIT centres apply the same rules and deliver the same consistent type of service across the network.

⁽¹⁾ OJ L 331, 15.12.2001, p. 79.

⁽²⁾ COM(2012) 259 final.

⁽³⁾ COM(2013) 269 final.

- (8) In order to ensure a consistent interpretation of the mandate across the network, this Recommendation defines the types of cases that should be handled by SOLVIT. Recommendation 2001/893/EC stated that SOLVIT deals with cases of 'misapplication' of 'single market rules'. Defining the scope in this way has led to inconsistency. First it has been argued that the term misapplication implies that SOLVIT centres cannot deal with cases where national rules run counter to Union law (so called 'structural cases'), and second that SOLVIT can only act where the Union legislation in question has an internal market basis.
- (9) SOLVIT cases are now defined as all cross-border problems caused by a potential breach of Union law governing the internal market by a public authority, where and to the extent such problems are not subject to legal proceedings at either national or EU level.
- (10) The term 'breach' is used to specify that SOLVIT centres take on as a SOLVIT case all situations where public authorities do not respect Union law governing the internal market, regardless of the root cause of the problem. The overwhelming majority of cases handled by SOLVIT reflect situations wherein a public authority incorrectly applies Union law governing the internal market. However, SOLVIT centres have also shown to be able to offer effective help where structural problems arise. Although structural cases present only a small part of SOLVIT's overall case load, the take-up of such cases by SOLVIT is important to ensure that such problems do not pass unnoticed. It offers the best guarantee that the structural problems are effectively tackled at the appropriate level.
- (11) This Recommendation confirms that SOLVIT deals with cases presenting a cross-border problem with a public authority. The cross-border criterion ensures that a SOLVIT case is handled by SOLVIT centres in two Member States, which guarantees transparency and quality of outcomes. The public authority criterion is linked to the fact that SOLVIT is part of the national administration and acts on an informal basis only.
- (12) This Recommendation also seeks to clarify the level of service individuals and businesses can expect from SOLVIT. It indicates how applicants should be informed and what minimum assistance they should be offered. It also clarifies the various procedural steps and deadlines to be respected when handling a SOLVIT case together with the follow-up to be given when a case cannot be resolved.
- (13) Further, this Recommendation sets out minimum standards SOLVIT centres should comply with, in terms of organisation, legal expertise, and relations with other networks. It also clarifies the role of the Commission within the SOLVIT network.
- (14) The Commission has recently rebuilt the SOLVIT online database as a stand-alone module in the Internal Market Information system. Given this technical integration, the rules set out in Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the 'IMI Regulation')⁽¹⁾ on the processing of personal data and of confidential information also apply to SOLVIT procedures. This Recommendation further specifies certain aspects of the processing of personal data in SOLVIT, in accordance with the IMI Regulation.
- (15) This Recommendation does not aim to specify how the Commission deals with complaints it receives directly and does not prejudice in any manner the Commission's role as the guardian of the Treaties. It also does not aim to specify the role of EU Pilot and the national EU Pilot coordinators. These elements are addressed in specific guidelines, which are regularly updated.

HAS ADOPTED THIS RECOMMENDATION:

I. OBJECTIVE AND DEFINITIONS

A. Objective

This Recommendation sets out principles governing the functioning of SOLVIT. SOLVIT aims to deliver fast, effective and informal solutions to problems individuals and businesses encounter when their EU rights in the internal market are being denied by public authorities. It contributes to a better functioning single market by fostering and promoting better compliance with Union law. To achieve this purpose, national SOLVIT centres should work together on the basis of the principles set out in this Recommendation.

B. Definitions

For the purposes of this Recommendation the following definitions apply:

1. 'Applicant': a natural or legal person encountering a cross-border problem and submitting it to SOLVIT directly or through an intermediary, or an organisation submitting a concrete problem on behalf of its member(s);
2. 'Cross-border problem': a problem an applicant in one Member State encounters involving a potential breach of EU law governing the internal market by a public authority in another Member State; this includes problems caused to applicants by their own public administrations, after having exercised their free movement rights or when trying to do so;

⁽¹⁾ OJ L 316, 14.11.2012, p. 1.

3. 'Union law governing the internal market': any Union legislation, rules or principles related to the functioning of the internal market within the meaning of Article 26(2) TFEU. This includes rules that do not aim to regulate the internal market as such but have an impact on the free movement of goods, services, persons or capital between Member States;
 4. 'Public authority': any part of the public administration of a Member State, at national, regional or local level, or any body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and that has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals;
 5. 'Legal proceedings': formal proceedings for the resolution of a dispute before a judicial or quasi-judicial body. This excludes administrative appeals against the same authority that has caused the problem;
 6. 'Structural problem': a breach caused by a national rule running counter to Union law;
 7. 'Home Centre': the SOLVIT centre in the Member State that has the closest links with the applicant based on for example nationality, residence, establishment or the place where the applicant acquired the rights at stake;
 8. 'Lead Centre': the SOLVIT centre of the Member State in which the alleged breach of Union law governing the internal market has occurred;
 9. 'SOLVIT database': the online application created within the Internal Market Information System (IMI) to support the handling of SOLVIT cases.
2. Applicants should receive within one week a first reaction to their problem, including an indication whether or not SOLVIT could take on their case, if such indication is possible on the basis of the information provided. If necessary, they should at the same time be invited to submit any documentation needed to process their file. Within one month after this first assessment and provided their file is complete, applicants should receive a confirmation of whether their case is accepted by the Lead centre and therefore opened as a SOLVIT case.
 3. When a problem cannot be taken up as a SOLVIT case, applicants should be given reasons and be advised of another possible course of action that might help them overcome the problem, including signposting or transferring the problem, where possible, to another relevant information or problem-solving network or to the relevant national competent authority.
 4. Within 10 weeks from the date of opening of the case, the applicant should receive a solution to its problem, which may include a clarification of the applicable Union law. In exceptional circumstances and in particular where a solution is close at hand or where it concerns a structural problem, the case can be kept open beyond the deadline, subject to informing the applicant, up to a maximum of 10 weeks.
 5. Applicants should be informed about the informal nature of SOLVIT and the procedures and timeframes that apply. This information should include information about other possible means of redress, a warning that handling a case in SOLVIT does not put on hold national deadlines for appeal, and that solutions offered by SOLVIT are informal and cannot be appealed. Applicants should also be informed that SOLVIT is free of charge. Applicants should be regularly informed about the state of their case.
 6. Whereas SOLVIT proceedings are of an informal nature, it does not preclude an applicant from launching formal proceedings at national level, which will result in closure of the SOLVIT case.
 7. When a successful outcome has been found, the applicant should be advised on actions to take in order to benefit from the proposed solution.
 8. As soon as it becomes apparent that a case will not be resolved within SOLVIT, the case should be closed and the applicant should be informed without delay. In such case, SOLVIT should also advise the applicant on other possible ways of redress at national or Union level. When advising complainants to file a complaint with the Commission, SOLVIT centres should encourage them to refer to prior proceedings in SOLVIT (by giving a reference number and shortly summarising these proceedings). Unresolved cases should be systematically reported to the Commission through the database.

II. MANDATE OF SOLVIT

The SOLVIT network deals with cross-border problems caused by a potential breach of Union law governing the internal market by a public authority, where and to the extent such problems are not subject to legal proceedings at either national or Union level. It contributes to a better functioning single market by fostering and promoting better compliance with Union law.

III. SERVICE OFFERED BY SOLVIT

Member States should ensure that applicants can benefit from the following minimum service:

1. SOLVIT centres should be available by telephone or e-mail, and should provide a prompt reply to communications directed to them.

9. After closing the case, applicants should be invited to give their feedback on how the case has been handled by SOLVIT.

IV. ORGANISATION OF SOLVIT CENTRES

1. Each Member State should have a SOLVIT centre.
2. To secure that SOLVIT centres can fulfil the tasks set out in this Recommendation, Member States should ensure that SOLVIT centres:
 - (a) have sufficient and well-trained staff with an operational knowledge of more than one Union language where needed to ensure fast and transparent communication with other SOLVIT centres;
 - (b) have adequate legal expertise or relevant experience with the application of Union law in order to be able to make independent legal assessments of cases;
 - (c) are situated in the part of the national administration with sufficient powers of coordination to be able to ensure the correct implementation of Union law within their administration;
 - (d) are able to establish a network within the national administration in order to have access to the specific legal expertise and support needed in order to find practical solutions to cases.

V. SOLVIT PROCEDURE

A. Principles governing the handling of SOLVIT cases

1. All SOLVIT cases should be handled by two SOLVIT centres, the Home centre and the Lead centre.
2. The Home and Lead centres should cooperate in an open and transparent manner with a view to finding fast and effective solutions for applicants.
3. The Home and Lead centres should agree what language they use to communicate with each other, bearing in mind the aim of resolving the problems through informal contacts as quickly and efficiently as possible and ensuring transparency and reporting.
4. All problems received, the assessments done by the SOLVIT centres involved in the case, steps taken and outcomes proposed should be registered in the SOLVIT database in a clear and comprehensive manner. Where a case presents structural problems, it should be flagged as such in the database so as to enable the Commission to systematically monitor such cases.
5. All proposed solutions need to be always in full conformity with Union law.
6. SOLVIT centres should abide by the detailed case handling rules set out in SOLVIT's case handling manual, which the

Commission will regularly review in cooperation with the SOLVIT centres.

B. Home centre

1. The Home centre should register all legal problems received, whether or not they qualify as a SOLVIT case.
2. Once the Home centre has accepted to take up a complaint as a SOLVIT case, it should constitute a complete file and carry out a comprehensive legal analysis of the problem before submitting it to the Lead centre.
3. When receiving a proposal for a solution from the Lead centre, including a clarification of the applicable Union law, it should check that the solution is in conformity with Union law.
4. The Home centre should provide the applicant with timely and appropriate information during the relevant steps of the procedure.

C. Lead centre

1. The Lead centre should confirm acceptance of a case within one week after it is submitted by the Home centre.
2. The Lead centre should aim at finding solutions for applicants, including clarification of the applicable Union law and should regularly inform the Home centre about how it is progressing.
3. Where the problem submitted by the applicant is a structural problem, the Lead centre should assess as soon as possible whether the problem can be resolved through the SOLVIT procedure. If it considers that this is not possible, it should close the case as unresolved and inform the relevant national authorities responsible for the correct implementation of Union law in that Member State, so as to secure that the breach of Union law is effectively put to an end. The Commission should also be informed through the database.

VI. ROLE OF THE COMMISSION

1. The Commission assists and supports the functioning of SOLVIT by:
 - (a) organising regular training sessions and network events in cooperation with national SOLVIT centres;
 - (b) drafting and updating the SOLVIT case-handling manual in cooperation with national SOLVIT centres;
 - (c) providing case-handling assistance at the request of SOLVIT centres. In complex cases this may include providing informal legal advice. The Commission services should reply to requests for informal legal advice within two weeks. Such advice is informal only and cannot be considered as binding on the Commission;

- (d) managing and maintaining the SOLVIT database and a public interface and providing specific training and materials to facilitate its use by the SOLVIT centres;
 - (e) monitoring the quality and performance of SOLVIT centres and the cases they handle. In cases presenting a structural problem, the Commission will closely monitor the case and, where needed, lend advice and assistance to ensure that the structural problem is put to an end. The Commission will consider whether unresolved structural problems require further follow-up;
 - (f) securing appropriate communication between SOLVIT, CHAP ⁽¹⁾ and EU Pilot ⁽²⁾ in order to ensure an appropriate follow up of unresolved SOLVIT cases, to monitor structural cases and to avoid duplication of the handling of complaints;
 - (g) informing SOLVIT centres, at their request, about the follow-up given by the Commission to unresolved cases, where a complaint has been lodged with the Commission.
2. Where appropriate, the Commission may refer complaints it has received to SOLVIT with a view to finding a rapid and informal solution, subject to the consent of the complainant.

VII. QUALITY CONTROL AND REPORTING

1. SOLVIT centres should conduct regular quality checks of cases they handle as Home centre and as Lead centre as detailed in the case handling manual.
2. The Commission services will conduct regular overall quality checks of all cases and signal possible problems to the SOLVIT centres concerned, which should take appropriate action to redress the shortcomings identified.
3. The Commission will regularly report on the quality and performance of SOLVIT. It will also report on the type of problems SOLVIT has received and cases handled within SOLVIT, with a view to defining trends and identifying remaining problems in the internal market. Within this reporting framework, the Commission will separately report on structural cases.

VIII. VISIBILITY OF THE NETWORK

1. The Commission will promote the knowledge and use of SOLVIT with European stakeholder organisations and Union institutions and will improve the accessibility and presence of SOLVIT via on-line means.

2. Member States should ensure that user-friendly information and easy access to the SOLVIT services is available, in particular on all relevant websites of the public administration.
3. Member States should also undertake activities to raise awareness about SOLVIT amongst its stakeholders. The Commission will provide assistance to such activities.

IX. COOPERATION WITH OTHER NETWORKS AND CONTACT POINTS

1. To ensure that applicants get effective help, SOLVIT centres should cooperate with other European and national information and help networks, such as Your Europe, Europe Direct, Your Europe Advice, the Enterprise Europe Network, European Consumer Centres, EURES, Fin-net and European Network of Ombudsmen. SOLVIT centres should also establish good working relationships with the respective national members of the Administrative Commission for the Coordination of Social Security, to enable an effective handling of social security cases.
2. SOLVIT centres should be in regular contact and cooperate closely with their national EU Pilot Contact Points, in order to secure a proper exchange of information on cases and complaints received.
3. The Commission will facilitate such cooperation by, among others, organising joint network events and establishing technical means of connection, with such networks and contact points as indicated in point 1 ⁽³⁾.

X. PROTECTION OF PERSONAL DATA AND CONFIDENTIALITY

The processing of personal data for the purposes of this Recommendation, including, in particular, transparency requirements and the rights of data subjects, is governed by the IMI Regulation. In line with that Regulation, the following should apply:

1. Applicants should be able to submit their complaints to SOLVIT through a public interface linked to the Internal Market Information System, put at their disposal by the Commission. Applicants do not have access to the SOLVIT database.
2. Home and Lead centres should have access to the SOLVIT database and be able to deal with the case they are involved in through this database. This includes access to personal data of the applicant.

⁽¹⁾ Complaint handling/Accueil des plaignants – Commission complaint registration system.

⁽²⁾ COM(2007) 502 final.

⁽³⁾ At the time of the adoption of this Recommendation the technical means are established with Your Europe Advice and are being developed with Europe Direct.

3. Other SOLVIT centres not involved in a particular case and the Commission should have read-only access to anonymous information on the case.
 - (b) offer informal legal advice in accordance with Section VI;
 - (c) decide on the possible follow-up to cases already handled by SOLVIT;
 - (d) resolve technical issues affecting the SOLVIT database.
4. The Home centre should normally disclose the applicant's identity to the Lead centre to facilitate problem solving. The applicant should be informed of this at the start of the process and offered the opportunity to object, in which case the applicant's identity should not be disclosed.
5. The information provided by the applicant should be used by the Lead centre and the public authorities concerned by the complaint only for the purpose of trying to resolve the case. Officials dealing with the case shall process the personal data only for the purposes for which they were transmitted. Appropriate steps should also be taken to safeguard commercially sensitive information not including personal data.
6. A case can be transferred to another problem-solving network or organisation only with consent of the applicant.
7. Staff of the Commission should only have access to personal data of applicants where this is necessary in order to:
 - (a) avoid parallel treatment of the same problem submitted to the Commission or another Union institution by means of another procedure;
8. Personal data related to SOLVIT cases should be blocked in the Internal Market Information System 18 months after the closure of a SOLVIT case. Anonymised descriptions of SOLVIT cases should remain in the SOLVIT database and may be used for statistical, reporting and policy development purposes.

XI. OTHER PROVISIONS

This Recommendation replaces Recommendation 2001/893/EC. All references to Recommendation 2001/893/EC should be understood as references to this Recommendation.

XII. DATE OF APPLICATION AND ADDRESSEES

This Recommendation applies from 1 October 2013

This Recommendation is addressed to the Member States.

Done at Brussels, 17 September 2013.

For the Commission
Michel BARNIER
Member of the Commission
