

Workshop

Responding to Infringement Procedures: A practical guide

Introduction

Target group:

This practical and interactive workshop targets employees in the Slovak public administration, who are involved in the transposition of EU law. It also aims at Slovak state officials and legal counsellors answering / preparing state defences in all stages of the infringement procedure, irrespective of the level of government of origin of the case (i.e. national, regional and local level).

Description:

As 'Guardian of the Treaties', one of the tasks entrusted to the European Commission by Article 17 of the Treaty on European Union is to oversee the application of EU law. The infringement procedure – Articles 258 to 260 of the Treaty on the Functioning of the European Union – is one of the enforcement mechanisms which the Commission can apply against a Member State whenever the Commission is of the opinion that the Member State is in breach of its obligations under European Union law. Divided into phases – pre-litigation (characterised by technical communication and negotiation between the Commission and the Member State in question) and litigation (jurisdictional phase, in front of the Court) – the purpose of this procedure is to give Member States the opportunity to voluntarily remedy the alleged breach of EU law and/or explain their position to the Commission. In case of persistence of the breach, the Commission will bring the Member State before the Court.

Method:

The training course follows an interactive methodology, combining presentations, workshops and discussions in plenary plus case studies. All sessions include question and answer periods and the possibility to exchange experiences.

Objectives:

This workshop provides a practical guide to the infringement procedure, analysing in detail the role of the Commission and the position of the Member States (in this case, the Slovak Republic). This analysis will allow participants to understand the capacities and prerogatives of both actors, determining the different respective administrative and procedural strategies, both of which could be used throughout the procedure. The objective of this seminar is to equip Slovak officials with the right methodology to improve the capacity and efficiency of their administrative action in response to the Commission's investigations on alleged infringements and to avoid litigation. In the potential scenario of the initiation of the jurisdictional phase of the procedure, the seminar will help Slovak legal counsellors to select the right defence strategy and arguments to improve their position during the litigation. Finally, and in case of a final condemnatory ruling after the procedure, this seminar provides tips on how to comply with the judicial decision as swiftly as possible and hence avoid a new procedure, this time under Article 260 TFEU.

Expert trainer:

Juan Diego Ramírez-Cárdenas Díaz, Senior Lecturer, European Centre for Judges and Lawyers, EIPA Luxembourg (LU)

Programme

Date and venue:

10 - 11 November 2015

Training premises of AINova, Prostredná 64, Svätý Jur (www.ainova.sk/sk/kontakt/)

DAY 1

08.30 **Registration of participants**

09.00 **Welcome and introduction to the seminar**

09.15 **Introducing the infringement procedure:**

- Concept and purpose;
- Main features;
- Parties in the procedure.

10.15 **Stages in the procedure: the pre-litigation phase (part I)**

EU Pilot

- System of operation;
- Evaluation of its efficiency.

Pre-258 letters:

- Contents of the letter;
- Obligation for the Member State to respond - how to reply;

Letter of formal notice:

- Contents of the letter of formal notice;
- Obligation for the Member State to respond - type and content of reply;
- The possible outcomes.

11.15 Coffee break

11.45 **Stages in the procedure: the pre-litigation phase (part II)**

Reasoned opinion

- Contents of the reasoned opinion;
- Obligation of the Member State to conform itself to the reasoned opinion;
- The possible outcomes:

Plenary discussion:

"Can the Member State still at the stage of reasoned opinion avoid a court case and how?"

12.30 Lunch

14.00 **Stages in the procedure: judicial proceedings**

- Litigation before the Court;
- Prerogatives and obligations of the Commission;
- The decision of the Court and its effect on the defendant Member State.

Plenary discussion:

"What can a Member State do to improve its situation / position during the litigation?"

15.30 Coffee break

16.00 **Workshop: Possible defences of the Member States**

In an interactive way, participants will have the possibility to analyse different potential defences Member States may resort to and to compare with the Court of Justice's reaction to those defences.

- Parallel application;
- Minimal default to fulfil the obligations;
- Opportunity;
- "Time overpassed";
- Modification of the rules at the origin of infringement;
- Shortness of the time-limit set out to transpose EU law;
- Reciprocity;
- Force majeure;
- Unlawfulness (illegality of the measure);
- Elimination of infringement after the expiry of the time limit set out in the reasoned opinion; etc.

17.00 End of Day 1

DAY 2

09.00 **Sanctions for failure to comply with the judgment**

- Article 260 TFEU;
- Lump sum or penalty payment;
- Court's discretion;
- Criteria to establish the amount of the sanction;
- Innovations introduced by the Treaty of Lisbon.

10.30 Coffee break

11.00 **Case Studies on the Infringement Procedure: discussion and resolution**

In this session, participants will have the opportunity to work with different case studies that deal with all phases of the procedure presented during the seminar and to analyse the Court of Justice's decision in each case.

12.30 **Conclusions and Evaluation**

13.00 **END OF THE SEMINAR**