

# A Practical Guide to the EU Infringement Procedure

Luxembourg, 8-9 June 2017



### What is the course about?

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 that can be applied by the Commission 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.

### How will the course help you?

This seminar will provide you with a practical guide to the infringement procedure, analysing in detail the role of the Commission and the position of the Member States. This analysis will allow you to understand the capacities and prerogatives of both actors, determining the different respective administrative and procedural strategies, which the two can resort to throughout the procedure.

In the particular case of national officials, the seminar will equip you with the right methodology to improve the capacity and quality of your national administration responses to Commission investigations on alleged infringements. In the potential scenario of the initiation of the jurisdictional phase of the procedure, the seminar will also be of help to you to select the right defence strategy to improve your State's position during the litigation. Finally, and in case of a final condemnatory ruling after the procedure, this seminar will provide you with 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.

### Who will benefit the most?

This practical and interactive seminar targets all public sector employees, who are in charge of or involved in the transposition of EU law and state officials and legal counsellors answering / preparing the defences of the State in all stages of the infringement procedure, irrespective of the level of government or origin of the case (i.e. national, regional and local level). The programme is also relevant to private practicing lawyers, consultants and other interested actors from the private sector, who wish to update their knowledge of the infringement procedure and obtain a comprehensive overview.

# Programme

THURSDAY 8 JUNE 2017

08.30 **Registration of participants**

09.00 **Welcome and introduction to the seminar**

*Juan Diego Ramírez-Cárdenas Díaz*, Chairman of the conference, Senior Lecturer, European Centre for Judges and Lawyers, EIPA Luxembourg

09.15 **The infringement procedure – a commented introduction**

- Nature the procedure and its relation with other judicial and administrative procedures;
- Concept of infringement: which EU law obligations can be breached and how?
- Identity of the parties in the procedure;
- Which is the role of the Commission throughout the procedure and what are its prerogatives and obligations?

*Minas Konstantinidis*, Member of the Legal Service, European Commission, Brussels (BE)

10.00 **Dealing with the Commission during the pre-litigation phase (1)**

#### EU Pilot

- Purpose;
- Types of files and queries introduced into the system;
- System of operation;
- Obligations of the Member State
- Analysis of performance indicators

#### Letter of formal notice:

- Contents of the letter of formal notice;
- Obligation for the Member State to respond:
  - How to respond to the letter of formal notice?
  - Type and content of reply;
- Member States' potential answers and their possible outcomes:
  - Classification of the complaint and closure of the file
  - Institution of the proceedings

*Minas Konstantinidis*

10.45 Coffee break

11.15 **Dealing with the Commission during the pre-litigation phase (2)**

#### Reasoned opinion

- Contents and formal requirements of the reasoned opinion;
- Responding efficiently and effectively to the reasoned opinion – some tips
- Assessing the conformity of the measures taken by the Member States to comply with the reasoned opinion;

- Member States' conduct and their possible outcomes:
  - Classification of the of the complaint and closure of the file
  - The case is brought before the Court of Justice

#### Plenary discussion: Questions that may be raised at this stage:

1. Is there a difference between cases concerning formal implementation on the one hand and a complaint based on content of the national measure?
2. In which instances can a Member State allege that the time period prescribed by Commission's reasoned opinion to present allegations is insufficient?
3. What is the value of the time period marked in the reasoned opinion for the determination of the infringement?
4. What is the legal value of the measures that reasoned opinion may propose the Member States to adopt to remedy the infringement?
5. Can the Member State still at this stage avoid a court case and how?

*Minas Konstantinidis*

12.45 Lunch

14.30 **The litigation phase (1): practical guide on the procedure before the Court**

- The Commission brings the matter before the Court of Justice: examining the admissibility of the Commission's application
- The proceedings per se:
  - Written phase: the application, the defence, the reply and the rejoinder;
  - The submission of the judicial documents, the service of documents and the time-limits;
  - Measures of organisation of procedure and preparatory inquiries;
  - The oral procedure and the arguments of the parties;
  - Conduct of proceedings, simultaneous interpretation, duration and practical advice.
- Prerogatives and obligations (burden of the proof et al.) of the Commission at the litigation phase.

*N.N.*

16.00 Coffee break

# Programme

## 16.30 **The litigation phase (2): procedural tips and strategies to improve the Member State's position before the Court**

1. What happens in the court proceedings (what documents to file, how is the oral presentation prepared)? Who represents the State?
2. What can a Member State do to improve its situation during the litigation?
3. What options does the Member State have before the Court, including whether the Member State still can remedy the "damage" done with a view to make the Commission withdraw the case?

4. Who pays what court costs?  
*N.N.*

17.30 Networking reception

## FRIDAY 9 JUNE 2017

### 09.00 **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;
- Execution of an EU obligation "in equivalent practice"

*Ágnes Kertész, Attaché for Legal Affairs, Permanent Representation of Hungary, Brussels (HU) (tbc)*  
*Miquel Sampol Pucurull, Abogado del Estado-Jefe, Abogacía del Estado ante el TJUE (Head of Unit, Legal Service before the European Court of Justice), Secretariat of State for the European Union, Ministry of Foreign Affairs and Cooperation, Madrid (ES)*

11.00 Coffee break

### 11.30 **The decision of the Court and its effects**

- Declaratory character of the decisions delivered by the Court of Justice;
- Legal force of the judgement and obligations for Member States:
  - Duty to take all necessary measures to put an end to the infringement;
  - Duty to repeal the national measures contrary to EU law.

#### **Plenary discussion: Questions that may be raised at this stage:**

- Tips and strategies to ensure full execution of the judgement and avoid an article 260 TFEU procedure: Who? What and How?
- Are there any time limits to comply with the judgement?
- Can a condemnatory judgement be the basis for State liability?

*Ágnes Kertész & Miquel Sampol Pucurull*

13.00 Lunch

### 14.30 **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 sanctions: Commission's guidelines and the approach of the Court;
- Enforcement of the article 268 TFEU judgement. The role of the Commission and potential litigation

*Juan Diego Ramírez-Cárdenas Díaz*

15.45 Coffee break

### 16.00 **Practical exercise: the infringement procedure in 10 case studies**

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.

*Juan Diego Ramírez-Cárdenas Díaz*

17.30 **Conclusions and evaluation**

18.00 **End of the seminar**

# General Information

## Seminar venue

EIPA Luxembourg, Building of the Chambre des Métiers  
Master Room (4th Floor)  
2 Circuit de la Foire Internationale  
1347 Luxembourg  
Tel.: +352 426 230-1  
[www.eipa.eu](http://www.eipa.eu)

## Hotel reservations

The European Institute of Public Administration has negotiated prices with a number of selected hotels. All rates are including breakfast and tourist tax. You can find the complete list of hotels available [here](#).

## Kirchberg

- **Hotel Novotel Kirchberg**, at the rate of €155  
Tel.: +352 49 00 11 44 44  
E-mail: H1930-RE2@accor.com  
<http://businesstravel.accorhotels.com>  
(Client code: SC000002048 – Access Code: IN281LU654)
- **Hotel Melia**, at the rate of €165  
Tel.: +352 27 33 32 02  
E-mail: reservations.melia.luxembourg@solmelia.com  
[www.melia-luxembourg.com](http://www.melia-luxembourg.com)
- **Hotel D'Coque**, rates between €60 and €120  
Tel.: +352 43 60 60 306  
E-mail: reception@coque.lu, [www.coque.lu](http://www.coque.lu)

## City Centre

- **Hotel Français**, at the rate of €132  
Tel.: +352 47 45 34  
E-mail: [info@hotelfrancais.lu](mailto:info@hotelfrancais.lu)  
[www.hotelfrancais.lu](http://www.hotelfrancais.lu) (Reservation code: EIPA)
- **Hotel Parc Plaza**, at the rate of €138  
**Hotel Parc Bellevue**, at the rate of €99  
Tel: +352 44 23 23 – 23 23  
(Reservation code: EIPA)  
E-mail : [reservation@goeres-group.com](mailto:reservation@goeres-group.com)  
[www.goeres-group.com](http://www.goeres-group.com)

Should you wish to make use of this possibility, please phone or fax the reservation department of the hotel on one of the above-mentioned numbers and mention the relevant reservation code. Payment is to be made directly and personally to the hotel on checking out.

## Local transport

Luxembourg City has several bus stations in the City Centre (Royal, Hamilius, Monterey, Forum Royal, Badanstalt, Charly's Gare). Bus lines 1 and 16, with departure every ten minutes, leave from dock Hamilius 1, go in direction 'Kirchberg', and stop at Kirchberg, stop John F. Kennedy which is within 5 minutes walking distance from the Chambre des Métiers building, where EIPA Luxembourg's premises are located. In addition bus line 16 links Findel Airport (dock 1) to the city centre and the station area.

## Meals

Should you require a special menu (e.g. vegetarian, diabetic), please inform the Programme Organiser so that this can be arranged.

## Participation

EIPA members' fee\*: €900  
Regular fee: €1000

The participation fee includes documentation, two lunches, one reception and refreshments. Accommodation and travel costs are at the expense of the participants or their administration.

\* EIPA members' fee is available to all civil servants working for one of EIPA's member countries (i.e. AT, BE, BG, CY, CZ, DE, DK, ES, FI, FR, GR, HU, IE, IT, LT, LU, MT, NL, NO, PL, PT, SE, UK), and civil servants working for an EU institution, body or agency.

## Early registration discount

On the regular fee of this seminar, EIPA Luxembourg offers a €50 discount for all registrations received before **27 April 2017**.

Note that reductions cannot be accumulated. For more information <http://seminars.eipa.eu> (Training courses - Discount policy)

## Registration

Kindly complete the online registration form which can be found on EIPA's website <http://seminars.eipa.eu> before **26 May 2017**.

Your name and address will be part of EIPA's database for our mailing purpose only. If you do not want to be included in our mailing database, please tick the box on the registration form.

## Confirmation

Confirmation of registration will be forwarded to participants on receipt of the completed registration form.

## Payment

Prior payment is a condition for participation. Please indicate the method of payment on the registration form. For cancellations received within 15 days before the activity begins, we will have to charge an administration fee of €150 unless a replacement participant is found.

## Cancellation policy

EIPA reserves the right to cancel the seminar up to two weeks before the starting date. EIPA accepts no responsibility for any costs incurred (travel, hotel, etc.). For more information: <http://seminars.eipa.eu> (Training courses - Cancellation policy).

[www.eipa.eu](http://www.eipa.eu)

