

Workshop on Internal Market at the Ministry of Economy and Construction of the Slovak Republic on 28/9/2010

Problems and disputes solving connected with application of the single market rules
Presentation of the SOLVIT Centre Slovakia on its activities - presentation summary
*(Peter Rohal, The Office of the Government of SR, Section of the
Governmental Legislation - Law Approximation Department)*

1. General about SOLVIT

SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both citizens and businesses. They are part of the national administration and are committed to providing real solutions to problems within ten weeks. Using SOLVIT is free of charge. SOLVIT deals with cross-border problems between a business or a citizen on the one hand and a national public authority on the other, where there is possible misapplication of EU law.

When is a case submitted to SOLVIT, home SOLVIT Centre will first check the details of application to make sure that it does indeed concern the misapplication of Internal Market rules and that all the necessary information has been made available. It will then enter case into an on-line database, and it will be forwarded automatically to the SOLVIT Centre in the other Member State where the problem has occurred - "Lead" SOLVIT Centre.

The Lead SOLVIT Centre should confirm within a week whether or not it will take on your case. This will largely depend on whether it considers that the case is well-founded and whether there is a good chance that it can be resolved pragmatically. If the solution to a problem requires the repeal of a national rule – rather than simply applying it correctly – this sometimes requires formal legal action, though SOLVIT can sometimes help persuade a member State to waive the offending rule pending its abolition. The target deadline for finding a solution to the problem is 10 weeks.

SOLVIT works much more quickly than making a formal complaint. If a problem goes unresolved, or complainer consider that the proposed solution is unacceptable, you can still pursue legal action through a national court or lodge a formal complaint with the European Commission.

2. Statistics

Overall case load from year 2004:

Home - 173 Lead - 63 Solved - 144 Unsolved - 8

Case load increases from 2004:

Home: 2 - 43 (till 09/2010)

Lead: 7 - 8 (till 09/2010, e.g. 17 in year 2008)

3. Case examples

Case number 51962/08/SK:

The Slovakian company was placing on the Hungarian market prepacket products – alcoholic beverages in the amount of 50ml or bigger than 2 000 ml. There was a Directive 2007/45/EC related to these products which must be transposed into national law until 11/04/2009. According to the client there was already new law adopted in Hungary (decree 13/2008 (VIII.8) NFGM-FVM egyutttes rendelet) which transposed this directive and it should come into force in April 2009. The client complains about this regulation since it did not transpose the directive well. According to this regulation, starting in April 2009, it will be possible to place on the Hungarian market only those prepacked products which are in amount laid down in the annex, i.e. in a case of spirits 9 nominal quantities of contents of prepackages between 100ml and 2 000 ml. Those that are in the amount below 100ml or over 2000 ml will not be possible to place there. According to the article 3 of the directive „Member States shall ensure that the products listed in section 2 of the Annex and put up in prepackages in the intervals listed in section 1 of the Annex are placed on the market only if they are prepacked in the nominal quantities listed in section 1 of the Annex.“ Therefore we think that only those prepackages which are in intervals listed in the annex must be placed on the market in the nominal quantities listed there. Those that are over or under these limits are not regulated. For this reason asked SOLVIT Hungary to check the adopted decree and contact the relevant ministry to bring this problem to its attention and follow needed legislative change.

Solution:

The hungarian ministry has issued the draft amendment of the Decree transposing Directive 2007/45/EC. The hungarian ministry had noticed the fault earlier, so it had started the process to amend it some weeks ago. The amended text is in line with the Directive, it expressly allows beverages to be packaged in any nominal quantities outside the intervals.

Case number 91824/10/SK:

A Slovakian company was from Oct. 2007 until April 2008 delivering a service related to construction of a building in Cluj, Romania. In relation to this service they were buying goods in Romania and were charged VAT on these goods. As they are a foreign taxable entrepreneur do not have duty to register for VAT in Romania, the company was then invoicing the final product/service to their Romanian client without VAT. Based on Art. 170 (b) and 171 (1) of the Directive 2006/112/EC on the common VAT system our client is entitled to returning the paid VAT. On 20.3.2008 the company requested returning the VAT for the year 2007. On 19.11.2008 client recieved a denying decision from Romanian Ministry of Finance. They lodged an appeal against the decision in December 2008. There has been no outcome to this appeal procedure until today. On 30.6.2009 they requested returning VAT for the year 2008. There has been no decision regarding their claim for 2008 VAT return until present. As per Art. 7 (4) of the Directive 79/1072/EEC on common system of returning the VAT to taxable persons non-residents of the Member State, the authority is obliged to decide within 6 months from lodging a request and to reimburse the due sum of VAT (in case of a positive decision) by the end of this period. Thus we believed the Romanian authority violated the right of our client to the return of the VAT paid in Romania and to a dully reasoned decision delivered in period of 6 months, which is guaranteed by the above cited EU law and also recognized by the Romanian national law itself.

Solution:

The Romanian competent authority has issued the decision for the reimbursement of VAT.

Case number 39523/07/SK:

A Slovakian citizen imported a vehicle Fiat Punto from Czech republic. The vehicle does not have a certificate of conformity, but at the time of buying it was registered lawfully in CR with the protocol on technical and emission controls. The registration certificate was harmonized according to the directive 1999/37/EC as well. In spite of this the client's effort to register vehicle before a slovak state authority, responsible for vehicle registrations in the Slovak republic, was unsuccessful. The client was required to submit a technical and emission control documentation, and also confirmation that the individually imported vehicle is identical with the type of the vehicle accredited in the Slovak republic.

Solution:

The Act No. 725/2004 on conditions of the motor vehicles road traffic was changed in order to satisfy all the conditions laid down in the Commission Interpretative Communication on the procedure for the registration of motor vehicles originating in another member state. The new act is already in force and it cancel all legal barriers of the registration of the cars originating in another member state.