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Transposition of EU directives into national laws

Under Article 288 of the Treaty on the Functioning of the European Union (TFEU), an EU directive is one of the legal acts that can be adopted by EU institutions (Article 288 paragraph 1 TFEU: 'To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.')

Article 288 paragraph 3 TFEU describes the nature of a directive: 'a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'.

The requirement to achieve a specific result, while at the same time leaving Member States the choice of form and method, implies that a directive must be transposed into the national law of each EU Member State. That means that each Member State must adopt national laws which put the provisions of the directive into its national legal system. In this way Member States maintain certain flexibility as to the way the requirements of the directive are included in its national legal system. Each EU directive indicates how much time Member States have for incorporating provisions of the directive into their national legal systems. Once a Member State transposes a directive, it has to communicate its national transposition measures to the Commission.

If a Member State does not transpose an EU directive into the national law within a given time limit and does not communicate such a national measure to the Commission, the Commission opens an infringement procedure (a so called 'non-communication case').

The Commission can also open an infringement procedure when it identifies that the directive has not been transposed into the national system correctly (a so called 'non-conformity case') or, even in case a directive has been transposed correctly, when it is not properly applied (implemented) on the ground (a so called 'bad application case'). An example of a bad application case would be a situation when a national law, in compliance with an EU directive, requires the issue of a permit but a person or a company carries out activities without asking for such a permit.

Since the entry into force of the Lisbon Treaty, the Commission has the possibility to be more severe in relation to non-communication cases than to non-conformity or bad application cases. In case of a failure by a Member State to communicate national measures transposing a directive, it may ask the Court to impose on a Member State a lump sum or a penalty payment (note that this is a possibility for the Commission and not an obligation). It has no such possibility in relation to other types of cases.

This lump sum or penalty payment should not be confused with a lump sum or a penalty payment that is proposed by the Commission when a Member State has not taken the necessary measures to comply with the judgment of the Court (in this case the Court must have already pronounced a judgment on the failure of a Member State to fulfill an obligation under the Treaty and the Member State must have failed to comply with this judgment). In these cases the Commission always proposes a lump sum or a penalty payment and the Court imposes it if it finds that the Member State did not comply with its judgment.

Relevant Articles of the TFEU

- **Article 258 TFEU**

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

- **Article 260(2) TFEU**

If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

- **Article 260(3) TFEU**

When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfill its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

More information can be found on:

- http://ec.europa.eu/dgs/secretariat_general/index_en.htm (website of the Secretariat General of the European Commission)
- http://ec.europa.eu/community_law/infringements/infringements_en.htm (infringements of EU law)
- http://ec.europa.eu/community_law/directives/directives_en.htm (directive and 'national implementing measures')
- http://ec.europa.eu/community_law/your_rights/your_rights_en.htm (the ways for EU citizens to request that EU law is applied)
- <http://ec.europa.eu/environment/legal/law/statistics.htm> (statistics on environmental infringements, including e.g. explanations on types of environmental infringement cases)

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