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# Implementation of EU law in the Czech legal order – methods and problems

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## I. Institutions to ensure the implementation



In the EU:

30 000 written legal documents, case law

*From the beginning of the 90 's, especially after the Association Agreement with the EC:*

**NEED TO CREATE AN INSTITUTIONAL SYSTEM  
to ensure that the obligation to implement EU law  
will be met**

## I. Institutions to ensure the implementation



### ➤ Responsibility for implementation:

**Ministries (other central bodies of the state service): expert units for EU law and for law-making**

### ➤ Coordination, methodical leadership, control mechanisms:

**Department for Compatibility of the Czech Office of the Government**

### ➤ Legal base - Decisions of the Government:

Methodical Instructions (Gov. dec. No. 1304/2005)

Legislative Rules of the Government (Gov. dec. No. 188/ 1998)

## I. Institutions to ensure the implementation



### **Department for Compatibility:**

- Monitors the legal impacts of draft EU legal acts
- Allocates the responsible ministries to the draft EU legal acts and EU legal acts in force
- Works out opinions on compatibility of the Czech legal proposals with EU law (about 800 opinions a year)
  - during the comment procedure between ministries and other bodies
  - when the proposal is submitted to the Government
- Administers the Information System for Approximation of Laws (ISAP)
- Carries out notifications of directives to the Commission database

## II. Introduction to the Czech legal system



### **Sources of law in the implementation process**

- **Statutes** – legal acts approved by the Parliament
- **Government regulations** – legal acts approved by the Government, cannot exceed the scope of the Statute
- **Decrees of the Ministries** – legal acts intended to implement statutes, can be issued only if the statute contains an authorizing provision which has to be clear and specify the limits
- **No specific system for implementation of EU law**

## II. Introduction to the Czech legal system



### **Main rules for choosing an appropriate legal act for implementation:**

- **Constitution** – Art. 4 (1) of the Charter of Fundamental Rights and Freedoms: *“Obligations may be imposed only by statute and within its limit and only if the fundamental rights and freedoms of the individual are respected.”*
  - Art. 79 (1) of the Constitution: *„Ministries and other administrative agencies and their jurisdiction may be established only by statute.”.*
- **Statutes should regulate important legal relationships**
- **Not to extend the Czech legal order, not to regulate rights and duties which already exist in the Czech legal order - attempt to implement into the existing legislation, into the existing systems**
- EU legal acts are regularly implemented into more than just one existing Czech legal act (mostly a statute(s) and decrees)

### III. General problems concerning the implementation of EU laws



#### **EU law: huge amount of legislation**

#### **:compromise between 27 Member States**

- exceptions, specialities of certain Member States – can be objectively necessary
- BUT: often badly arranged, too complicated and technical

Eg. medicinal products: 30 EU legal acts

working time: general directive, specific directives in the field of transport, ECJ judgements – not consistent

Recast, Codified versions: cannot solve all the problems

Legal aspects are underestimated in the process of negotiation, CZ experts do not always sufficiently analyse the impacts of EU proposals on the Czech legal order (rivalry between EU law units and law-making units)

- Insufficient analysis in advance – problems later

## IV. Concrete problems



### Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation

General principles: Community legislative acts shall be drafted clearly, simply and precisely, provisions of acts shall be concise and their content should be as homogenous as possible, the drafting shall be appropriate to the type of act concerned

BUT: agriculture: decisions addressed to all the MS, obligations for private bodies – implement them like directives)

- 1) Terminology, scope
- 2) References to other EU legal acts
- 3) Amendments of directives by regulations
- 4) Commitology
- 5) Language problems
- 6) Case law

## V. Terminology, scope



- **EU terminology**: cross-border elements – does not cover purely internal situations, cannot be fully consistent with national terminology

BUT: often inconsistent even on the level of EU law

- examples: establishment, residence

Interinstitutional agreement – General principles,  
sec.6: *„The terminology used in a given act shall be consistent both internally and with acts already in force, especially in the same field. Identical concepts shall be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language.“*

## V. Terminology, scope



- **Scope:** sometimes not very precise
  - examples:
    - Civil aviation - regulation No. 3922/91 covers helicopters or rescue service ?, Directive 2006/21/EC on the management of waste from extractive industries – relation to radioactive waste only in recital 10 of the preamble

Interinstitutional agreement – General principles, sec. 13: *„Where appropriate, an article shall be included at the beginning of the enacting terms to define the subject matter and scope of the act.“*

## VI. References to other EU legal acts



- Too many references
- Interinstitutional agreement – General principles, sec. 16 (minimize references, if used – precise, no serial references)
- References to acts which have already been repealed
  - eg. sec. 2 (1) of annex to directive 2005/47/EC refers to directive 2001/14/EC which has been repealed by directive 2004/49/EC
- Regulations referring to directives:
  - individuals have to know directives which are addressed to Member States - Eg. regulation (EC) No. 338/97 – trade with protected animals, regulation (EC) No. 1907/2006 - chemical substances)
  - if regulations refer to directives which obtain facultative provisions : not clear what should be taken as a base - eg. regulation (EC) No. 2006/2004 - consumers

## VII. Amendments of directives by regulations

- Transfer of legal arrangement from directives to regulations (regulations providing for the same as directives which they repeal at the same time) – acceptable (agriculture)
- Amendments of directives by regulations: problematic
  - Amendments of entire (compact/undivided) parts – it is possible to repeal whole parts of the transposing Czech legislation, refer to the directly applicable regulations – Example: Commission regulation No. 213/2008 amending directives 2004/17/EC and 2004/18/EC (tenders)
  - Other amendments – necessary to copy regulations – Example: regulation No. 2004/21 amends directive 92/100/EEC – changes the definition of “animal”, repeals a paragraph, changes words in certain sentences, etc.
    - ECJ case law: copying of regulations is not allowed

## VIII. Commitology and the Czech legislation



- Implementing measures: should only be of a supplementary character, should not regulate essential elements
- Does not always satisfy these conditions: Eg. Art. 2 (1) directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community - definition of plants can be specified (extended) by implementing measures; regulation No. 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States - secret implementing measures not open to public – they provide for the obligation of MS to create unified certification authorities and national checking units.
  - Often not sure what will be the form of the anticipated implementing measure
- Short time to implement these measures

## VIII. Commitology and the Czech legislation



- Position of the Czech legislation:
  - Normally necessary to create an authorizing provision in the statute while implementing the basic EU act – can be tricky to do that so much in advance
  - If the EU implementing measures provide for rights and obligations (essential provisions): necessary to amend the statute
- **PROBLEM TO ACT QUICKLY** (general problem)

## IX. Language problems



- 23 language versions:
  - different expressions in different language versions
  - commitology – necessity of fast translations into the Czech language in specialized fields (names of chemical substances): high number of mistakes – problems for subsequent implementation

## X. Case law



- Source of EU law
- Interprets EU law often in a way that was not anticipated by the MS
- Extends the scope, impacts of legal relationships

Problematic esp. where it substantially changes some term or where it does not specify clear limits or where it is not clear if it sets up general principles

- Examples: working time, social advantages (2004/38/EC), tax case law (based on the right of establishment, free movement of capital, etc.)

## XI. Conclusion



- Implementation of EU law: necessary to create a well functioning system because of the amount of EU legislation and relatively strict rules for legal drafting
- Stress should be put on the negotiation phase – not to underestimate legal aspects both by the Member States and the EU institutions
- Legal drafting should get better:
  - Simplify EU legislation
  - Keep the rules for legal drafting
    - ✦ Try to unify the terminology, specify the scope
    - ✦ Not use too many references
    - ✦ Not amend directives by regulations
    - ✦ Use comitology just for technical and not essential cases
    - ✦ Try to help Member States to deal with extensive case law



**Thank you for your attention.**