

Policy Department C
Citizens Rights and Constitutional Affairs



**COMPARATIVE STUDY
ON THE TRANSPOSITION OF EC LAW
IN THE MEMBER STATES**

LEGAL AFFAIRS



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Directorate-General Internal Policies
Policy Department C
Citizens Rights and Constitutional Affairs

COMPARATIVE STUDY ON THE TRANSPOSITION OF EC LAW IN THE MEMBER STATES

INTERNAL STUDY

IN CO-OPERATION WITH THE ECPRD

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Executive summary

Each year the European Commission draws up a Report on the monitoring of the application of Community law, in response to requests made by the European Parliament (resolution of 9 February 1983) and the Member States (point 2 of Declaration No 19 annexed to the Treaty signed at Maastricht on 7 February 1992). The report also responds to the requests expressed by the European Council or the Council in relation to specific areas of activity.

On the basis of this yearly report, the European Parliament establishes an initiative report in its capacity of assuming the political control on the action of the Commission.

By adopting the report of Mrs Frassoni¹ MEP on the 21st and 22nd Annual reports of the European Commission on the application of Community law (years 2003 and 2004)², the European Parliament notably emphasised the necessity of a better transposition of EU directives in the Member States national laws.

Within this framework, the European Parliament called for an increased co-operation between national parliaments and the European Parliament to "*promote and reinforce an effective control of European issues at national level*". It further underlined that "***national parliaments have an essential role to play in the monitoring of the application of Community law, because they allow to reinforce the democratic legitimacy of the Union and to make it closer to citizens***".

When preparing the report on the 23rd Annual report of the European Commission on the application of Community law (year 2005)³, the Committee of the European Parliament on Legal Affairs needed to gather some technical information on the transposition of EU directives in national laws. Therefore, Policy department C in charge of the study support to Legal Affairs Committee has been put in charge of a study on the comparison between the various legal techniques used in the Member States to transpose EC law in the national legal order. This study refers to an ECPRD⁴ survey, which took place from 16th January to 2007, on the basis of the following questionnaire, which 24 national parliaments answered.

¹ 2005/2150(INI) - A6-0089/2006 of 24/03/2006

² COM(2004)839 and COM(2005)570

³ COM(2006)416

⁴

Questionnaire submitted to the 27 national parliaments (ECPRD survey)

"How is the transposition of EC directives organised in your Member State:

- 1.** Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

- 2.** What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

- 3.** Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

- 4.** Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

- 5.** Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

- 6.** Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

- 7.** Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

- 8.** Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

- 9.** Can you think of any major, typical or notable difficulty in the transposition process in your Member State?"

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1.

Comparative analysis⁵

⁵ Sections in this analysis do not fully match with questions of the survey

1.1 Respective roles of national parliaments and governments in the legislative transposition of EC law

According to a constant case-law of the Court of Justice, EC law may only be transposed valuably in national law by means of "*national provisions of a binding nature which have the same legal force as those which must be amended*"⁶. "*This is not the case of "mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity*"⁷. Also may not constitute a valuable implementation of EC law the publication of a Ministerial notice leaving unchanged the legislation in force and thereby "*leading to an ambiguous legal situation giving rise to legal uncertainty*"⁸.

EC Directives setting up new legislative measures, or revising them, should thus be transposed by equivalent legislative measures at the national level.

Legislative measures for transposing EC law in the national legal order are mainly subject to two major decision-making processes: either transposition laws are based on a standard legislative procedure, which is mainly based on a government's proposal adopted by the parliament, or the transposition process may also be delegated to the national government.

In **Belgium, Denmark and Sweden**, EC directives in the social field may also be transposed by collective agreements between social partners (pl. refer to section 1.5).

As a result of our enquiry, in 12 Member States the national parliament makes use of a delegation of its transposition competence to the government: **Denmark, Germany, Estonia, Spain, France, Italy, Ireland, Poland, Portugal, Romania and the United Kingdom**.

The delegation of transposition duties to the government, which is also in charge of the overall coordination, seems to be based on the assumption that European directives are mainly technical, so that their transposition can be better achieved by technical departments of Ministries, which were also in charge of the negotiations in the Council's working parties. An increased speed of the procedure may also be a justification for the concentration of the transposition process in the hands of the executive power.

The transposition of EC law may be delegated to the government either generally or on a case-by-case basis.

In **Denmark**, the Parliament may delegate the power to adopt specific rules to the government (the competent minister), who will then act by ministerial orders. The delegation of power to the government is **not limited in time** and the delegation may extend to a later modification brought to the transposed directive by a new one, which may be immediately transposed by ministerial orders without a new delegation of powers: if another directive later on falls within that delegation, the new directive will be transposed only by ministerial orders.

⁶ Judgment of the Court of 15 October 1986, C-168/85, Commission / Italy, ECR 1986, p. 2945, point 13; Judgment of the Court of 2 December 1986, C-239/85, Commission / Belgium, ECR, p. 3645; Judgment of the Court of 3 mars 1988, C-116/86, Commission / Italy, ECR, p. 1323; Judgment of the Court of 17 November 1992, C-235/91, Commission / Ireland, ECR, p. I-5917, points 9-10; Judgment of the Court of 9 March 2000, Commission / Italy, C-358/98, ECR, pI-1255, point 17.

⁷ *id.*

⁸ Judgment of the Court of 13 July 1988, C-169/87, Commission / France, ECR 1988, p. 4093, point 11

In **Germany**, the parliament has to specifically authorise the government to issue a regulation, by an act in parliament which defines the content, subject and scope of the delegation. This authorisation is **not limited in time**.

In **Estonia** also, the delegation of the transposition process to the government requires an individual delegation from the national parliament to the government. This system of specific delegation also prevails in **Portugal**, where it depends largely of the matters concerned, i.e. whether they fall or not in the competences of government in national law.

The delegation for the government to issue legislative transposition measures is also **limited in time** in **France** and is often used when facing delays in transposing directives.

In **Italy**, the yearly Community Act⁹ may also authorize the government to transpose EC law by way of administrative measures or regulations.

On the contrary, in **Spain**, a delegation of the transposition process to the government is very rare - although technically possible, and **transposition is usually done by the parliament**

A more original system of delegation in full to the government can be found in **Ireland**, where the **whole transposition process has been delegated to the government** by the *European Communities Act 1972* (and its successors), which enabled a Minister to make regulations for the purpose of transposing EC law. Under the 1972 Act, regulations adopted by the government on this basis were supposed to be confirmed by the parliament.

This system of confirmation proved to be inefficient and has been replaced in the **1973 Act** by a **system of annulment: Ministerial regulations were given a permanent statutory effect subject that they have not been annulled y the parliament within one year** on the recommendation of the Joint Committee on the Secondary Legislation of the European Communities, which has been replaced in the 1993 Act by the Joint committee on European Affairs.

In **Romania**, the delegation given by the parliament to the government for the purpose of adopting transposition measures by way of decisions and ordinances is subject to an enabling law, which defines the field and the date for issuing ordinances. In Romania also, **the enabling law may request that ordinances adopted by the government be submitted to the parliament for approval** in the conditions of the regular legislative procedure and before the expiry of the enabling law.

In the **United Kingdom the vast majority of EC legislation is enacted by Statutory Instrument** under Section 2(2) of the *European Communities Act 1972*. This Section confers authority on ministers, Government departments or Her Majesty in Council to make, with certain exceptions, subordinate legislation "*for the purpose of implementing any Community obligation of the United Kingdom*". Subordinate legislation made under this section can repeal or amend existing legislation if this is incompatible with EC law.

⁹ see below

1.2 National implementing measures and specific transposing acts in federal or decentralised Member States

National implementing measures

The transposition of EC law uses the same kind of implementing measures, as for legislation adopted under the sphere of competence of national law.

Beyond the act adopted in parliament, or the governmental regulation when the transposing measures is delegated to the government, the transposition is also achieved by governmental decrees, ministerial or administrative decisions and public bodies measures, in function of the level of the legal norms necessary to the transposition, according to constitutional provisions and to the nature of the existing national legal provisions to be adapted.

Specific transposition procedures in federal or decentralised Member States

In **federal or decentralized Member States**, the shared character of competences in the transposition of EC law has often been mentioned as a source of delays and distortion in the application of Community law. The Court of Justice has for long underlined that if "*each Member State is free to delegate powers to its domestic authorities as it considers fit and to implement directives by means of measures adopted by regional or local authorities, that division of powers does not however release it from the obligation to ensure that the provisions of the directive are properly implemented in national law*"¹⁰.

Some federal or decentralised countries have adopted specific procedures to overcome this potential source of non-compliance.

In **Austria**, temporary legislation may be used to counterpart the possible inaction of federal provinces (*Länder*) in their transposition duties. The legislative bodies of the Austrian Parliament can adopt provisional legislative measures valid for the *Länder*, if their legislative bodies (provincial diets) fail to adopt these legislative measures in due time. Indeed, when according to the Austrian Constitution the legal matter to be regulated falls within their competence, and when **the *Länder* fail to transpose the European Act in due time, the competence of transposition passes on to the Austrian Federation**. The act of transposition of the Federation will become invalid as soon as the *Länder* have finalised their transposition.

In **Italy**, the central government also owns some **deputizing powers when facing the inaction of Regions and Autonomous Provinces**. In this case, the Community Act ensures that Regions and Autonomous Provinces comply with their obligations under the EC Treaty by enacting provisions guaranteeing that the central government will legislate by exercising its deputizing powers in the event that the Regions are non-compliant.

¹⁰ Judgment of the Court of 25 May 1982, Commission / The Netherlands, C-96/81, ECR, p. 1791, point 12 et C-97/81, ECR, p. 1819, point 12; see also, Judgment of 14 January 1988, Commission / Belgium, Joined cases 227, 228, 229 and 230/85, ECR 1988, p. 1

In special cases, such as judgments and rulings handed down by the Court of Justice, the Minister for Community Policies may also submit measures to the Central / Regional Governments Conference for the approval of urgent measures, further to a specific procedure. This is also accompanied by the powers vested in the Prime Minister or the Minister for Relations with Parliament to request both Houses to fast-track these measures for their rapid approval.

In **Belgium**, further to art. 169 of the Constitution, the Federal Government has a “*substitution right*”. After a condemnation of Belgium by the Court of Justice for non-transposition of an EC directive, the Belgian federal government may exercise its *substitution right* and transpose the directive in place of the federate entities concerned.

In practice, this *substitution right* has not yet been applied, for reasons that could be identified as follows:

- the *substitution right* is a relatively recent rule and it applies only after a first ECJ judgement;
- only a part of the EC directives has to be transposed by the federate entities in relation with their respective fields of competence;
- the *substitution* requires the adoption of a parliamentary Act with a *special majority* i.e. a majority in each linguistic group + a majority of 2/3 in the Assembly as a whole;
- a linguistic group may be reluctant to “*condemn*” its own community.

1.3 Individual or global transposition

Each directive may be transposed in one national legal instrument, but it may also occur that, in consideration of its material content, the same directive requires the modification of more than one national instrument for its transposition.

On the contrary, more than one directive may be transposed in national law by a single legislative instrument in consideration of their related subject either in EC law or in national law, for instance when the implementation of the said directives requires the modification of the same national law, when these directives regulates the same issue or fall in the same policy area.

Stricto sensu, the wording “*Global transposition*” refers to the transposition of various directives in one single legislative instrument, without any necessary link between the subjects of the transposed directives, except their common time of transposition. This technique aims at avoiding a legal gap in the transposition process by insuring that all directives which need to be transposed in a given deadline will be formally integrated in national law.

This technique has been used in **Greece** and **Italy**.

In **Greece**, *Law 1338/1983 on the implementation of Community law*, which remains in force and is still being implemented, has been used by the Greek legislator to transpose Community law into Greek legislation. It is a framework law, which provides general guidelines to the administration.

Apart from specific authorisations for presidential decrees or ministerial decisions, Law 1338/83 allows the Greek legislator to adopt regulatory instruments in order to:

- **Take all necessary complementary measures** for the implementation of secondary legislation, such as the establishment of new bodies and posts, the determination of competences and administrative procedures and the enactment of administrative penalties;
- **Establish criminal penalties**, provided that the enabling provision allows for it, or provided that a penalty clause is contained in the law including the enabling provision;
- **Establish punishable misdemeanours** under the Penal Code where necessary for the implementation of Community acts in cases where the infringement in question does not constitute a criminal offence under existing Greek legislation [this being possible given that the penalties are established by law];
- **Amend or abolish, by means of appropriate regulatory acts, the provisions of the existing legislation** that are contrary to the provisions of primary and secondary law [Article 3(2), as amended by Article 65 of Law 1892/90 (A 101)].

In **Italy**, the implementation of EC law is governed by **Law of 4th February 2005, n. 11 enacting "General provisions governing Italy's participation in the European Union's legislative process and the procedures for complying with Community obligations"**, which repealed and replaced Law 9th March 1989, n.86 better known as the "La Pergola Act"¹¹ .

Community directives are transposed into the Italian legal system primarily by the Community Act (an ordinary law), which is the main instrument used to implement community legislation, specifying the timing and the manner for transposing directives.

Law 4th February 2005, n. 11 also established a new system to guarantee the necessary promptness in complying with obligations that are so urgent that they cannot wait for the annual Community Act.

On the basis of the acts issued by Community institutions and after ascertaining the conformity of Italian legislation with Community law, in conjunction with the government departments concerned and in compliance with the guidelines issued by the Parliament and the observations of the Regional governments, the Minister for Community Policies drafts a Bill containing "*Provisions for compliance with the obligations stemming from Italy's membership of the European Communities*" (better known as the "*Community Bill*").

This Bill is laid before Parliament by 31st January each year. It contains the government's report to Parliament on the **state of conformity** between Italian law and Community law, any **infringement proceedings against Italy**, and the **case-law of the European Court of Justice**.

¹¹ see www.politichecomunitarie.it

This Bill also provides for:

- A **list of directives** implemented or awaiting implementation through administrative channels, and those implemented by Regulation;
- The **reasons for any failure to transpose** directives when the transposition deadline has already expired or is about to expire;
- A list of all the **normative instruments by which the Regions or the Autonomous Provinces have implemented directives** regarding matters falling within their spheres of competence.

The Community Act guarantees that the Italian legislation complies with Community law by:

- Amending **current legislation** in contrast with Community obligations, and any instruments implementing Community directives subject to infringement procedures;
- Enacting provisions directly **implementing Community law**, also under delegated powers vested in the government, or which authorise the government to implement them, whether by administrative means or by Regulation;
- Enacting provisions setting out the fundamental principles for the **implementation of Community acts by the Regions and the Autonomous Provinces** in matters falling within their sphere of legislative competence;
- Enacting provisions guaranteeing that central government will legislate by exercising its **deputising powers in the event that the Regions are non-compliant**.

1.4 Transposition by reference and other specific transposition methods

Transposition by reference means that the national transposing measure makes reference to the EC directive, without reproducing its content in any further provision in national law.

The method of implementation by reference has been developed in view of improving the transposition record in some Member States but, according to our survey, it seems now to be less used.

Other similar practices of reference in national law are also considered in this section.

Compatibility with EC law

The reproduction of directives' provisions in national law is not regarded as compulsory by the Court of Justice, which ruled on a constant basis that "*the transposition of a directive into domestic law does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the directive, be adequate for the purpose provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts*"¹².

In a later case, the Court also added a criteria of **transparency**: "*the need to ensure that Community law is fully applied requires Member States not only to bring their legislation into conformity with Community law but also to do so by adopting rules of law capable of creating a situation which is sufficiently precise, clear and transparent to allow individuals to know the full extent of their rights and rely on them before the national courts*"¹³.

These criteria are of course of an utmost importance, when considering this technique of transposition by reference.

Practice in the Member States

Transposition by reference is allowed in **Czech** law, possible in **Germany** and also used in **The Netherlands**. It is an exception in **Cyprus** law.

Transposition by reference does also exist in **Slovenia** but is mainly used for the transposition of technical annexes and is excluded when the directive transposed establishes rights and obligations of natural or legal persons in national law.

It has been used once in **Spain** with Royal Decree-Law 1/1997, of January 31st, in relation to the technical specifications of the Directive 95/47/CE, but it has not been used again and is highly unlikely to be used in the future.

The possibility to use this technique of transposition is under examination by the *Conseil d'Etat* in **France**; it has recently been accepted for the annexes of directives for the purpose of adapting to technical progress.

¹² Judgment of 28 Feb. 1991, Commission v Germany, C-131/88 (Groundwater), ECR 1991, p. 825

¹³ Judgment of 18 January 2001, Commission v Italy, C-162/99, ECR 2001, p. 541, point 22; also see Case C-360/87 Commission / Italy [1991] ECR I-791, paragraph 12; Case C-220/94 Commission / Luxembourg [1995] ECR I-1589, paragraph 10; Case Commission / Germany, C-361/88 et C-59/89, ECR, p. I-2567 et I-2607; Case of 1st October, 1991, Commission / France, C-13/90, ECR, p. I-4327

Transposition by reference may be used in **Latvia** on special occasions when all of the following criteria are met:

- The **directive is published** in the EU Official Journal or its special issue;
- The norm of the directive is available in **Latvian**;
- The directive leaves **no room of appreciation** by the Member State;
- The **directive is precise and unambiguous**, it comprises clear formulations and unconditional norms (e.g., technical drawings, a list of objects or chemicals);
- The terminology of the directive corresponds with **terminology used in Latvian legal acts**;
- The **reference** to the directive has to be **correct, precise and actual**;
- It is **not allowed to implement several directives by a multiple reference** in the regulations of The Cabinet of Ministers in such a manner that these regulations comprise a reference to one directive, and the respective directive makes reference to another directive or other norms.

Similar national practices

In **Austria**, reference can be made in the recitals of the transposing act to other legal instruments, containing transposition measures of the directive concerned.

Reference is allowed to another legal instrument in **Poland**, if it has been published.

1.5 The role of civil society in the transposition process

In the vast majority of Member States, representatives of the civil society are consulted in the preparation of implementation measures i.e. experts, representatives of sectors concerned, NGOs, and social partners.

Among them, social partners are the most regularly consulted (17 Member States).

Moreover, in **Belgium, Denmark** and **Sweden**, EC law may be implemented by a collective agreement between social partners.

In **Belgium**, the transposition of EC law in the field of labour or social law itself can be done by the social partners -i.e. representatives of workers trade unions and employers associations-gathered in the National Labour Council. The agreement between social partners, which is called "*collective work agreement*", is later enforced by a Royal Decree to give the agreement a legal force even outside the negotiating partners. For instance, this procedure has been used for the transposition of Directive on the European Works Council¹⁴.

In **Denmark** and in **Sweden** also, provisions from EC directives, which relate to matters traditionally ruled at the national level by collective agreements, are transposed by social partners.

In **Germany**, the consultation of social partners is only on an informal basis. On the contrary, in **Estonia**, social partners and NGOs are consulted both in the negotiation and in the transposition phases.

Such consultations of social partners do not exist in **Romania** and **Slovakia**.

1.6 Reporting on the transposition process

European Affairs are among the areas, in which the national parliaments exercise their political control on their government. To this end, the Member of government in charge of European Affairs, or responsible for the area of competence concerned, usually makes report to the parliamentary assembly in a regular meeting or, more often, before a standing committee specialised in EU Affairs. The scrutiny of EU affairs may entail very different practices, starting from the simple exchange of information to a real policy debate in the national parliament, leading to the adoption of binding positions on the government for the negotiations in the EU Council of Ministers.

The scrutiny of EU affairs seems to be less developed in the area of the transposition of EU law.

Regular governmental reports on the implementation of EC law

In **Belgium**, the State Secretary for European affairs comes, at regular intervals, for a hearing with the members of the Advisory Committee on European affairs about the state of transposition of European directives into Belgian law. The Belgian government is also obliged to submit to the House of Representatives an annual report on the execution and the application of the European treaties.

In other countries, the government must submit to the national parliament a regular **report on the implementation of EU legislation** in national law.

¹⁴ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees OJ L 254, 30.9.1994, p. 64–72

In **Latvia**, the Ministry of Justice submits an informative report to the Cabinet of Ministers showing how Latvia as the EU member state meets the commitments of the EEC Treaty three times a year. These informative reports also comprise information on the directives, which will be implemented in the future, as well as legal act proposals, which will be used to transpose these directives. The informative reports are sent to the Parliament. Representatives of the Ministry of Justice also take part in the sittings of the European Affairs Committee, providing with information on the prepared legal act proposals, which are necessary to ensure the implementation of the EU legal acts on time.

In **Lithuania**, a similar report is made by the government every six months. It includes a list of legal acts transposing directives for spring and autumn sessions of the Parliament.

In **Estonia**, the State Chancellery keeps an electronic record on the directives, the implementation acts needed with their deadlines. The State Chancellery makes regular reports on the basis of this database to the Government and the Parliament. These reports include **information about delayed transposition measures and possible problems**, also information about likely **infringement cases**. It also includes 12 months forward-looking review in order to improve the planning of the preparation of transposition measures.

In **Italy**, by 31 January each year, the government must submit an annual report to Parliament on Italy's participation in the European Union's legislative process, illustrating past activities and looking ahead to **what the government intends to do during the course of the current year**. As with the Community Bill (see point 1.3), the report is examined by all standing Committees according to their respective competence, by the EU Policies Committee, which then reports to the House, and by the House itself, which normally votes on a resolution containing indications for the government on the main issues under examination by the European institutions.

Transposition is also based on a yearly planning in **Slovenia**. The Government prepares an **annual work program** containing draft laws and implementing regulations that the Government is about to propose to the National Assembly together with a list of drafted implementing provisions, which the respective ministries are about to prepare in the coming calendar year in view of their national needs and in view of the alignment of the national legislation with the Acquis.

In **Cyprus**, on a regular basis, the government sends to the Parliament a forecast of the directives that have to be transposed within the next few months but in addition, **a monthly letter is sent out by the Parliament** to the ministries, the Planning Bureau and the Harmonization Coordinator, listing the directives whose implementation date has passed, which have not yet been submitted to Parliament, in order to ensure that the harmonization process is carried out in a timely fashion. Cyprus thus knows a real system of double **control** in transposition matters: the government makes a regular report in the Parliament on directives to be transposed, but the Parliament itself issues a monthly reminding letter when draft transposition measures have not been submitted by the government in due time.

To a lesser extent, the **United Kingdom** makes use of the government's "*Transposition notes*", when EU legislation is transposed by primary legislation: the department should place in the libraries of both Houses a memorandum ("*Transposition Notes*") showing how the Government proposes to transpose the main elements of the relevant European directive into UK law. The existence of Transposition Notes should be indicated in the Explanatory Notes to the Bill.

1.7 Specific national practices and transposition guidelines

Commission of inquiry on transposition measures

In **Sweden**, when more extensive EC directives are to be implemented, a commission of inquiry is often set up by the Government to analyze the need and methods for amending Swedish law. The commission's report is made public, and the Government bill is often based on the proposals made in the report.

National guidelines for transposition

Guidelines may also have been adopted at national level, with a view to improve the transposition process in some Member States.

Civil servants who have participated in the adoption of Community acts through the negotiations in the EU Council working groups are supposed to be best placed for the transposition of these acts in national law, as they are supposed to be more familiar with these acts and their comparison with existing national law.

In **Estonia**, the same Ministry is responsible for one directive in the negotiation, transposition and implementation phases. This is also the case in **Slovakia**. The same ministerial departments are also involved in the adoption and in the transposition phase in **Greece**.

In **Ireland**, under the ICCEUA¹⁵ Guidelines, where EU legislation is likely to be difficult¹⁶ and/or costly to transpose, the relevant Minister should inform the Government, the Department of the Taoiseach and the Department of Foreign Affairs at least 3 months before the transposition deadline. The Department of the Taoiseach will inform the ICCEUA. Departments are recommended to follow Commission 'Best Practice' in relation to directives that have not been transposed on time.

With a view to prevent difficulties or delays in the transposition process, some national parliaments have set up a close co-operation procedure with their government, which ranges from a simple consultation process to a close follow-up of the negotiations lead by the government in the EU Council of Ministers. In some cases, the opinion given in parliament is binding and leaves no room to the negotiators (see above).

¹⁵ Interdepartmental Coordinating Committee on European union Affairs

¹⁶ The example given in the Guidelines refer to 'extensive consultation with interested shareholders'

1.8 Follow-up of transposition: central transposition bodies and transposition databases

Supervision of the transposition of EC law is mainly a direct governmental responsibility.

According to our survey, it seems that, up to now, no Member State has established a specific, dedicated office in charge of the transposition of EC law, although in some cases the government has set up a coordination committee (**Ireland** - ICCEUA¹⁷, which issued guidelines for transposition) or entrusted one single administrative department of the coordination on EU affairs (**France** - SGAE¹⁸).

In **Belgium**, this coordination role relies on the European division of the federal department for foreign affairs. The European division also manages a network of “Euro-coordinators (both at Federal and Regional levels). For each directive, there is a “Route manager” who is responsible for the coordination of the transposition at federal and, when appropriate, at regional levels.

In **Poland**, the Office of European Integration Committee is responsible for the monitoring of the implementation of EC law.

In **Slovakia**, although the central administration of the State is responsible of the transposition process, the Institute for Approximation of Law - a governmental Office- has been entrusted of the coordination for law approximation and the checking of draft transposition measures.

In the **Czech Republic**, a coordination role is also played by the Department of Compatibility of the Government Office. A similar coordination role is played in **Cyprus** by the Harmonization Coordinator and the Planning Bureau and, in **Slovenia**, by the Government Office for Legislation, which supervises transposition and monitors constitutionality and legality.

In order to improve the follow-up of the transposition process, **some Member States have set up a centralised database** managed by the central authority:

- **Belgium:** a database called "*Eurtransbel*" gives the status of transposition for each directive;
- **Estonia:** a central database, which is the electronic working plan for the Government, contains the information about the directives in force (deadlines etc.), the transposing acts and the draft transposing acts;
- **Ireland:** the secretariat to the ICCEUA is now developing a database which will allow the members to monitor the transposition of EU directives and, in addition, each department should operate a database for its own directives so that up to date information regarding transposition is readily accessible. Up to date information on the progress made in transposing directives should also be publicly available on each departmental website.
- **Finland:** the Prime Minister's office oversees transposition by means of a centralised database.

¹⁷ Interdepartmental Coordinating Committee on European union Affairs

¹⁸ Secrétariat général aux Affaires européennes

1.9 Main transposition difficulties

Typical issues identified by the national parliaments as the main difficulties encountered in the transposition process at national level may be grouped in the following categories.

Difficulties linked to the structure of the state in federal or decentralised countries

These are typical in federal states like **Germany** and **Belgium**.

Austria and **Italy** have developed original solutions in this field by empowering the central authority to adopt interim legislative measures when facing the failure to act from federal or decentralised authorities¹⁹. In **Italy**, the Community law contains enacting provisions guaranteeing that central government will legislate by exercising its deputising powers in the event that the Regions are non-compliant while in **Austria**, the legislative bodies of the Austrian Parliament can adopt provisional legislative measures valid for the Länder, if their legislative bodies (provincial diets) fail to adopt these legislative measures in due time.

A substitution right also formally exists in **Belgium** (art. 169 of the Belgian constitution), but has never been applied up to now.

The obligation to consult many socio-economic groups

This obligation may be time-consuming for the national transposition process like in **Belgium** and **France**. The negative influence of groups of interests is also pointed out in **Cyprus**.

Legal drafting techniques

Difficulties may arise from the use of certain legal drafting techniques such as the **rewriting** to cope with national ways of legal drafting (**France**, **United Kingdom**).

Length of national process

The length of the drawn-out process of transposition bills is, for instance, pointed out by the parliament of **Portugal**.

Gold plating

Gold plating techniques consist of adding national provisions to the EC text, using more detailed or more restrictive regulations than prescribed by the directive itself. This seems to have often been the case in the **United Kingdom** and in **Sweden**.

¹⁹ Also see, point 1.2 supra

In the **United Kingdom**, two special methods have been used for transposing EC law into national law:

- **Copy-out**: implementing legislation adopts the same, or mirrors as closely as possible the original wording of the directive;
- **Elaboration**: choosing a particular meaning, in accordance with the traditional approach in UK legislation, according to what the draftsman believes the provision to mean, with the aim of working a provision into something clearer.

The Swedish Agency for Public Management also noted in a report from 1998 that public authorities sometimes tend to over regulate when they implement EC directives, i.e. they issue more detailed or restrictive regulations than is proscribed by the directive.

Lack of coordination

Difficulties and delays in the transposition process may also result from a lack of coordination between administrative departments in charge of transposition duties, which sometimes leads to a lack of time to conduct an impact assessment, as underlined by the Parliament of **Estonia**.

The necessary co-operation between the various ministerial departments involved and the many steps in the transposition process are also underlined by the Greek parliament as a potential source for delays.

Legal terminology

Difficulties may also arise from the EU legal terminology itself, which is not always easy to translate in national legal terms (point raised by the Parliament of **Slovakia**).

2.

Analysis per Member State

Contributions received from National Parliaments

Belgium²⁰

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The transposition of a EU-directive follows a traditional legislative process.

In principle the Government takes the initiative to draft a bill, which is then submitted to the State Council. (verification of compatibility and coherence with the existing Belgian laws and the Acquis). The Council of State can also make comments on the instruments used for the transposition (see 2).

The Government is obliged to integrate the remarks of the State Council in the draft bill. After approval by the Council of Ministers, the bill is submitted to the Parliament (House and Senate) and depending of the policy areas also to the Parliaments of the federate entities (Communities and Regions).

The transposition in internal law in Belgium may be a difficult and complex process, especially when the directive has a mixed character (with federal and regional competences).

After the parliamentary procedure is completed (examination at Committee level and vote in Plenary session), the adopted text is signed by the King (and Government).

The publication of the law (transposing the EU-directive) is at that moment also notified to the European Commission.

In other cases, other instruments than a legislative text can transpose directives (royal decree, ministerial decree) and are not submitted to Parliament for transposition.

Rather rarely, (but possible in theory), the transposition of a EU-directive can also be initiated by a parliamentary initiative. This may happen to give an incentive to the Government to make work of a transposition.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

IN PRINCIPLE THE TRANSPOSITION OF EU-DIRECTIVES HAPPENS THROUGH

- laws (federal level)
- decrees (regional level)

= implication of Parliament.

The bulk of transposition is however done by:

- royal decrees (federal level)
- decisions (regional level)

= Exclusively by the executive power (governments)

Specific policy items may be the prerogative of the social partners (e.g. : the directive on the European Workers Council).

At national level this directive is transposed by an agreement between the social partners (collective work agreement) and then ratified by a royal decree.

²⁰ Answer delivered by the Secretariat of the Advisory Committee on European affairs of the House of Representatives

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

TRANSPOSITION IS IN PRINCIPLE MADE INDIVIDUALLY, ONE LAW TRANSPOSING ONE DIRECTIVE.

But it may happen that a further implementation of this law still requires a Royal decree (taken by the government). Often a directive of mixed nature requires in Belgium different transposition instruments (law, royal decree (federal level) and decrees of the federate entities).

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

There is no tradition in Belgium to transpose several directives by one single law.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

As already explained in point 3 a transposing instrument may refer to several legal instruments at federal level (laws and royal decrees) and at regional level (decrees and governmental decisions). However, all the legal instruments adopted are published in Belgium's official Gazette.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

See section 2.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Up till now, the transposition process was mainly a governmental responsibility. Once the European Council of Ministers adopts a directive, the room for manoeuvre is rather limited and the parliament is confronted with a "fait accompli".

The subsidiarity protocol in the draft European constitution and the Barroso initiative (forwarding of the proposals of the European Commission to the NP)(since 01/09/2006) have given an impetus to the NP to organize themselves in a more pro-active way.

The Advisory Committee on European affairs regularly holds meetings with the permanent representative of Belgium to the EU about the Commission's legislative work program and the most important forthcoming directives.

The Belgian State Secretary for European affairs comes, at regular intervals, for a hearing with the members of the Advisory Committee on European affairs about the state of transposition of European directives into Belgian law.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The responsible ministerial departments do the transposition. At the level of the federal department for foreign affairs, a European division is coordinating the whole transposition process. The division is managing a network of “euro coordinators (of the federal and regional level). The whole process is monitored through a database (eurtransbel), which gives the status of each directive in the transposition process. For each directive, there is a “traject manager” who is responsible for the process at federal and regional level. Moreover, we have in Belgium a State secretary (member of the federal government) responsible for European affairs whose main task consists in supervising the transposition process and, if need be, giving the necessary impetus to all the actors concerned.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

The complex state structure of Belgium makes the transposition process difficult, but not impossible. An often-cited reason of the late transposition in Belgium is the legally obliged consultation of socio-economic groups in order to prepare a law.

Czech Republic

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The Government is generally responsible for the transposition of the acquis. Nevertheless, in some cases the cooperation of the Parliament is inevitable. The implementation term of directives depends on time schedule prescribed by directives individually.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

There can be used different legal instruments evolving from particular characteristics and nature of the matter - laws as well as administrative instruments (decrees).

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

Not in all cases. If that is necessary and useful, one amendment or law can be adopted in order to fulfil requirements from several directives.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

See above.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

That is a question discussed in the legal doctrine too. Generally, there can be made a reference to published and legally directly binding act.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

The other actors (social partners) are involved for discussions through responsible Ministries and they can be invited to be heard in the Parliament during committee sessions.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

According to the Protocol on the Role of National Parliaments of Amsterdam Treaty, national parliaments are informed about proposed EU legal acts. Special provisions on this European agenda in the Parliament are set out by the Rules of Procedure of the Chamber of Deputies and the Senate.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The coordination role is exercised by the Department for the Compatibility of the Office of the Government of Czech Republic.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

No.

Denmark

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

In Denmark, the government is in charge of planning and preparing transposition of EU legislation into Danish law. As a rule, the actual transposition is made by passing an act through the Danish Parliament.

There are, of course, some exceptions to that rule. The Danish Parliament may, in the act, delegate the power to adopt specific rules to the government (the competent minister), who will then act by ministerial orders. If another directive later on falls within that delegation, the new directive will be transposed only by ministerial orders – in other words the latter directive will be transposed without passing an act through the parliament. The delegation of power to the government is not limited in time.

However, a ‘normal’ transposition will unfold in the stages below:

1. The competent ministry receives the Directive and prepares a proposal for a transposing act to the parliament.
2. The government tables the proposal in parliament.
3. The parliament passes the act using the normal procedure (two plenary readings and one reading in a committee), and the act is signed by the Danish Queen and countersigned by the government.
4. The competent ministry adopts possible ministerial orders, circulars and guidance for the authorities in charge of implementing the act.

The Competent authorities – typically subordinate agencies or local authorities - implement the act.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

As described above, directives are transposed by acts, ministerial orders and circulars. The nature of these legal instruments in a Danish context is explained below.

Acts: are passed through three readings in the parliament. Afterwards they are signed by the Danish Queen and countersigned by the competent minister (on behalf of the government). They are of course legally binding.

Ministerial orders: specify general principles and basic provisions laid down in the act. The ministerial orders always have a legal basis in the originating act. Ministerial orders are legally binding.

Circulars: are official orders issued by a superior civil servant. Circulars are only legally binding to public authorities, not to private persons.

Because of the Danish social model some directives concerning labour market issues are transposed by collective agreements between The Confederation of Danish Employers and The Danish Confederation of Trade Unions. In some specific cases these agreements are complemented by a parliamentary act transposing the Directive in order to cover the minority of workers/employers who are not covered by the collective agreements.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

No, it depends on what kind of legislation is already in place in the area concerned. Often a directive is transposed by amending several existing Danish acts, ministerial orders etc.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

This occurs over time when transposing a number of directives regulating issues covered by the same act in Danish law.

If a directive is to be transposed by an act, which already transposes another directive, that act will be amended again in order to transpose the second Directive. Because of this practise some Danish acts transpose more than one directive.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

As explained above, a lot of transpositions are conducted by ministerial orders referring to an act which authorises the government (the competent minister) to adopt specific ministerial orders.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

The Danish political system is a mixture of corporatism and pluralism. This means that the social partners, industrial and trade interests, environmental groups and farmers among other pressure groups are generally very much involved in the decision making process.

To some extent there seems to be a spill over effect from this tradition in 'normal Danish politics' to the procedures of transposition of EC law.

It is relevant to emphasize that the coordination of Denmark's EU-policy during the EU decision making phase is also characterized by great involvement of a wide range of interests.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Danish coordination of EU-policy is rather thorough. As Denmark almost without exception has minority governments there is a strong need to coordinate the governments' EU-policy with the parliament. In addition, Denmark has a strong tradition for coordinating the EU-policy with the parliament.

The coordination of Danish EU-policy normally involves an impact assessment estimating the legal and financial consequences for Denmark of the proposed EU act. The impact assessments are carried out by the competent ministries.

However, the coordination of Danish EU-policy in the EU decision making phase does not per se (automatically) anticipate the transposition of a proposed EU act.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

Legal transposition is carried out by the government and the parliament alone.

As for the practical implementation transposition (putting the transposed directives into force) a number of subordinate agencies and local authorities are involved.

As an example, environmental control lies within the authority of municipalities. This means that the Danish municipalities are responsible for the practical implementation / effectuation of transposed directives regulating environment.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

The Danish practice of transposing is rather efficient and the result is a coherent body of law. Every Danish act and ministerial order, transposing an EU act, has an annotation stating the name and the number of the transposed EU act. However, the Danish practice tends to make it difficult to decide which part of a Danish legal instrument originates from an EU act and which part originates from 'normal Danish legislation'.

Germany

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

European directives can be implemented by parliament (i.e. in the form of a legislative act) or by the executive branch (in the form of a regulation, i.e. a statutory instrument). However, parliament has to specifically authorise the executive to issue a regulation. The content, purpose, and scope of the authority conferred shall be specified in the act of parliament (Art. 80 Basic Law). The authorisation does not necessarily concern individual implementation measures and it is not temporary.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

(see supra 1) Legislative acts of parliament or government regulations may be used to implement EU legislation. Legislative acts are passed by the parliament, regulations are issued by the government based on a specific authorisation in an act of parliament. Both are legal acts of a general and abstract nature, creating rights and obligations for (potentially) everyone.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Transposition may be individual (a single legal instrument implementing a single directive) or “global” (one legal instrument implementing several directives). The choice will mainly be based on efficiency calculations, i.e. whether several directives concern similar problems or require changes in the same legal area (e.g. anti-discrimination directives).

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

Transposition by reference is possible and occurs, albeit in the framework set by the relevant ECJ case law. Therefore, implementation has to remain sufficiently clear and precise and persons concerned must be able to ascertain the full extent of their rights and, where appropriate, rely on them before the national courts.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

The German constitution does not explicitly envisage the participation of social-partners, interest groups or other non-state actors in the legislative process. However, parliament and the executive

make regular use of hearings, panels of experts etc. at various stages in the legislative procedure, to exchange views and gather expertise from diverse sources.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Effective parliamentary oversight is only possible if the parliament possesses adequate information. The German federal government is obliged to provide parliament with sufficient information to make effective parliamentary scrutiny possible. It also has to inform the parliament on all forthcoming and ongoing legislative proceedings at EU level, usually by written reports or oral statements during a session of the committee concerned. The federal parliament's involvement is regulated in Article 23(2) and (3) Basic Law and addressed in greater detail by the "Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union" of 12 March 1993 and an additional agreement on the same topic of 28 September 2006.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

There is no "central body" responsible for the implementation of EU legislation. The division of legislative competences between the federal level (Bund) and the states (Länder) concerns not only national matters but EU matters as well. The question of which level is competent to transpose a certain EU directive therefore depends on who is competent to legislate on the subject-matter concerned.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

Some originally observed problems originating in the federal structure and the divided competence to implement EC law seem to have been overcome. Mostly the implementation process seems to work smoothly and without notable difficulties.

Estonia

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

In principle the transposition depends on the directive, some directives require laws to be adopted by the Parliament, others are transposed by Government regulations. According to the Estonian legal system every legislative measure adopted by the Government should be based on the provision delegating authority. This means in practice that even if the transposition is done by Government regulation the Parliament has to adopt at first a law delegating authority to the Government. So in theory the transposition would take approximately one year, starting with the amendments to the respective law and ending with the adoption of necessary implementing acts by the Government.

The Government is responsible for the overall co-ordination of the transposition process; it prepares necessary draft legislation and submits it to the Parliament. Usually it is up to the Government to decide when the transposition measures should be worked out (according to the deadlines deriving from the directive). The State Chancellery holds a **central database** for that purpose (electronic working plan for the Government), which contains information about directives in force (deadlines etc.), transposing acts and indicative transposing acts. Every directive has a lead ministry, which is responsible for the negotiations on the directive and who also co-ordinates the transposition and implementation activities. The lead ministry prepares an impact assessment of the draft directive, including an indicative transposition schedule and national positions. This package will be submitted for adoption to the Government. The proposal of an EU draft legal act is forwarded by the Government (State Chancellery) to the Board of the Riigikogu, which designates one or several sectorial committees to give their opinion to the EU Affairs Committee. The EU Affairs Committee discusses the EU draft and the Governments position and gives the Government a position on behalf of the whole Riigikogu (binding to the Government).

This ensures an early-warning system that enables to see forthcoming legislative changes and helps to avoid unpleasant surprises. Furthermore, in order to keep the Government and the Parliament informed about the transposition, the State Chancellery prepares regular reports. These include information about delayed transposition measures and possible problems, also information about likely infringement cases.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.
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Law	Adopted by the Parliament, it foresees general regulations and if necessary contains provision delegating authority to the Government for the implementation acts.
Regulation of the Government	Horizontal implementation act that includes more than one ministry. Adopted by the Government on the basis of the provision delegating authority.
Regulation of the Minister	Sector-specific implementation act that contains detail rules for some specific issue. Adopted by the respective minister (depending on the governmental area) on the basis of the provision delegating authority.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

It depends on the directive and domestic legislation (how the policy field has been regulated before), but it is common practice to transpose more than one directive with one legislative act if necessary. On the other hand one directive could also be transposed with several domestic acts.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

There are some cases where several directives have been transposed with one legislative act. But in that case these directives are usually regulating the same policy area or issue.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

We transpose directives by including their content in the national measures. It is not very common to include references to the EU legislative acts in our domestic legislation. Although it is not precisely forbidden it is not seen as a good legislative practice.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Usually the lead ministry asks an opinion from respective actors during the negotiations of the draft directive, when it prepares an impact assessment and national positions. Actors involved depend on the issue, meaning usually social partners and NGOs. The lead ministry or Ministry of Justice also asks an opinion during the transposition phase, while preparing a draft law or other legislative measure.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

As mentioned before it is common practice that the lead ministry prepares an impact assessment just after the publication of Commission proposal (usually in four weeks). The impact assessment of the draft directive, including national positions, will be submitted for adoption to the Government and afterwards to the Parliament (to the Board - sectorial committee and finally - the European Affairs Committee, in case of CFSP and/or ESDP issues - the Foreign Affairs Committee). This ensures an early-warning system that enables to see forthcoming legislative changes and helps to avoid unpleasant surprises.

Furthermore, in order to ensure smooth transposition of the Acquis the State Chancellery keeps an electronic record on the directives and necessary implementation acts. This central database is one part of the general electronic working plan for the Government. Every ministry has an access to the database whereby it can see new directives and indicate necessary transposition acts with deadlines. The State Chancellery prepares regular reports on the basis of this database and submits those to the Government and the Parliament. These reports include information about delayed

transposition measures and possible problems, also information about likely infringement cases. It also includes 12 months forward-looking review in order to improve the planning of the preparation of transposition measures.

The EU Affairs Committee Secretariat has direct access to the State Chancellery database for the EU Coordination Council where 2 weekly tables are taken and disseminated to the colleagues in other committees: Commission proposals and other EU documents as well as the table on schedule of EU drafts coming to the Government session. The latter is a very useful tool for the planning of scrutiny work in Riigikogu as well.

For more detailed information:

[http://www.cosac.eu/upload/application/pdf/1991edd7/ELAK_voldik%20\(ingl%20k\)%2010%2010%202005.pdf](http://www.cosac.eu/upload/application/pdf/1991edd7/ELAK_voldik%20(ingl%20k)%2010%2010%202005.pdf)

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The State Chancellery is responsible for the overall co-ordination of transposition process (including the notification of transposition measures to the European Commission) but in general every ministry takes care of the transposition in their governmental area. The State Chancellery also regularly informs the Government and the Parliament about the state of affairs.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

There is a lack of capacity to carry out proper impact assessments in the ministries. Also due to overload of staff transposition is frequently started too late, i.e. too close to the transposition deadline.

Greece

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The statutory transposition of Community law into national legislation can take place at any given time except in the case of those issues explicitly referred to in the Constitution; however, from the very first years of accession, legislation for the transposition of Community law in order to deal with issues of a purely technical nature has proved to be a time-consuming process.

During the 20-year course of legislative adaptation, laws have been and continue to be passed in the Greek Parliament, through which particularly important Community directives are transposed. It was necessary for these laws to encompass both Community and purely national provisions, something which could not be done by means of authorisation granted by presidential decree or ministerial decision.

The process of drafting legislation for adaptation is similar to that of drafting legislation on matters unrelated to the Community.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

- a) Formal law, mainly for issues that the Constitution (e.g. in Article 78) requires to be regulated through the drafting of laws, or for the regulation of matters of particular importance.
- b) Presidential decrees subject to the provisions of Article 43(2) of the Constitution.
- c) Ministerial decisions subject to the provisions of Article 43(2) of the Constitution.
- d) Decisions by other administrative authorities empowered to adopt regulatory instruments (acts of the Governor of the Bank of Greece, decisions of the Supreme Chemical Council, decisions of the Capital Market Commission).
- e) The use of authorisations under laws preceding or following the date of accession.
- f) Reference to pre-existing national provisions dealing fully with the matter referred to by the Community rule.

The circular is not used as a legislative tool, since it concerns an administrative practice that can change at the Administration's discretion, is not sufficiently widely published and can be replaced or abolished.

The Governor of the Bank of Greece and the Capital Market Commission are also empowered to issue acts or decisions of a regulatory content on issues of their exclusive jurisdiction (an empowerment vested on the basis of provisions of enacted legislation).

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

The usual process is one legal instrument transposing one directive. The possibility of one legal instrument transposing more than one directives may take place if the directives regulate the same issue or when a posterior directive amends a pre-existing one or when we wish to integrate into a unified legislative text a series of directives (original and amending).

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Law 1338/1983 on the implementation of Community law, which with certain amendments remains in effect today, constitutes a valuable tool with which the Greek legislator can transpose Community law into Greek legislation. The said law was submitted by the Minister of National Economy to the Greek Parliament for a vote.

It takes the form of a framework law under Article 43(4) of the Constitution that generally determines the matters to be regulated through regulatory decree; that is to say, it provides general instructions and guidelines for the Administration in dealing with the issues covered by the authorisation and lays down its period of validity.

Apart from specific authorisations for presidential decrees or ministerial decisions, Law 1338/83 allows the Greek legislator to adopt regulatory instruments in order to:

- take all necessary complementary measures for the implementation of secondary legislation, such as the establishment of new bodies and posts, the determination of competences and administrative procedures and the enactment of administrative penalties;
- establish criminal penalties, provided that the enabling provision allows for it, or provided that a penalty clause is contained in the law including the enabling provision;
- establish punishable misdemeanours under the Penal Code where necessary for the implementation of Community acts in cases where the infringement in question does not constitute a criminal offence under existing Greek legislation [this being possible given that the penalties are established by law];
- amend or abolish, by means of appropriate regulatory acts, the provisions of the existing legislation that are contrary to the provisions of primary and secondary law [Article 3(2), as amended by Article 65 of Law 1892/90 (A 101)]ⁱ.

Law 1338/83 remains in force and is still being implemented, which proves that it is sufficiently comprehensive and provides a useful tool for the Greek legislator, which is none other than the Public Administration.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

In most cases the transposing legal instrument includes all the provisions of a directive. The opposite may occur when a directive falls under the competence of two Ministries. In that case each Ministry forwards a separate statute on account of its jurisdiction.

Moreover, frequently when transposition takes place by statute law and less often when it takes place by presidential decree, the legal instrument includes delegation of power for further regulations of technical and particular issues, always within the frame of the directive provisions (and of course within the Constitutional limits).

Reference to other legal instruments (published in the official Gazette of the Greek State) may take place, when it concerns the implementation of an already institutionalized procedure or the provisions of enacted legislation calling for e.g. sanctions..

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

The parties concerned in a given regulation are informed on the proposed legislation and are called to submit their views and opinion. (deliberation process)

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Responsibility for drafting laws and regulatory instruments bringing national legislation into line with Community legislation lies with the relevant ministerial departments.

The latter, without necessarily being staffed by lawyers, usually include those that have witnessed Community acts *in fieri*, through the participation of their representatives in European Commission or Council working groups and are familiar with their basic content, points of conflict with national legislation, and points needing further regulation under national law.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

There are no other central actors, other than the aforementioned in the previous questions, which are entrusted with the transposition of community directives.
However, the General Secretariat of the Government monitors the course of transposition of community legislation and makes efforts towards its precipitation and the decrease of its deficit (beyond the deadlines provided by the community directives).

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

The drafting of the above statutes may require the collaboration of a large number of departments in one or more ministries, frequently resulting in the constitution of legislative drafting committees. Despite this, cooperation between ministerial departments unable to agree on their respective areas of competence or requiring new areas of competence sometimes breaks down, resulting in the delayed transposition of Community directives, which has consequences for the Greek Administration. This is fortunately an infrequent occurrence.

Delays in the transposition are frequently due to the procedure of issuing a regulatory act, that is, further to the cooperation of the competent services and potential delays, the procedure followed for issuing a regulatory act is time-consuming.

To give an example, as regards the procedure for presidential decrees : their prior elaboration by the Supreme Administrative Court is mandatory, the subsequent compliance of the Administration with its remarks, adaptation of the draft text of the presidential decree following the remarks of the Court, new signing of the final text by the competent Ministers, signing by the President of the Republic and, finally, publication in the Official Gazette (not to mention the time consumed for the intervention of the General Accounting Office, whenever this is necessary i.e. in case the state budget bears the cost of implementation of provisions of the proposed draft legislation).

Spain

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The transposition is usually made by Parliament through normal legislative procedure. Although it is seldom done, it is also technically possible for Parliament to delegate the transposition of EU Directives to the Government. Be aware that the transposition may not always require the enactment of a law (as the subject matter of the directive may not need to be regulated by law). In these cases, the Government is entitled to approve a royal decree, not as a delegation from Parliament, but in exercise of the Government's power to enact statutory regulations, as established by the Constitution.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

EC law may be transposed into National Law through any of the following legal instruments:

- Organic Act, which is enacted by Parliament in exercise of its law-making powers, through a procedure that requires an absolute majority (i.e. requires the favourable vote of half the full Chamber) in the Congress of Deputies. The Constitution lists the matters that require this special procedure.
- Act, which is enacted by Parliament in exercise of its law-making powers.
- Legislative Royal Decree, whereby Parliament authorises Government to enact regulations which have the force of an Act of Parliament.
- Royal Decree, which is enacted by the Government, in exercise of its own regulatory powers.
- Royal Decree-Law, which is enacted by the Government, in exercise of constitutional emergency powers, but requires the ratification of the Congress of Deputies within one month of its enactment.
- Ministerial Order, which is enacted by a member of Government, in compliance with the minister's statutory powers as defined by the Law.
- Regulations enacted by independent regulatory bodies, like the Bank of Spain or the Telecommunications Market Board.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Transposition is normally made individually, although it is not at all unusual for one legal instrument to transpose several directives, either because the subject matter of the directives is similar, and it is germane to regulate it in one single piece of legislation, or either because the said

piece of legislation comprises several types of subject matters, and is enacted to transpose different directives on different subject matters.

Furthermore, it is also quite normal for one Directive to be transposed by several types of legal instruments. For example, some of the measures included in one Directive may be transposed by an Act, while other measures of the same Directive may be transposed by a Royal Decree.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

The Spanish legal instrument will transpose the whole set of measures and will not make it by reference.

It must be said that transposition by reference was used once, with the Royal Decree-Law 1/1997, of January 31st, in relation to the technical specifications of the Directive 95/47/CE, but it has not been used again and is highly unlikely to be used in the future.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Government may hint to the tabling of a forthcoming Bill transposing EU directives, but it is done within the bounds of the usual political debate and not as a regular procedure.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.). Pl. explain.

At Government level, the coordination of the transposition of Directives is entrusted to an Interdepartmental Commission for EU Affairs, chaired by the Vice Minister for EU Affairs.

Due to the highly decentralised nature of Spain, the Sectorial Conference on EU Matters coordinates the transposition of Directives which are the competence of the regional administrations. A representative for each region, as well as a representative of the National Government, sits at this Conference.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

As a matter of fact, Spain has had, up to now, a good record in the transposition of EU Directives. We can also add that the decentralised nature of Spain has not hindered the effectiveness of the Spanish transposition process.

France

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent and for how long: one directive, one year, one parliamentary term?

As the French Constitution distinguishes between the areas of legislation and regulation, the Parliament is responsible only for transposing the legislative provisions of each directive (on a national level).

When the Parliament is responsible, the transposition text is usually prepared by the Government.

The Parliament may delegate the transposition of directives to the Government. This procedure, laid down in Article 38 of the Constitution, authorises the Government, for a limited period, to implement, using decrees, measures that are normally the domain of the law. Where directives are concerned, this procedure is usually used if there are many delays with transpositions.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

Legislative directives are transposed by legislation (or using decrees, as per the answer above). However, in most cases complete transposition requires regulatory implementing measures (decrees and/or orders).

3. Is transposition made individually: one legal instrument transposing one directive?

Directives that are considered important from a political point of view are generally transposed by a specific draft law (followed by several regulatory implementing texts). Other transpositions are carried out by inserting one or several articles into a draft law with a broader scope. Finally, draft laws for the adaptation of community law (*loi d'adaptation au droit communautaire*, DDACs) allow several directives relating to a single ministry to be grouped together in one law.

4. Is transposition made globally: one legal instrument transposing several directives?

See answer above.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)?

Transposition texts usually try to rewrite the whole directive (either by copying or seeking to adapt the terms used to our legal system). Nevertheless, transpositions can refer to **definitions** contained in Community provisions. Recently, transposition by reference has been permitted for annexes to directives 'adapting to technical progress'. However, this practice happens only occasionally. The Government recently asked the Council of State to study the possibility of developing transposition by reference.

6. Are actors other than the Parliament and the Government (for instance the social partners) involved in the transposition process, and to what extent?

Apart from the Council of State, which is responsible for giving a legal opinion on draft transposition laws and on 'in Council of State' decrees, transposition texts generally go through numerous consultations; these may be compulsory or optional. This is often identified as being one of the main causes of transposition delays. The report to be drawn up by the Council of State, mentioned in the previous answer, should also propose relaxing the consultative procedures.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)?

The procedure laid down in Article 88-4 of the Constitution requires the Government to forward Community legislative proposals (on a national level) to the two Chambers of Parliament so that they can give their opinions. This submission should, in principle, be accompanied by an impact assessment indicating the national law texts likely to need amendment when transposition takes place. A correlation table should also be attached but, in practice, this is rarely done.

8. Are there, in your Member State, central bodies in charge of the transposition of EU law? At which level (national / federal / regional etc.)

French community policy is coordinated by the General Secretariat for European Affairs (*Secrétariat général des affaires européennes*, SGAE) working under the Prime Minister, who intervenes at the negotiation and transposition stages. It is worth noting that transposition is still the responsible ministry's task and the SGAE only handles coordination with other ministries concerned with the directive.

9. Do you see any major, typical or notable difficulty in the transposition process in your Member State?

Apart from problems linked to the consultative procedure, one should mention the 'legal perfectionism' that leads to rewriting the provisions of the directive. For all these issues, the report on transposition delays published annually since 2003 by the MP Christian Philip, on behalf of the National Assembly Delegation to the European Union, can be consulted (see the 2006 report in particular: (report no 3239) (<http://www.assemblee-nationale.fr/12/europe/rap-info/i3239.asp#TopOfPage>)).

Ireland

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

European Communities Act 1972

The transposition of EC law into Irish domestic law was delegated to the Executive power under the *European Communities Act 1972* (the “1972 Act”). However the 1972 Act and its successors have invoked different forms of parliamentary scrutiny over both the initiatives proposed by institutions of the European Communities and the domestic measures attributed with their implementation.

Section 3 (1) of the 1972 Act enabled a Minister to make regulations²¹ for the purposes of implementing existing European Community laws and any future acts adopted by the institutions of the European Community. Section 3 (2) allows Ministers to make incidental, supplementary or consequential provisions as they think necessary including provisions repealing or amending existing Irish laws.

It was envisaged that Parliamentary control would be exercised over the Ministers by giving the regulations only temporary statutory effect and requiring their confirmation by the Oireachtas²² in 6 months under section 4 of the 1972 Act. Without such confirmation the Ministerial regulations would lapse. However this provision of parliamentary control proved to be wholly unsatisfactory as can be adduced when the first and only Confirmation Act was passed in June 1973, at which time not even the texts of the Ministerial Regulations to be confirmed were readily available to members of the Oireachtas (Byrne & McCutcheon, 2001)²³.

European Communities (Amendment) Act 1973

Subsequently the *European Communities (Amendment) Act 1973* (the “1973 Act”) was passed which repealed section 4 of the 1972 Act and replaced it with a system of annulment rather than confirmation. Ministerial Regulations were given permanent statutory effect subject to one proviso: they could be annulled by the Oireachtas within one year of being made on the recommendation of a new body established by the 1973 Act known as the Joint Committee on the Secondary Legislation of the European Communities²⁴. However under section 6 of the *European Communities (Amendment) Act 1993*, a new Committee was established by both Houses of the Oireachtas, named the ‘Joint Committee on European Affairs’ and was delegated the responsibility of EC law scrutiny (effectively this Committee replaced the Joint Committee on the Secondary Legislation of the European Communities).

EU Scrutiny Act 2002

Enhanced arrangements for Oireachtas scrutiny of EU business were introduced on 1 July 2002 and were placed on a statutory basis on 23 October 2002 with the entry into force of the *EU Scrutiny Act 2002* (the “2002 Act”) and the establishment of the Sub Committee on European Scrutiny as part of the Joint Committee on European Affairs.

The 2002 Act sets out mechanisms for Parliamentary scrutiny of measures presented by the European Commission or proposals initiated by member states. It contains various provisions which ensure that members of the Oireachtas are aware of ongoing EU activities at all times.

²¹ A regulation is a form of a statutory instrument which is governed by the Statutory Instruments Act 1947, s 1(1). A statutory instrument is made in pursuance of a statutory power. Regulations tend to contain specific, detailed provisions pertaining to the general matters which are contained in the parent statute. See below at answer to question 2.

²² The Irish Parliament is called the Houses of the Oireachtas and consists of an upper House, Seanad Éireann and a lower House, Dáil Éireann (for more information visit <http://www.oir.ie/ViewDoc.asp?fn=/home.asp>).

²³ European Communities (Confirmation of Regulations) Act 1973, enacted 11 June 1973

²⁴ Oireachtas Joint Committees comprise of members from Seanad Éireann and Dáil Éireann.

Under the 2002 Act, regulations or directives for adoption under the Treaty establishing the European Union are subject to Oireachtas scrutiny. Government Departments are required to provide information notes relating to documents open to scrutiny by the Committee.

Section 2(1) of the 2002 Act provides that a copy of any text on measures presented by the European Commission or proposals initiated by member states must be laid before each House of the Oireachtas as soon as is practicable. The Minister (to whom the area of responsibility regarding the measure relates) must also include a statement outlining the content, purpose and likely implications for Ireland of the proposed measure and any other information that he or she may consider appropriate. Under section 2(2) of the 2002 Act the Minister *shall have regard* to any recommendations made to him or her on the proposed measure by either or both Houses of the Oireachtas or by a Committee of either or both the Houses (i.e. the Joint Committee on European Affairs or the Sub-Committee on European Union Scrutiny).

There are two instances where the procedures set out in section 2 subsection (1) and (2) do not have to be strictly complied with. If the Minister believes that there is insufficient time for the procedures outlined above to be carried out, under section 2(3) he or she does not have to lay the proposed measure before the Oireachtas. However if the measure concerned is adopted by an institution of the European Communities, a copy of the text of the measure must be laid before both Houses together with a statement by the Minister as outlined above. Under section 5, if the Minister believes that the measure proposed is confidential, the measure is exempt from the procedural requirements of sections 2 (1) and 2 (2). However section 5 further provides that the Minister may make a report on the proposed measure as he or she deems appropriate in the circumstances. The report would also be made to either or both Houses of the Oireachtas or to a Committee of both or either House.

The 2002 Act incorporates further reporting systems. Under section 2(5) every Government Minister must report to each House of the Oireachtas in relation to measures, proposed measures and other developments concerning European Communities and the European Union in the field in which he or she has responsibility. The reports should be made not less than twice yearly. Furthermore under section 4, the Government must make an annual report to each House on developments in the European Communities and the European Union.

European Communities Act 2007

This Act was presented on 1 December 2006 and was passed by both Houses of the Oireachtas on 4 April 2007. The purpose of the Act is to amend section 3 of the *European Communities Act 1972* so as to enable Ministers to create indictable offences as well as summary offences in Ministerial Regulations made pursuant to the 1972 Act where the EC law being transposed requires a substantial sanction for breach of its provisions. The Minister will only have a limited power to make provisions for indictable offences, where necessary to meet our Treaty obligations and will do so within the parameters set down by the Oireachtas in section 2 of the Act [Section 2 provides for a maximum fine of €500,000 and a maximum term of imprisonment of 3 years for an indictable offence.] (Address of Minister Treacy to the Seanad on 1 December 2006).

The Act also provides that Ministers will have the power to make statutory instruments under any Act of the Oireachtas in order to transpose EC law. The Act was drafted to address the consequences of two Supreme Court judgments in 2003 and 2005. In the respective cases of *Browne v Attorney General & anor* [2003] IESC 43, available at <http://www.courts.ie/Judgments>] and *Kennedy v Attorney General & anor*[Footnote: [2005] IESC 36, available at <http://www.courts.ie/Judgments>], the Supreme Court found that Ministerial Regulations could only be used to give effect to EC law where it specified this as one of its purposes. The 2007 Act will enable statutory instrument making powers (e.g. Ministerial Regulations), under any Act of the Oireachtas, to be used to implement EC law. See also the information included in question 7 on the *Joint Committee on European Affairs & Sub-Committee on European Union Scrutiny*.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

Generally the implementation of directives is achieved by means of Ministerial Regulation, which a Minister is empowered to use under section 3 of the 1972 Act (Donelan, 1997). However a small number of directives have been implemented by means of an Act of the Oireachtas (primary legislation) and via regulations made under an Act other than the European Communities Act 1972 (Byrne & McCutcheon, 2001). There is no central bank of data on the amount of directives that are transposed by regulations or primary legislation. However there is consensus in the literature and among government department officials who have been contacted that the vast majority of implementation is achieved through Ministerial Regulation.

A regulation is a type of statutory instrument which is used to enact much of the delegated legislation in the State. Statutory instruments are governed by the *Statutory Instruments Act 1947* section 1(1) which defines a 'statutory instrument' as being an 'order, regulation, rule, scheme or bye-law' (emphasis added) which is made in pursuance of a statutory power. Regulations tend to contain more detailed provisions pertaining to the general matters contained in the parent statute.

Delegated legislation consists of instruments enacted by a subordinate body or official to which or to whom law-making power is devolved by the legislative organ, i.e. the Oireachtas. Article 15.2.1° of the Constitution dictates that the law-making powers of the State shall be the 'sole and exclusive' power of the Oireachtas. However these provisions have been interpreted by the courts to mean that statutory instruments are constitutional devices, provided that they are confined to matters of detail as distinguished from principle (Gwynn Morgan, 1997). Challenges have been taken over the purported legislative power of delegated legislation, particularly in relation to the implementation of EU directives.

In the case of *Meagher v Minister for Agriculture*²⁵ the applicant was charged with certain offences under the provisions of the *European Communities (Control of Veterinary and Medicinal Products and their Residues) Regulations 1990*. Under the *Petty Sessions (Ireland) Act 1851*, such a complaint must be made to the District Court within the six-month period specified under section 10(4). However Article 32(8) of the 1990 Regulations purported to amend the 1851 Act and to allow prosecutions within two years after the offence. The 1990 Regulations were made pursuant to section 3(2) of the 1972 Act and it was not seriously disputed that, were it not for the European dimension in this case, section 3(2) would be unconstitutional as involving an unlawful delegation of legislative power (Kelly, 2003).

Article 29 of the Irish Constitution provides entry for Ireland into the European Community. Under Article 29.4.10°, laws may be enacted, acts may be carried out and measures may be adopted by the State which are *necessitated* by the obligations of membership of the European Union or of the European Community. Therefore the issue which required consideration in the *Meagher* case was whether section 3(2) of the 1972 Act could be said to be 'necessitated' by the obligations of Community membership and therefore invulnerable to constitutional attack (Kelly, 2003). The Supreme Court in allowing the appeal, stated that it was satisfied that having regard to the number of Community laws, acts done and measures adopted which have to be implemented by appropriate action into the law of the State by the obligations of membership, the making of Ministerial Regulations rather than legislation of the Oireachtas in order to facilitate this would be necessary in some instances and possibly in a great majority of instances.

In *Maher v Minister for Agriculture and Food*²⁶ the Supreme Court also examined the question of what was the constitutionally appropriate method of transposition – an Act of the Oireachtas or

²⁵ [1994] 1 IR 329

²⁶ [2001] 2 IR 139

statutory instrument. The case involved the transposition of EC Milk Quota Council Regulations by statutory instrument. The court concluded that this was entirely a matter of domestic law and the court found that it can never be said that the transposition of Community legislation by means of a statutory instrument was necessitated for the purposes of Article 29.4.10°. Rather it identified the critical test in this area as whether the Directive which is sought to be transposed contains sufficient ‘principles and policies’ so that transposition of primary legislation would be superfluous. In this case Chief Justice Keane (as he then was) concluded that the making of a statutory instrument in this instance was not an impermissible exercise of the legislative powers of the Oireachtas as the principles and policies which underlie the regulations are to be found in the treaties of the European Union and the Regulations and Directives which have established the complex machinery of the CAP and the common market in milk, not in any parent legislation in Ireland.

The justification for using secondary legislation rather than primary legislation for the implementation of directives has been explained as follows:

“The reason why the executive implementation procedures provided for in section 3 of the European Communities Act 1972 have proved to be the most popular method of implementation are not too difficult to discern. Executive implementation is a more convenient and straightforward method than implementation by primary legislation. Parliamentary time is short and there may be difficulties in securing the assistance of parliamentary draftsmen to draft the appropriate legislation.” (as quoted in Donelan, 1997)

The so-called ‘democratic deficit’ resulting from the fact that laws can be made under EU treaties by delegated legislation and hence without reference to the Dáil or the Seanad, was considered by the Constitutional Review Group in its report published in 1996. The report found that the EU treaties provide the framework for consultation and decision-making for much of Irish law and that it is these procedures which each member state must use, as it sees fit, to deal with its input, whether democratic, diplomatic or administrative, to the working of the Union. The report referred to the Joint Committee on European Affairs and its terms of reference which enable Parliament to form a view on Union legislation before it is enacted. The Group found that such domestic procedures can be useful in providing a democratic input into community legislation. It further found that the reports submitted to the Oireachtas by the Minister for Foreign Affairs every six months on developments in the EU²⁷, listing the statutory instruments made under the European Communities Act 1972 also provide an opportunity for reviewing Union affairs in either or both Houses. In conclusion the report stated that the ways of dealing with EU business are governed by either the Union Treaties or the procedures of the Houses themselves, and the Review Group does not consider that any constitutional change affecting them is called for.

²⁷ This was the reporting procedure prior to the European Union Scrutiny Act 2002 which provides that every government Minister must submit a report twice a year.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Directives may be transposed both individually and globally. For example if a directive contains policy matters which cut across more than one government portfolio then more than one regulation may be made in order to implement the directive. Alternatively a number of EU directives may address connected policy areas and so may be enacted into Irish domestic law by one Ministerial Regulation.

The Inter-Departmental Coordinating Committee on European Union Affairs (ICCEUA) is supported by a secretariat in the Department of the Taoiseach²⁸ and is chaired by the Minister of State for European Affairs. The Committee meets fortnightly. Each department has a designated EU Co-ordinator who is a member of ICCEUA. The Committee co-ordinates national policy across all Government Departments on the policy agenda and assists in the preparation of meetings of the Cabinet Committee on European Affairs.

At present the secretariat to the ICCEUA is developing a database which will allow the members to monitor the transposition of EU directives. One of the main logistical problems facing the development of this database is the fact that a Ministerial Regulation may transpose one or more directives or indeed a number of Ministerial Regulations may be required to transpose one directive²⁹, i.e. transposition may be made globally or individually.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

1. The transposing instrument will usually, but not always, transpose the entire of the EU Directive concerned.

2. Transposing instruments might transpose part only of an EU Directive if -

- existing national law (primary or secondary) is already in compliance with some of the requirements set out in the Directive, or
- the Directive deals with matters some of which fall within the competence of one Minister of the Government and the remainder of which fall within the competence of another Minister of the Government - each Minister would make an instrument giving effect to the provisions of the Directive falling within his area of competence.

3. Where a transposing instrument gives effect to part only of an EU Directive it would not be the practice to refer to an existing instrument that gives effect to the remainder of the Directive. The purpose of legislation is to prescribe and stipulate rights and duties not to provide incidental information. So, where existing national law is already in compliance with part of an EU Directive, any subsequent instrument made for the purpose of giving effect to the remaining provisions of the Directive would not make reference to the said national law unless that were necessary for the purpose of fully implementing those remaining provisions.

²⁸ for more information on the Department of the Taoiseach see <http://www.taoiseach.gov.ie/index.asp>

²⁹ In conversation with a member of the secretariat of the ICCEUA.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

The extent of consultation with other members or groups in civil society is dependant on the nature of the directive sought to be implemented and is decided by the department charged with that policy area and ultimately charged with the transposition process.

As of 21 June 2005, when draft EU directives and certain significant EU Regulations are published by the European Commission, a Regulatory Impact Assessment (RIA) procedure must be carried out by the relevant government official (this is also discussed at question 8). RIA is an analytical tool used to assess the likely effects and implications of a proposed new regulation or regulatory change³⁰.

To ensure that RIA is proportionate and does not become overly burdensome a two- phase approach is adopted. Regulations³¹ with relatively low impact are subject to a *Screening RIA*, a preliminary less detailed analysis. A *Full RIA* involving more extensive and detailed evaluation is applied to more significant regulations.

Informal consultation must be conducted as part of a Screening RIA and the Guidelines provide that consultation with key stakeholders should take place as early as possible in the RIA process so that it can feed into the analysis of costs, benefits and impacts. What is meant by informal in this context is that consultation may not necessarily be publicly advertised or all-inclusive. However in general it is desirable that all affected parties should be consulted including the social partners and relevant industry groups. A summary of views conveyed through the consultation process should be provided as part of the Screening RIA (RIA Guidelines: How to Conduct a Regulatory Impact Analysis, 2005).

If the initial screening process indicates that wider consultation is required, then a Full RIA should be conducted. This would involve a formal consultation process. Formal consultation is usually based on a written document, it encompasses a wider population and it involves a specific time period for responses. It should be widely publicised through appropriate channels such as advertisements in the national media, government websites etc. Potential respondents should be given sufficient time to respond to the consultation process.

See also at question 7, the transposition of difficult EU legislation and footnote 16.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Under the ICCEUA Guidelines, where EU legislation is likely to be difficult³² and/or costly to transpose, the relevant Minister should inform the Government, the Department of the Taoiseach and the Department of Foreign Affairs at least 3 months before the transposition deadline. The Department of the Taoiseach will inform the ICCEUA. Departments are recommended to follow Commission 'Best Practice' in relation to directives that have not been transposed on time.

Joint Committee on European Affairs & Sub-Committee on European Union Scrutiny

The Joint Committee on European Affairs is a joint committee of the Dáil and the Seanad but Irish members of the European Parliament also have the right of attendance and audience. They can participate but not vote though the Committee does not normally vote in any event. The Committee generally does its business through consensus and by agreement, something which has

³⁰ For more information on RIA, please see paragraph 1 of Annex 1 of the full text of the Guidelines available at <http://www.taoiseach.gov.ie/index.asp?locID=223&docID=2510>.

³¹ In the context of RIA, the term 'regulation' refers to primary and secondary legislation.

³² The example given in the Guidelines refer to 'extensive consultation with interested shareholders'.

emerged rather than being a requirement of legislation (Joint Committee on European Affairs, Volume No. 62, 29 January 2004).

As a result of the requirement to send all proposals for regulations and directives to the Joint Committee on European Affairs under the 2002 Act, a Sub Committee was established which meets every 2 weeks. The Department of Foreign Affairs acts as co-ordinating Department working closely with the Committee secretariat to carry out its role in an efficient and effective manner (Third Annual Report 2005). The Department of Foreign Affairs acts as a liaison point between the Oireachtas and the government departments to help ensure that the 2002 Act is implemented to the fullest extent. On receipt of a proposal from the Commission/ Member State, the department forwards all EU documents to the relevant Department who prepares an information note and submits this along with the proposal to the Sub-Committee on European Scrutiny. Under agreed guidelines the Department submits the proposals to the Sub-Committee within 4 weeks of initiation. The information note includes a summary of the proposal, its aim, the anticipated negotiation period, the expected implementation date and the implications, if any, for Ireland of the proposed measure.

On receipt of the departmental documentation, an advice note is prepared by the Oireachtas scrutiny policy advisor on each proposal and is circulated to Committee members. At its meetings the Sub-Committee conducts an examination of these proposals in public session and determines which of those presented require further scrutiny.

The Sub-Committee may:

- Agree that a particular document requires further scrutiny and agree to refer it to an appropriate sectoral committee;
- Agree that a particular document does not warrant additional scrutiny by a sectoral committee. In this case no further action is required;
- Agree to confer consideration of a proposal to a further meeting, for example should further clarification on some element be required;
- Agree to note a proposal. This can happen for example where exceptional reasons mean that a proposal does not reach the Committee until after its adoption and the Sub-Committee accepts the exceptional circumstances involved.
- Agree to forward any proposal to a sectoral committee for information.

The Orders of Reference of the Joint Oireachtas Committees state that a Committee must consider a proposal referred to it for scrutiny by the Sub-Committee. It is usually open to a sectoral committee to elect to scrutinise a document not specifically referred to it, but which falls within its remit. The Fourth Annual Report on the operation of the European Union (Scrutiny) Act 2002 which covers the period up to 31 December 2006 is not yet available. However the following figures are taken from the Third Annual Report. From 1 January 2005 to the 31 December 2006, the Sub-Committee on EU scrutiny met 17 times and scrutinised 440 legislative proposal and other documents. By far the largest category of documents considered by the Sub-Committee in 2005 was that of legislative proposals – a total of 329. Specifically the Sub-Committee dealt with over 160 decisions, 120 regulations and in the region of 30 directives during 2005. The Sub-Committee referred 74 proposals to sectorial committees for further scrutiny and 8 of these referred proposals dealt with directives.

<p>8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.</p>

The transposition of EU directives is delegated to the (national) department which has responsibility for the policy issues dealt with in the directive. As mentioned, an EU Co-ordinator is appointed in each department and one of the functions of this role is to oversee the transposition

of directives by officials in the department. The various departments may have their own procedures for the transposition³³. However the ICCEUA issued a document in March 2006, entitled ‘*Guidelines on best practice on Transposition of EU Directives*’³⁴. The Guidelines were based on EU Commission recommendations for best practice and incorporate principles and process elements. Below is a summary of the recommendations and the full text is available at <http://www.taoiseach.gov.ie/index.asp?locID=223&docID=2510>.

- The Departmental officials involved in the negotiation of the Directive should, if possible, also be closely involved in its transposition. If this is not possible the negotiators should keep the officials involved in transposition fully informed throughout the negotiations.
- As mentioned, from 21 June 2005, when draft EU directives and certain significant EU Regulations are published by the European Commission, a Regulatory Impact Assessment (RIA) procedure must be carried out by the relevant government official. The RIA must also be updated, as required, during the negotiation process and transposition into Irish law, to take account of any significant changes to the original draft directive. Additional Impact Assessments carried out by the Council, the European Parliament or the Commission should also be taken into account in the national RIA.
- The text of any draft directive together with the accompanying information note should be laid before both Houses of the Oireachtas and forwarded to the Oireachtas Sub-Committee on European Scrutiny for consideration.
- When the directive has been fully negotiated and the scrutiny process is complete, the EU Co-ordinator in the relevant department should inform the Department of the Taoiseach, the Department of Enterprise, Trade and Employment and the Department of Foreign Affairs giving the name of the Lead Officer and the deadline. The Lead Officer should draw up a planning schedule for the implementation of the directive and forward this to the departmental EU Co-ordinator.
- Consideration as to whether implementation should be by way of primary legislation or Ministerial Regulations or through other alternatives to regulation should be identified by the RIA. Where primary legislation is required to transpose the directive, the RIA should be attached to the memorandum to government seeking permission to draft Heads of Bill. If the department proposes to introduce additional regulatory changes in the legislation transposing a directive, the RIA should be updated as appropriate.
- Departments should stay in close contact with the relevant Commission Directorate Generals when they are transposing a directive, particularly complex directives that require intensive consultation and primary legislation.
- Directives that are successfully transposed should be automatically notified to the Department of the Taoiseach and the Department of Foreign Affairs. Departments should keep an up-to-date record of all directives that have been transposed.
- Where infringement proceedings have been taken against Ireland by the EU Commission under Article 226, they should be promptly brought to the attention of the relevant department and the department of the Taoiseach. The Guidelines provide for immediate consultation and communication with the Attorney General’s office and the Chief State Solicitors Office if infringement proceedings are continuing. Where the European Court of Justice issues a judgment under Article 226, ‘a concerted effort must be made to close the matter as soon as possible and to meet the concerns of the court’. Any action which is initiated by the Commission under Article 228 should be treated as a priority for business planning purposes.

³³ Links to all Irish government departments are available on this webpage <http://www.gov.ie/departments/default.asp>.

³⁴ This follows on from Guidelines issued by the Department of Foreign Affairs in December 2003 entitled, ‘*Oireachtas Scrutiny of EU Business: Guidelines for Departments*’.

- to Each department should operate a database for their own directives so that up date information regarding transposition is readily accessible. Up to date information on the progress made in transposing directives should be publicly available on each departmental website.

The EU Co-ordinators of each department should submit a monthly report on the current position of transposition and infringement proceedings to the Department of the Taoiseach. The Minister of State for European Affairs will circulate a summary of these departmental reports to the Cabinet Committee on European Affairs, on a regular basis.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

It follows that where the negotiation of EU directives has been carried out by officials of the Executive arm of the State, their transposition into Irish domestic law is overseen by the negotiators or their departmental colleagues can be considered an efficient mechanism. The sheer volume and intricate policy areas of EU directives, also mandates the lead role being taken on board by departmental officials.

With the enactment of the *European Union Scrutiny Act 2002* and the establishment of the Sub-Committee on European Scrutiny, the procedures in place for adequate parliamentary scrutiny of the EU directives and the measures proposed in implementing them has been elevated to a sufficiently robust level. However, perhaps the government Ministers have been allowed one notable ‘opt out’ clause in that they are justified in proceeding with the implementation of a directive where time limits are tight. Under section 2 (3) of the 2002 Act, if the Minister *believes* that there is insufficient time for the procedures outlines in the Act to be carried out, then he or she does not have to lay the proposals before the Oireachtas.

Italy

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The annual Community Act is intended to transpose Community directives into Italian law and to implement any other EU legal act and case-law.

The government is required to submit **the draft Community Bill to Parliament by 31 January each year**: this is considered together with the annual government report on Italy's participation in the European Union as a kind of "**European session**", with specific deadlines. Such consideration is conducted by the European Union Policies Committee acting in a reporting capacity and by the other Committees responsible by subject matter, for all the parts falling within their jurisdiction.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

The directives can be transposed:

- by **direct enactment**;
- by **enacting enabling legislation**, empowering the government to implement directives in compliance with mandatory principles and guidelines;
- through **authorised regulations** governing matters already regulated by an Act of Parliament, provided that these matters are not reserved exclusively for an Act of Parliament.

Parliament can decide which of the directives forming the subject-matter of the enabling legislation, and which directives to be implemented through an authorised regulation require the draft Legislative Decree or implementing Regulation to be submitted to **the relevant parliamentary Committees for an opinion** before adoption.

The government may also, where possible, directly implement EU directives under administrative powers, notifying Parliament in the report annexed to the Community Bill. It is also possible for directives of particular importance to be implemented by tabling *ad hoc* members' or government Bills. The regions can directly implement directives on matters for which the Regions have concurrent competence.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Italy's participation in the legislative process of the European Union is now governed by Law 4th February 2005, n. 11 enacting "General provisions governing Italy's participation in the European Union's legislative process and the procedures for complying with Community obligations", which

wholly repealed and replaced Law 9th March 1989, n.86 better known as the "La Pergola Act" [see www.politichecomunitarie.it] .

Community directives are transposed into the Italian legal system primarily by the Community Act (an ordinary law) that is the main instrument used to implement community legislation and specifies the timing and the manner for transposing directives.

The Community Act was first established in 1989 by the so-called "La Pergola Act", and now is governed by Law 4th February 2005, n.11.

Law 4th February 2005, n. 11 reformed the manner of Italy's participation in the Community institutions, establishing a new system to guarantee the necessary promptness in complying with obligations that are so urgent that they cannot wait for the annual Community Act.

On the basis of the acts issued by Community institutions and after ascertaining the conformity of Italian legislation with Community law, in conjunction with the government departments concerned and in compliance with the guidelines issued by the Parliament and the observations of the Regional governments, the Minister for Community Policies drafts a Bill containing "Provisions for compliance with the obligations stemming from Italy's membership of the European Communities" (better known as the "Community Bill").

The Bill is laid before Parliament by 31 January each year. It contains the government's report to Parliament on the state of conformity between Italian law and Community law, and any infringement proceedings against Italy, and the case-law of the European Court of Justice; it provides a list of the directives implemented or awaiting implementation through administrative channels, and those implemented by Regulation; it explains the reasons for any failure to transpose directives when the transposition date has already expired or is about to expire, and it provides a list of all the normative instruments with which the individual Regions or Autonomous Provinces have implemented directives regarding matters falling within their spheres of competence.

The Community Act guarantees that the Italian legislation is regularly updated to comply with Community law:

- by amending current legislation in contrast with Community obligations, and any instruments implementing Community directives subject to infringement procedures;
- by enacting provisions directly implementing Community law, also under delegated powers vested in the government, or which authorise the government to implement them, whether by administrative means or by Regulation;
- by enacting provisions setting out the fundamental principles for the implementation of Community acts by the Regions and the Autonomous Provinces in matters falling within their sphere of legislative competence;
- by enacting provisions guaranteeing that central government will legislate by exercising its deputising powers in the event that the Regions are non-compliant.

In special cases (such as judgments and rulings handed down by the judicial organs of the European Communities and the European Union) the Minister for Community Policies may submit measures to the Council of Ministers or to the Central/Regional Governments Conference in the case of matters of regional competence, for their approval of urgent measures, following a specific procedure.

This is also accompanied by the powers vested in the Prime Minister or the Minister for Relations with Parliament to request both Houses to fast-track these measures for their rapid approval.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

By 31 January each year the government must submit an annual report to Parliament on Italy's participation in the European Union's legislative process, illustrating past activities and looking ahead to **what the government intends to do during the course of the current year.**

As with the Community Bill, the report is examined by all the standing Committees for the consideration of those parts for which fall within their competence by subject matter, by the EU Policies Committee, which then reports to the House, and by the House itself, which normally votes on a resolution containing indications for the government on the main issues under examination by the European institutions.

As soon as it receives them, the government must submit **all draft legislation and policy-setting documents** adopted by the European institutions **to both Chambers**, together with any modifications, and the preparatory documents (fact-finding, consultative and policy-setting documents, such as communications, plans of action and White and Green Papers) indicating the date it is assumed they will be debated.

The acts and draft legislative acts adopted by the Council or by the European Commission, and all the preparatory documents transmitted by the government or published in the Official Journal of the European Communities, are submitted to the **parliamentary Committee competent by subject matter for consideration, and to the European Union Policies Committee, for its opinion.** For this purpose, the competent Parliamentary organs may request the **government** to provide a **technical report** on the status of negotiations, on the comments received from actors that have already been consulted, and on the impact on the Italian legal system, on the organisation of the public administration, and on the activities of private citizens and business.

Law 11/2005 has introduced a new **legal procedure: the Parliamentary scrutiny reserve on all Community and European Union acts.** This reserve may be established at the **initiative of either of the two Chambers** or of the **government** and can be applied to **every proposed act** which the government is under an obligation to submit to the two Chambers.

Law 11/2005 provides that whenever **the Chambers have already begun examining** the draft Community and European Union acts, the government has to reserve its position at the Council of Ministers of the European Union until the Parliamentary scrutiny is completed. **In the case of particularly important** draft legislation or acts being examined by the Council of Ministers of the European Union, the **government** may (**at its own initiative**) make its position conditional on the outcome of Parliamentary scrutiny, submitting the text on which a decision is required to both Chambers. In either case, the **government may proceed** to take part in framing Community and

European Union acts, even without the response of the Parliament, **20 days after the notification** to the Chambers that the Council of Ministers of the European Union had been informed of the government's Parliamentary scrutiny condition.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

Cyprus

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

Bills of law transposing EU legislation are drafted by the competent Ministries and then are submitted before the Parliament. Following that, the bills of law are examined by the competent parliamentary committees and are finally forwarded to the plenary of the House. The time needed each time largely depends on whether the transposition is substantive and how complex it is (i.e. whether new institutions are created, whether interested parties have strong opinions on a matter etc).

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

Transposition of EC law is mainly carried out through bills of law and regulations (subsidiary legislation issued under the provisions of the basic legislation). In addition, Ministerial Decrees are also issued under the provisions of the basic legislation, in order to ensure harmonization usually regarding technical issues.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

3. & 4. There have been cases in which an individual bill of law has fully transposed a single directive, however, there have also been cases where a single bill of law has transposed several directives.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

There have been cases in which a set of measures is included in a single legal instrument, but transposition by reference is also possible, but as an exception to the rule. This usually depends on the sector /matter regulated.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Following Cyprus' accession to the EU, the fast track harmonization procedure followed in the past, has ceased to exist. Therefore, the sectoral parliamentary committees examining a harmonizing bill of law, now invite the interested parties / social partners to express their views on the said bill of law before the committee.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

On a regular basis, the government sends to the Parliament a forecast of the directives that have to be transposed within the next few months. In addition, a monthly letter is sent out by the Parliament to the ministries, the Planning Bureau and the Harmonization Coordinator, listing the directives whose implementation date has passed, which have not yet been submitted to Parliament, in order to ensure that the harmonization process is carried out in a timely fashion.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The authorities in charge of the transposition of EC law are the competent Ministries. However, the Harmonization Coordinator and the Planning Bureau are responsible for the coordination of the harmonization process.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

There have been cases where difficulties in the transposition of EC law were encountered. This largely depends on the nature of the EU legislation being transposed and relates, chiefly, to fields where no legislation or previous experience exists in Cyprus. Difficulties are also encountered in cases where the EC law has substantial effects on the interests of groups of citizens.

Latvia

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

In Latvia Republic, the EU legislation is mainly implemented by regulations of the Cabinet of Ministers and laws. The Cabinet of Ministers makes the draft laws referring to the transposition of the EU legislation and the Parliament of Latvia (Saeima) adopts them. **Thus, the transposition of the EU legislation mainly is in the competence of the government.**

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

In Latvia Republic, the implementation of the EU legislation is carried out by adopting laws and regulations of the Cabinet of Ministers. The Law is a legal act adopted by the Parliament of Latvia (Saeima). The Cabinet of Ministers adopts the regulations of The Cabinet of Ministers, which are made legally binding by respective laws. In line with the judicial system of the Republic of Latvia, laws have a higher judicial power than regulations of the Cabinet. Sometimes directives are implemented. In several cases directives are implemented by adopting internal legal acts of public institutions. However, it is possible only in those cases when directives refer to the work of public institutions, but not to the rights of individuals.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

The judicial system of Latvia Republic does not stipulate the individual transposition – in some cases one EU directive is implemented by several national legal acts and in other cases – several EU directives are implemented by one national legal act.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

National transposing legal instruments comprise the whole transposing set of measures. However, the Cabinet of Ministers has accepted that the transposition of the EU directive is possible also by including a reference in a national legal act. This transposition method can be used on special occasions when all of the following criteria are met:

- the norm of the directive is published in the EU Official Journal or its special issue;
- the norm of the directive is available in Latvian;
- the norm of the directive does not comprise any choice possibilities for the member state;
- the norm of the directive is precise and unambiguous, it comprises clear formulations and unconditional norms (e.g., technical drawings, a list of objects or chemicals); the terminology of the directive corresponds with terminology used in Latvian legal acts; the reference to the norm of the directive has to be correct, precise and actual;

it is not allowed to implement the norms of several directives by a reference in the regulations of The Cabinet of Ministers in such a manner that these regulations comprise a reference to one norm of a directive, and the respective norm comprises references to other norms of a directive, other directives and their norms.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Social partners are involved in the transposition process of the EC law by participation in the preparation and harmonization of the draft law made to implement the EU legislation.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Ministry of Justice submits an informative report to the Cabinet of Ministers showing how Latvia as the EU member state meets the commitments of the EEC Treaty three times a year. These informative reports also comprise information on the directives, which will be implemented in the future, as well as legal act proposals, which will be used to transpose these directives. The informative reports are also sent to the Saeima. Representatives of the Ministry of Justice take part in the sittings of the European Affairs Committee, providing with information on the prepared legal act proposals, which are necessary to ensure the implementation of the EU legal acts on time. Saeima participates in the implementation process by approving national positions in the cases when legislation refers to national interests of the Republic of Latvia.

The competent institutions are obliged to inform the Saeima on the current issues of the work of the EU Council of Ministers.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

In Latvia, the coordination and control of the transposition process of the EU legislation is carried out by The Ministry of Justice. Line ministries are responsible for making the necessary draft laws, which implement the EU legislation.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

At present, Latvia does not face any remarkable difficulties in the transposition process of the EU legislation.

Lithuania

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The Government is responsible for preparing draft law, draft resolution of the Government or draft order of the minister that transposes provisions of directive into national law.

The period of transposition depends on terms of implementation, fixed in directive, and on type of national legal instrument, which transposes provisions of directive into national law.

When draft law is prepared, it comes to the Parliament. The Parliament debates draft law and it can either pass a law, or reject it, or return it to the Government. Transposition of directive by law can take a year and more.

Draft resolution of the Government is prepared by responsible Ministry and approximated with other involved institutions. Transposition of directive by resolution of the Government can take from six months to one year.

Draft order of the minister is prepared and adopted by responsible Ministry. Transposition of directive by order of the minister can take about six months.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

There are three legal instruments used for transposition of European law into national law:

- 1) Law - legal act with the highest legal power and which has a supremacy over other legal acts.
- 2) Resolution - legal act, which implements law or implements functions of the Government
- 3) Order - individual legal act, implementing acts of the highest legal power.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Both cases are possible. It depends on the subject of directive, which has to be transposed. It is also possible that one directive can be transposed by several legal instruments.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

In practise usually the whole set of measures is transposed into national legal instrument without reference to another national legal instrument, i.e. the whole text of directive is transposed into national legal act or acts.

In addition, it is important to mention, that all transposed EU legal instruments are listed in the final provisions of national legal instrument.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Social partners are involved in the transposition process. The Parliament and the Government consult social partners.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Yes, it is. The Government prepares national positions to every European Commission's proposal to adopt legal act. The Government presents these national positions to the Parliament before every meeting of the Council of the EU.

The Government every six months also prepares a list of legal acts, transposing directives, for spring and autumn sessions of the Parliament.

The Parliament is informed about forthcoming legislative proceedings at European level by receiving European Commission's proposal to adopt legal act directly by e-mail from European Commission to the Parliament.

The Parliament every year also debates European Commission's Legislative and Work Programme for forthcoming year and marks priorities as "very relevant" or "relevant".

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

Republic of Lithuania is a unitary state, so transposition of EC law into national law takes place at national level. Ministries and other governmental institutions are in charge of transposition of EC law into national law and the Chancellery of the Government is a coordinating and supervising body of the transposition process.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

No.

The Netherlands

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

Transposition is delegated to the Government. When Dutch legislation needs to be changed in order to implement EU legislation the responsible Minister(s) submits a Bill to make changes in current Laws. The Parliament then discusses the changes as with each Bill. The process of implementing EU legislation is the same as National legislation with the difference that the initiative doesn't come from a Ministry but from the EC.

The coordination of the implementation lies with the Ministry of Foreign Affairs (Department European Affairs).

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

No. The legal process is described in the Constitution. EU legislation is treated as normal legislation.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

This depends. If one regulation changes more than one Law in the Netherlands sometimes the Government chooses to make one Bill that changes several Laws at once. If an EU regulation is just on one topic, there will be only one Bill to change one Law

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

Both situations happen.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Sometimes. It happens that Bills to implement EU legislation are being discussed in a Committee. Committee debates are sometimes open to experts and other actors.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Yes. There is a Committee on European Affairs that monitors and communicates the ongoing legal process in the EU

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The Ministry of Foreign Affairs coordinates the implementation of EU legislation.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

No.

Austria

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

In Austria the government (ministries) prepares, surveys and controls the need of transposition of EC law. When there is a need of transposition into national law a draft law is drafted by the ministry in charge of the legal matters concerned. The government transmits the draft law to Parliament where it undergoes the same legislative procedure of adoption as other draft laws. If a legal instrument falls within the legislative competence of the provinces a similar procedure is followed by the provincial government and the provincial diet. There is no general rule stipulating the duration of the transposition process.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

The kind of legal instrument used depends on the content of the European Directive. A European Directive may partly be transposed by law and partly by decree depending on what national legal instruments are chosen for provisions of the kind of the EU provision and whose legislative competence is concerned. If the legal matter to be regulated falls according to the Austrian Constitution within the competence of the Federal provinces (Länder) the provinces are responsible for its transposition. When they fail to transpose the European Act in due time the competence of transposition passes to the Federation. The act of transposition of the Federation becomes invalid as soon as the provinces have finalised transposition.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

Transposition may be made in one single act but can also be made in several legal acts depending on the content of the EU-directive. If the European directive affects several national laws or decrees, those laws or decrees will be amended accordingly.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

In principle transposition is not made globally. If several directives concern coherent legal matters to be regulated in one legal instrument transposition in one single act could be the case.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

In the legal text itself no reference is made. To every legal instrument explanations are made. They may make reference to other legal instruments containing measures of transposition of the EU-directive concerned. .

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Like other draft laws also draft laws transposing EU-law are sent to a number of institutions (among them social partners) who have the right to give their opinion to it. The ministry responsible for drafting the law collects the opinions and it is a political decision whether they are taken into account or not.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Austrian Constitution contains a number of provisions referring to the participation of the Austrian Parliament in the European legislative process.

The government (the competent member of the Federal Government) has to inform Parliament without delay about all projects in the framework of the European Union and give opportunity to vent its opinion. If the National Council (one of the two chambers of the Austrian Parliament) gives an opinion to a legal project then the member of government is bound by this opinion during European Union negotiations and voting. Deviation is only admissible for imperative foreign and integrative policy reasons. The federation has to inform the provinces (Länder) without delay regarding all projects within the framework of the European Union which affect their autonomous sphere of competence.

For further details see Art. 23 d, e, f, Federal Constitutional Law in http://www.ris.bka.gv.at/erv/erv_1930_1.pdf

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The Federal Chancellery is in charge of monitoring the transposition of EU-directives. (note: not in charge of the transposition but in charge of the monitoring of the transposition!)

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

No.

Poland

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

It depends on the directive. Transposition is made both by the Parliament and by the Government, but the Government to act has to have some kind of delegation.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

Transposition is made with the use of the acts of Parliament and the regulation passed by the Government.

According to art. 92 of the Constitution: regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, acts of Parliament by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

There is no general rule on how to transpose the directives. It depends both on the content of the directive and the act which transposes it. It happens that one directive is transposed by one legal instrument which is issued only to transpose that directive.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

There is no general rule on how to transpose the directives. It depends both on the content of the directive and the act which transposes it. There are some legal acts which transpose several directives e.g. Labour Code, Commercial Code, Act on the Protection of the Environment.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

Both methods are possible but the legal instrument to which the reference is made has to be published.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Social partners may be involved in the transposition process on the same rules as in the other legislative processes, e.g. they may be consulted before the legislation is adopted.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Parliament is informed according to the rules of the Protocol on Role of National Parliaments in the EU. Government is also obliged to inform the Parliament of its position in relation to the drafts of EU legislation and to inform the Parliament on the on-going legislative proceedings at European level.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

There is no such body. The Office of the European Integration Committee (the governmental body) is responsible (among other things) for the monitoring of the implementation of the EC law.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

Not at the parliamentary level.

Portugal

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

Directives can be transposed by Parliament and/or the Government, depending on the subject matter involved.

In the case of a subject for which the *Assembleia da República* (AR) [Portuguese Parliament] has **exclusive competence**, under Article 164 of the [Constituição da República Portuguesa \(CRP\)](#) [Portuguese Constitution], the process takes place exclusively in Parliament and transposition is carried out by means of a law, as was the case in 2006 with Law No 20/2006 of 23 June on the approval of additional general legal provisions on asylum and refugees, ensuring full transposition into the domestic legal system of Council Directive No 2003/9/EC of 27 January, laying down minimum standards for the reception of asylum seekers in Member States.

In the case of a subject for which Parliament has **partial competence**, under Article 165 of the CRP, the Government can adopt legislation leading towards transposition but requires a prior legislative authorisation from Parliament. By way of example, in 2006 Parliament granted four legislative authorisations to the Government, on:

- the taking-up and pursuit of the activities of insurance and reinsurance mediation and the adaptation of the general system of administrative infractions to the specific features of this activity, following the transposition of Directive No 2002/92/EC of the European Parliament and of the Council of 9 December;
- the reorganisation and winding up of credit institutions in connection with the transposition of Directive No 2001/24/EC of the European Parliament and of the Council of 4 April;
- the distance marketing of consumer financial services in order to transpose Directive No 2002/65/EC of the European Parliament and of the Council of 23 September into the domestic legal system;
- takeover bids, so as to adapt the system of sanctions provided for in the *Código dos Valores Mobiliários* [Securities Code] to the scheme provided for in Directive No 2004/25/EC of the European Parliament and of the Council of 21 April.

In addition to this, the Draft Bill on the State Budget normally includes a section devoted to EU tax harmonisation, in which directives are transposed or legislative authorisations are given to the Government to carry out such transposition.

For other subjects the Government has competence to carry out transposition by decree law.

Since the amendment of the Constitution in 2004, the Autonomous Regions have also been able to transpose EU legislation under Article 112(4) and Article 227(1)(x) of the CRP, by means of regional legislative decrees.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

As provided for in the CRP, EU legislation is transposed into the domestic legal system in the form of laws, decree-laws or regional legislative decrees.

It should be noted that in Portugal, the laws, decree-laws and regional legislative decrees of the two Autonomous Regions of the Azores and Madeira are legislative instruments. It should also be noted that laws and decree-laws have equal force, though decree-laws issued under legislative authorisation are subordinate to the respective enabling law and to the decree-laws that develop the general legal provisions (Article 112(1) and (2)).

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

Directives are generally transposed individually by means of a single legal instrument, usually a decree-law, subject to any detailed implementing rules which may prove necessary.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

When various directives on the same subject are to be transposed, a single piece of transposition legislation has been adopted for all of them. This speeds up the transposition process and stops legislation from becoming too dispersed.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

In exceptional cases and for various reasons, situations arise in which a directive is initially only partially transposed, which means that another legal instrument has to be adopted subsequently to complete the transposition. In such cases the legal text itself may refer to instruments already published or yet to be adopted. This occurred with the transposition of Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004, on measuring instruments, in which Article 2 of the framework transposition legislation states that the annexes to the Directive shall be adopted by a subsequent Government decree.

Legal instruments complementing transposition are also frequent in connection with tax legislation.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Yes. Besides Parliament, the Government (including Legal Policy Offices/Directorates-General of the various Ministries) and the Autonomous Regions, the President of the Republic (passing or rejecting transposition legislation or decree-laws) and the social partners (appraising and possibly suggesting amendments) are also involved in transposing directives when the draft legislation is at the public consultation stage.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The law does not provide for any mechanism allowing or recommending specific anticipation. However, the various parties involved in the legislative process of transposing directives tend to try to begin work on preparing the transposition of a directive as early as possible, i.e. from the time at which its content is stable enough for it to be possible to work on its transposition.

Following the new [Lei n.º 43/2006, de 25 de Agosto](#) [Law No 43/2006 of 25 August] governing the monitoring, appraisal and expression of views on Portugal's participation in the process of EU integration, in association with the European Commission's decision to transmit all its initiatives directly to national parliaments (COM (2006) 211 final, 'A Citizens' Agenda', 10 May 2006), the Portuguese Parliament systematically scrutinises European initiatives.

In this context Parliament seeks to monitor the European legislative process *ex ante*, drafting scrutiny reports on various European Commission initiatives, holding policy debates and public hearings with members of the Government, Deputies in the Legislative Assemblies of the Autonomous Regions of the Azores and Madeira, and Commissioners and Members of the European Parliament.

This process of Parliamentary scrutiny is set out on the [IPEX - Inter-Parliamentary EU Information Exchange](#)³⁵ database – an electronic inter-Parliamentary cooperation platform for the exchange of information on the positions of the various Parliaments with regard to European initiatives.

³⁵ <http://www.ipex.eu>

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The National Parliament, the Government and the Autonomous Regions are responsible for the transposition of EC law, a process which accordingly forms part of normal legislative procedure.

Monitoring of the transposition of Community directives into domestic law is the responsibility of the Foreign Ministry's Directorate-General for European Affairs. Monitoring is coordinated with the various sector-level ministries via the Inter-ministerial Committee for Community Affairs.

At political level the Assistant Secretary of State for European Affairs is the member of Government responsible for monitoring the process of transposing directives.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

One of the most problematic aspects of transposition is related to the formal requirements of the legislative system, since the drafting, circulation, scheduling and approval of draft bills is a long drawn-out process. If there is a change of government during this period the process can become even more protracted, which means that political instability may exacerbate the already sluggish transposition process.

Slovenia

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

In the Republic of Slovenia as a member of the European Union, the government acts as the indirect legislator submitting law proposals to be adopted by the National Assembly. All proposals need to be accompanied by a declaration of conformity with the Acquis communautaire and, when directives are being transposed into national law, corresponding correlation tables need to be enclosed.

Above that the government adopts decrees and the ministers and bearers of public authority adopt rules.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

According to the content and the respective nature of an EU legal act, these are being transposed into national legislation either by a law adopted by the National Assembly, a government decree or a rule adopted by ministers or bearers of public authority.

The Government regulates in detail and clarifies by decree the relations prescribed by **law** or other act of the National Assembly in accordance with the purpose and criteria contained in the law. Pursuant to its authorization under the law, the Government may also **regulate** by decree the manner in which the rights and responsibilities of Slovenian citizens and other persons are exercised. The Government may adopt a **decree** for the implementation of respective EU acts as well.

To implement laws, other regulations and acts of the National Assembly, and regulations and acts of the Government and the regulations of the European Union, ministers issue rules and, where provided by law, other regulations. If the content of the rules belongs to the scope of several ministers, responsible ministers adopt joint rules. Rules are issued pursuant to the provisions of law or government regulation, or upon Minister's appraisal that issuing rules is required for purposes pursuant to paragraph 1 of this Article. Bearers of public authority issue rules where so provided by law.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

3.4.5. The regulation is an EU legal document, that is, since 1 May 2004, valid in the Republic of Slovenia according to the principles of primacy and direct applicability of EC law.

In the areas covered by the regulations, the Acquis communautaire does not permit the Member States to selectively or partially enforce the provisions, this meaning that the Member states can not adopt legal acts contrary to the content of the regulation or legal acts recapitulating the content of the regulation, even if cited. As ruled on several occasions by the European Court of Justice, the citation of the regulations' provisions when transposing EU legislation into national law is inadmissible.

The abovementioned does not imply, that on national level the member states are not permitted or do not need to address the areas covered by regulations. Irrespective of the fact that regulations are directly applicable, their implementation was often not possible without national legal acts determining, for instance, the competent authority to monitor, deliver decisions or perform other tasks in order to efficiently enforce the provisions of the regulation. In addition to that, the member states have to provide for penalties or other sanctions, should the provisions of the regulations not have been applied, if

- the regulation explicitly provides that member states have to provide for sanctions, applicable to violations of the provisions of the regulations;
- the regulation does not provide for sanctions applicable to violations of its provisions, and yet it is evident from the very nature of the provisions of the regulation that sanctions are necessary.

Hereby the member state has to provide that the violations of the provisions of the Community legislation are sanctioned under conditions (procedural and material) comparable to those applicable for the violations of the national legislation of similar importance and nature; in any case sanctions provided for must be effective, proportionate and dissuasive (the duty of a state to ensure effective implementation of Community legal order).

It is often required that member states adapt their legislation to the provisions of the regulation or adopt legal acts in the areas covered by the regulation or areas it relates to indirectly. In adopting the acts that guarantee effective implementation of the provisions of the regulation on the national level, member states can by way of exception transpose parts of the texts of the regulations, but only to the extent necessary to assure inner coherence and consistency of the text and to make it more easily understood by the user.

Adequate transposition of directives in terms of expertise and legality is based on three fundamental approaches that can be, if so required, mutually complemented and combined.

These approaches are:

- The basic approach when transposing a directive into national law is that contents of the directive are transposed in **keeping with the rules of the national legal technique** in a manner and scope necessary for consistent and complete transposition of the contents thus ensuring compliance of the directive with the national legal order and regulations. The national legal act has to unequivocally cover the contents of the directive; it has to ensure that the

directive will be considered and that its contents will be implemented in the national legislation. Hereby it is important that the implementation of all objectives of the directive together with all the changes is guaranteed on the national level.

- The second approach when transposing EU directives into national law is a **direct transposition of the parts of the text**. This form of transposition is acceptable and adequate when it comes to technically specific provisions very often consisting of lists, tables, formulas, numbers and the like. In the later case these are the provisions that do not leave scope for substantive interpretation and do not permit an alternative formulation or arrangement. As far as content is concerned, directives in certain areas very much resemble the regulations, due to their legal nature however a demand for transposition into the national law exists.
- **In exceptional cases a directive can be transposed into national law by way of reference to individual provisions**. The reasons for such transposition are in principle much like the reasons for direct transposition (see previous paragraph), and it depends on the case when the use of the first or the second is more appropriate. In most cases this way of transposing the Community directives is applied when referring to **technical annexes** to directives, aimed to ensure the achievement of uniformity of technical standards in certain areas. But even so, a comprehensive transposition of the provisions of the directive into the national law has to be assured, whereby from the viewpoint of the user the transparency and applicability of the valid normative regulation of a given area have to be taken into account. It is therefore better to avoid such referring; especially when it comes to directives that have undergone several changes, for it is difficult to establish the exact validity of the text referred to. **Reference as a way of transferring the provisions of directives into the national law is inadmissible especially when the directive directly establishes rights and obligations of natural and legal persons of the member states.**

Provisions in the text of a directive often refer to the use of other EU legal instruments (directives, regulations, decisions, etc.) for instance when using the phrase *without prejudice to (other EU legal instruments)*. The member state transposing the directive into the national law has to take into account such references to corresponding EU legal instruments as well.

When dealing with such references, a member state has several options how to transpose a directive:

- by reference to the national regulation, transposing the directive in question,
- by reference to the directive in question,
- by reference to the national regulation and the directive.

In the ideal case, the reference would point to the national regulation, transposing the directive referred to. However, when adopting and implementing this option several difficulties arise:

- **the directive referred to has not yet been transposed** into the legislation of the Republic of Slovenia thus relevant national provisions do not exist;
- the directive referred to has been transposed into the legislation of the Republic of Slovenia, however, **legal irregularities during the transposition process** have been identified thus national provisions have to be adapted or harmonized;
- the directive referred to has been **transposed into the legislation of the Republic of Slovenia by several national legal acts** (also as regards the hierarchy between different categories of acts):
- how should subsequent amendments of the directive referred to be dealt with? When referring to the national regulation transposing the directive directly, the reference should have been revised upon every amendment or changed to reference to another legal

document (sometimes the act amending the directive is not transposed solely by amendments to the national regulations);

- **sometimes reference to the national regulation is not possible.** Consider, for example, the next reference: The directive reads as follows: "The variety has to be added to the list of the varieties in accordance with and entered in the common catalogue of Varieties of vegetable species according to the Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed." The reference is made to the Common Catalogue of Varieties of Vegetable Species that is kept by the Commission in accordance to special procedural provisions of the Council Directive 2002/55/EC. This section of the directive was not (could not have been) transposed by a national regulation, since it is the authority of the Commission.

The most appropriate option can be established only with regard to each separate case.

The provisions of the directives referring to another directive are transposed into national law by reference made in the national legal document to that act.

If a directive refers to another, directly applicable EU legal act (for instance a regulation) the national legal act has to refer to this act as well.

Same rules apply also for decisions - after thorough examination of their content it has to be established what (if any) actions are needed on the national level and what provisions need to be made for the adoption of a national legal act to ensure full direct applicability of this act on the national level.

The implementation and transposition of EU legal acts into the Slovenian law brings about certain changes in the way the legal acts are drafted. The EU legal acts are not referred to in the legal basis of the national statutory regulation nor in its title where the regulated content should be recapitulated. The legal basis of the implementing regulation should refer to the legislative (material) basis pursuant to which the statutory regulation has been issued, that provides for its legality and thus allows for it to be issued. It is indispensable for the legal basis to include a reference to the material basis with the quotation of the act that is being implemented in this way. The quotation depends on the fact whether the regulation is being issued upon special or general authorization. Special authorization implies the existence of an explicit authorization (authorizing provision) in the text of the law, which needs to be referred to. Such authorization indicates that there is an obligation to issue the regulation (for example by the minister). In the second case (general authorization) only the provision or provisions the law regulates in detail are referred to; such act is issued if the competent authority (the government, ministers) establishes that this is necessary for the enforcement of the law.

The repetition of the Government of the Republic of Slovenia Act that regulates the issuing of the implementing regulations by the government (Art. 21) and the corresponding provisions of the State Administration Act regulating the issuing of the implementing regulations by ministers (Art. 9 and 74 of the State Administration Act) in the legal basis is not necessary and often incorrect; the later being true for cases when it is wrongfully stipulated that the quotation of the material basis of the law, being regulated and implemented in detail by the implementing regulation in question, can be substituted by the reference to the abovementioned acts.

It has to be observed, however, that exceptions do exist. The seventh paragraph of the amended Art. 21 of the Government of the Republic of Slovenia Act reads as follows: "For the enforcement of the provisions of the European Union the Government shall issue decrees and other acts within its competency." This meaning that the Government can adopt decrees to partially or completely implement the Community regulations without the material basis present. Same applies also for ministers that can adopt rules within their scope of activities on general legal basis when enforcing provisions of the European Union (for example the Rules on implementation of Council Regulation (EEC) and Commission Regulation (EEC) on the assessment of beef carcasses, Official Gazette of RS, No 120/05)).

When there is reference to more than one directive, the directives are being referred to in **chronological order**.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Apart from the National Assembly and the Government of the Republic of Slovenia, the transposition process has been carried out by other bearers of public authority (chambers, public agencies) that have been assigned regulatory functions by the law (for instance by the Public Agencies Act and sector-specific acts such as the Health Services Act or the General Practitioners Services Act).

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Government conducts, directs and co-ordinates the implementation of the policies as determined by the National Assembly. To plan and implement those activities **the Government prepares an annual work program**. This is a comprehensive document containing draft laws and other implementing regulations that the Government is about to propose to the National Assembly together with a list of drafted implementing provisions, which the respective ministries are about to prepare in the coming calendar year in view of their national needs and in view of the alignment of the national legislation with the Acquis. **The Government's work program is in line with the actions of the EU institutions**. The program contains the procedures, time limits for discussion by the Government and by the National Assembly and for the adoption by the later. At the 102nd regular session of 20 December 2006, the Government adopted the normative work program of the Government of the Republic of Slovenia for 2007.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

In charge of the transposition of EC law are primarily the **competent ministries**, supervised by the **Government Office for Legislation**. The Office discusses draft laws and other legislative acts proposed by the Government to the National Assembly and submitted by the National Assembly for discussion to the Government, drafts of the Government legal acts and the drafts of the ministries' legal acts, and establishes whether they are drafted in accordance with the Constitution, the legal system of the European Union and the Acquis and whether they adhere to the legal technique. The Office further discusses the establishment of the legal system and in co-operation with the Government and the competent ministries attends to the exercise of the constitutionality and legality. **It establishes the rules of legal technique** when drafting a law or other act proposed by the Government to the National Assembly as well as the Government and ministries' legal acts. For the Government the Office provides special services as regards **monitoring the constitutionality and legality of the acts issued by the ministries**. The Office also monitors and evaluates the influence of the EU legal order on the national legal order and the issues linked to the implementation of the Acquis and comments on them to the Government and the ministries. It provides the notification of national legal acts that have been adopted to ensure the transposition of the directives to the legal order of the Republic of Slovenia and report thereupon to the government. It co-ordinates and in co-operation with competent ministries prepares positions on issues in pre-trial procedures, induced due to the lack of notification and monitors the execution of the Government's work programme in the light of its compliance with the Acquis.

In performing its tasks, the Office closely co-operates with ministries' legal services, the Legislative and Legal Service of the National Assembly, other national legal institutions, with the EU and international legal institutions.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

No.

Slovakia

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The transposition is the way of transforming already adopted EC law – directives into national legal systems.

In Slovakia, the transposition process stems from the legislative process in general, as is stipulated in the Slovak Constitution. Under the art. 87 sec. 1 of the Constitution, bills may be submitted by committees of the National Council of the Slovak Republic, Members of Parliament (MPs) and the Government of the Slovak Republic. As a matter of fact, the Government submits about 80 % of all bills to the National Council for debate. The reason is that the Government prepares policies in all areas of legal regulation and has necessary legal staff to prepare the bills. The Government (respective ministries) is responsible for the transposition – drafts legal instruments into which directives are transposed.

In order to act flexibly in the accession process and especially in the approximation process, an amendment to the Constitution was adopted in 2001.

The amended art. 13 (*the new letter c*) reads as follows:

(1) Duties can be imposed

a) by law or on the basis of a law, within its limits, and while complying with basic rights and freedoms,

b) international treaty pursuant to Article 7 section 4 which directly establishes rights and obligations of natural persons or juridical persons, or

c) government decree pursuant to Article 120 section 2.

Art. 120 sec. 2 of the Constitution:

If so stipulated by law, the government is authorized to issue decrees in order to execute the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and to execute international treaties stipulated in Article 7 section 2.

A government decree stated in the art. 13 and art. 120 is the so-called „approximation decree“. It is designed to fasten the approximation process, because it is much faster to adopt a governmental decree than a law - which usually takes two months to pass the whole procedure in the parliament. Also, a law cannot regulate every technical detail in various fields of European regulation, which is the purpose of these decrees – to disburden the parliament in the approximation process.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

Art. 249 of the EC Treaty stipulates that „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“. Transposition of a directive is intended to harmonize certain rights and duties in a specific field. It is up to a Member State into what instrument a particular rule is transposed.

In Slovakia, they are laws (passed by the parliament), governmental approximation decrees, governmental decrees and also regulations, ordinances and orders of ministries - all legally binding instruments.

Directives are transposed in such a way and into such legal instruments that effective implementation of measures from the directive must be ensured. Also, national principles of legal certainty, legal protection and law enforcement must be ensured.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Both options are possible and are widely employed. Sometimes, one directive is transposed into one legal instrument, but also several directives can be transposed into several legal instruments or one directive is transposed into more legal instrument. This is not a question of number of directives but a question of the content of the relevant directives and national legal instruments. The reason is that there are differences between the content of the Slovak legal system and the EU legal system. The measures from directives - depending on their content – are simply inserted into Slovak laws, there is no such rule as to the number of national legal instruments.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

The content must be wholly transposed, there is no exception and it is transposed in different ways (see Q 3. – 4.).

But it may happen that a specific rule from the directive is already present in the Slovak legal order. Therefore the obligation of Slovakia is to notify the Commission on the fulfillment of the duty to transpose - to send the Commission the relevant provisions of the national legal instrument where the specific rule from the directive is reflected.

As to the Slovak legal order, when a relevant body responsible for transposition finds such case – that a measure from a directive is already in the Slovak legal order, it doesn't make any references, because once a rule required by the EU is present in the national legal system, then the only duty of a Member State is to notify the Commission on the fulfillment of the duty.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

In the process of transposition, the most active subjects are ministries, where the heaviest burden of transposition lies and they are therefore staffed by lawyers to do the work. After the transposition is completed (for instance, a new draft law or decree is drafted in a ministry), it is submitted to and adopted by the Government. Then, the draft law is submitted to the Parliament for adoption..

Social partners are not involved. Once there is a duty imposed by the EU, it has to be implemented and in the process of transposition, there is no space for negotiating. The space to influence a certain rule is in the legislative process in the EU institutions. Then, it is usually a technical matter of the Government how to transpose the EU measures (see also Q 8).

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

Transposition is the way the Member States deal with their obligations inscribed in the Founding Treaties. It is an ex post activity, after the directive was adopted at the EU level and came into effect.

Any legislative process that is under way in the EU, is monitored by the Government which has its members in working groups of the Council of the EU and also votes in the Council. To a certain degree, it is also monitored by the parliament – the National Council by the way of the Committee for European Affairs. A constitutional law on cooperation of the Government and the Parliament on the EU matters was adopted in 2004. It stipulates that the government shall submit all legislative and non-legislative acts to the Parliament with a standpoint.

Transposition is on the agenda once a directive is adopted, not before. Forthcoming/on-going legislative processes in the EU differ from the transposition process.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

Only central bodies are responsible for transposition. Every ministry or a central body of state administration³⁶ is responsible for its field of action and for the preparation of the Slovak rule which is a reflection of the EU measure (the so-called „sponsor“). Sponsorship of each directive is determined according to the content of a directive – responsibility for transposition is taken by the body into which field of action a substantial part of the content of the directive belongs.

Ministries send their staff to working group of the Council of the EU during the legislative process at the EU level and are well aware of what has been adopted, they know also from the Official Journal. The draft Slovak legal instrument is then checked by the Institute for Approximation of Law (which is a part of the Office of the Government) which is a coordinator of law approximation in Slovakia.

³⁶ Ministries and other central bodies of state administration are state bodies with a field of action in the whole Slovak territory. Central bodies of state administration are, for instance, National Bank of Slovakia, Office of the Prosecutor General, Supreme Audit Office, Antitrust Office, Statistical Office, Public Procurement Office or National Security Authority. Each body joins the process of transposition in its field of action and is responsible for transposition of the relevant measures of the EC law.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

The biggest problem that is observed by the bodies responsible for transposition, is the translation of the terminology of the EC law into Slovak language. The legislative language of the EC law is different from the Slovak legislative language. The problem arises in translation of the EU measures into the Slovak legal language, so that their meaning was not altered and the result to be achieved was maintained.

Finland

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The question of which organ approves an enactment that is required to transpose a European Act is decided case-by-case according to who, under the Finnish constitution, is empowered to issue the material legal provision. European Acts vary significantly in their constitutional impact, so the power may rest with the Parliament, the President-in-Council, the Government or a sub-governmental, administrative body.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

As question 1. Depending on what material provisions the European Act requires, it may be an Act of Parliament, a Presidential or Government or Ministerial Decree, or a purely administrative regulation, circular etc.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

This depends on the situation. Some European enactments may lead to an omnibus enactment, some may require amendments to many individual enactments. Quite frequently, directives may cover issues that involve different layers of government, legislative, executive or administrative.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

Rarely, but when appropriate, yes. That is if there are several directives affecting broadly the same area of legislation.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

As a rule, the transposing instrument contains the material provisions needed to bring about the results required by the directive. On some occasions, the directive may require verbatim transposition, but this is exceptional - and not necessarily in conformity with the treaties. **Transposition by reference is considered unacceptable in Finnish legislative practice**, and could not be applied when transposition is carried out by Act of Parliament or Decree; it may be applied to enactments that apply only to a specialist readership, but these would normally be enacted at the administrative level.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

The Finnish legislative process (including at decree level) requires a high degree of consultation aiming at consensus: it may be taken for granted that social partners and parties with a material interest in the enactment (e.g. industry organisations) participate.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

About 50 percent of the Finnish Parliament's workload relates to defining Finland's national position on proposed European legislation: the Eduskunta's positions are what the government is obliged to represent in the Council and its working groups.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The Prime Minister's office oversees transposition by means of a centralised database. The actual work is headed by the relevant sector ministries. These are national bodies. (Because of the autonomy of the Åland Islands, national measures usually apply only to the mainland - transposition is done separately by the Ålanders' regional government and parliament.).

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

Not really, although one is frequently tempted to note the poor quality of European legal drafting.

Sweden

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The transposition is made by Parliament, Government or by public authorities depending on the nature and content of the EC law. If Swedish legislation has to be amended, the Government puts forward the necessary proposals to Parliament for adoption. If the EC law concerns matters that has been delegated to the Government by law, or fall within the Government competence according to the Constitution, the Government can make the necessary amendments on its own by issuing decrees. In the same respect the relevant authorities can make amendments to regulations that fall under their competence (the public authorities are authorized by law to issue regulations within specific areas).

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

As indicated above, EC law can be implemented in several different ways: by law (adopted by Parliament), by decree (adopted by Government) or by regulations (adopted by public authorities). Often an EC directive is implemented by several different acts at different levels. For example, the framework directive on water (2000/60/EC) is implemented both by amendments in law (the Swedish Environmental Code and the law on public water and sewer facilities), by several Government decrees and by a regulation on drinking water from the National Food Administration. As a rule, more detailed provisions in EC law are implemented on a lower level (i.e. by an authority rather than by Parliament or Government).

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

It depends on the content of the EC law. As noted above, EC directives are sometimes implemented by a number of acts at different levels of Government. In some cases it is sufficient to adopt or amend one act at any level.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

This is usually not the case. It happens that several directives are implemented at the same time if they concern the same body of legislation and are to be implemented at the same time (e.g. the directives on public procurement). In these cases, the same Government bill contains all the necessary amendments to implement all the directives.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

Not applicable. Directives are usually implemented by amending existing acts (laws, decrees, regulations). If several acts have to be amended they are done so separately (but, as noted above,

they can be amended at the same time, e.g. contained within the same Government bill and the same Parliamentary Committee report).

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

Before bills are sent to Parliament they are usually subjected to a consultative procedure in which they are sent out to all concerned parties for opinion. The parties might be authorities (including courts of law), NGOs, local authorities, universities and other academic institutions, trade unions and employers or trade associations.

In some cases, provisions in EC directives that concerns matters traditionally not regulated by law but by collective agreement between the social partners are left to them to implement.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

The Government has the obligation to inform the Parliament on all important proposals from the European Commission and on the ongoing legislative processes in the EU. This is done primarily by consultation with the relevant Committee and with the European Affairs Committee, and by submitting explanatory memorandums and other documents on Commission proposals to Parliament.

When more extensive EC directives are to be implemented, a commission of inquiry is often set up by the Government to analyze the need and methods for amending Swedish law. The commission's report is made public, and the Government bill is often based on the proposals made in the report.

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

The Government is responsible for ensuring that EU legislation is properly implemented in Sweden. The Government proposes necessary amendments to legislation and adopts necessary decrees in order to transpose EC directives. The public authorities operate independently to a large extent and adopt the necessary measures to implement directives within their remit. In simple cases they often do so on their own initiative (provided that they have an authorization to issue regulations in that area). When more complicated or extensive directives are to be implemented, the Government Offices often form a working group with representatives of the concerned ministries and authorities to analyze the need to adopt measures at different levels.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

There are no major problems with implementation of EC law in Sweden that have come to general attention. The Swedish Agency for Public Management noted in a report from 1998 that public authorities sometimes tend to over regulate when they implement EC directives, i.e. they issue more detailed or restrictive regulations than is proscribed by the directive. From time to time it has also been noted that some Government bills regarding transposition of EC directives are overdue.

United Kingdom

1. Is transposition made directly by the Parliament or is transposition delegated to the Government? If yes, to what extent (pl. explain) and for how long: one directive, one year, one parliamentary term?

The *European Communities Act 1972* (ECA) allows EC specified instruments to become part of UK law without the need for separate enactment of each and every EC instrument. Section 2(1) of the ECA gives the statutory authority for Treaty provisions and directly applicable secondary legislation (e.g. regulations) automatically to have legal effect in UK domestic law without further enactment:

All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression "enforceable Community right" and similar expressions shall be read as referring to or to which this subsection applies.

However, for practical reasons, uniformity is not always possible without additional implementing measures, particularly in the area of agriculture. Thus, many agricultural regulations are in fact implemented in the UK by Statutory Instrument (S.I.).

EC legislation which is not directly applicable (e.g. directives and decisions) can be enacted either by primary or secondary legislation in the UK. The vast majority of EC legislation is enacted by S.I. under Section 2(2) of the ECA. This Section confers authority on ministers, Government departments or Her Majesty in Council to make, with certain exceptions contained in Schedule 2 of the Act, subordinate legislation:

- (a) for the purpose of implementing any Community obligation of the United Kingdom, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or
- (b) for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above.

The vast majority of EC laws are implemented in the UK by Statutory Instrument under Section 2(2). Subordinate legislation made under this section can repeal or amend existing legislation if this is incompatible with EC law.

2. What kind of legal instruments are used to make transposition of European law in national law: act, decree, other? Pl. describe legal characteristics.

EC law is transposed by means of primary legislation (Acts), secondary legislation (Statutory Instruments, Orders etc) or administrative measures and regulations.

3. Is transposition made individually: one legal instrument transposing one directive? Pl. explain.

This varies. One UK instrument may transpose one EC measure or several; several UK instruments might be needed to transpose one EC measure.

4. Is transposition made globally: one legal instrument transposing several directives? Pl. explain.

5. Does the transposing legal instrument contain the whole transposing set of measures or does it make reference to another legal instrument published or not (not. transposition by reference)? Pl. explain.

The two approaches for transposing EC law into UK law are

copy-out implementing legislation adopts the same, or mirrors as closely as possible the original wording of the directive

or

elaboration choosing a particular meaning, in accordance with the traditional approach in UK legislation, according to what the draftsman believes the provision to mean, with the aim of working a provision into something clearer.

The March 2005 Cabinet Office *Transposition Guide: How to Implement European Directives Effectively* sets out in detail how EC laws are transposed into UK law and how lawyers and implementers can avoid over- as well as under-implementation. This document can be accessed at <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/tpguide.pdf>.

The UK processes for the adoption and transposition of a directive subject to co-decision are set out in the following diagram from the Guide.

6. Are other actors involved in the transposition process, than the Parliament and the Government (for instance social partners) and to what extent? Pl. explain.

7. Is the transposition process anticipated in any way (for instance, information of the Parliament by the Government on forthcoming / on-going legislative proceedings at European level etc.)? Pl. explain.

If EU legislation is implemented by primary legislation special transposition procedures apply. The following Cabinet Office note describes Government Memorandums on the Implementation of European Directives or “Transposition Notes”:

If the Bill implements European directives, the department should place in the libraries of both Houses a memorandum (“Transposition Notes”) showing how this has been done. The Government has undertaken to “make available to Parliament a memorandum alongside primary or secondary legislation giving effect to European

directives, except where the effort required would be disproportionate or the result unhelpful to the reader.”

This memorandum will set out how the Government proposes to transpose the main elements of the relevant European directive into UK law. The existence of Transposition Notes should be indicated in the Explanatory Notes to the Bill (See Appendix B, paragraph 46, for further details).

It is important where a Bill implements European directives that departments plan carefully to avoid or to manage potential conflicts between European implementation deadlines and timescales and domestic parliamentary deadlines or requirements, such as the need to consult.³⁷

8. Are there, in your Member State, central bodies in charge of the transposition of EC law? At which level (national / federal / regional etc.) Pl. explain.

9. Can you think of any major, typical or notable difficulty in the transposition process in your Member State?

In February 2004 the then Foreign Secretary, Jack Straw, announced that the Government would be reviewing the scrutiny and implementation procedures for EC legislation. He said:

Transposition of EU legislation into national law also needs attention. The risk of gold-plating the original texts, thereby imposing on British businesses more stringent conditions than those that their competitors in other member states face, is real. With that in mind, 18 months ago I commissioned the distinguished European lawyer, Robin Bellis, to prepare a report on our implementation of EU legislation and I published it on 24 November last year. In December I held a seminar to discuss its recommendations with representatives from across Government, the House, the EU institutions and the Confederation of British Industry. I have asked the relevant Departments to report back to me in six months on the steps that they have taken to implement the recommendations. Of course, I also welcome the views of the House.³⁸

The Bellis Report, entitled *Implementation of EU Legislation*, November 2003, can be accessed at <http://www.fco.gov.uk/Files/kfile/EUBellis.pdf>. An FCO press release outlined the main recommendations in the report as follows:

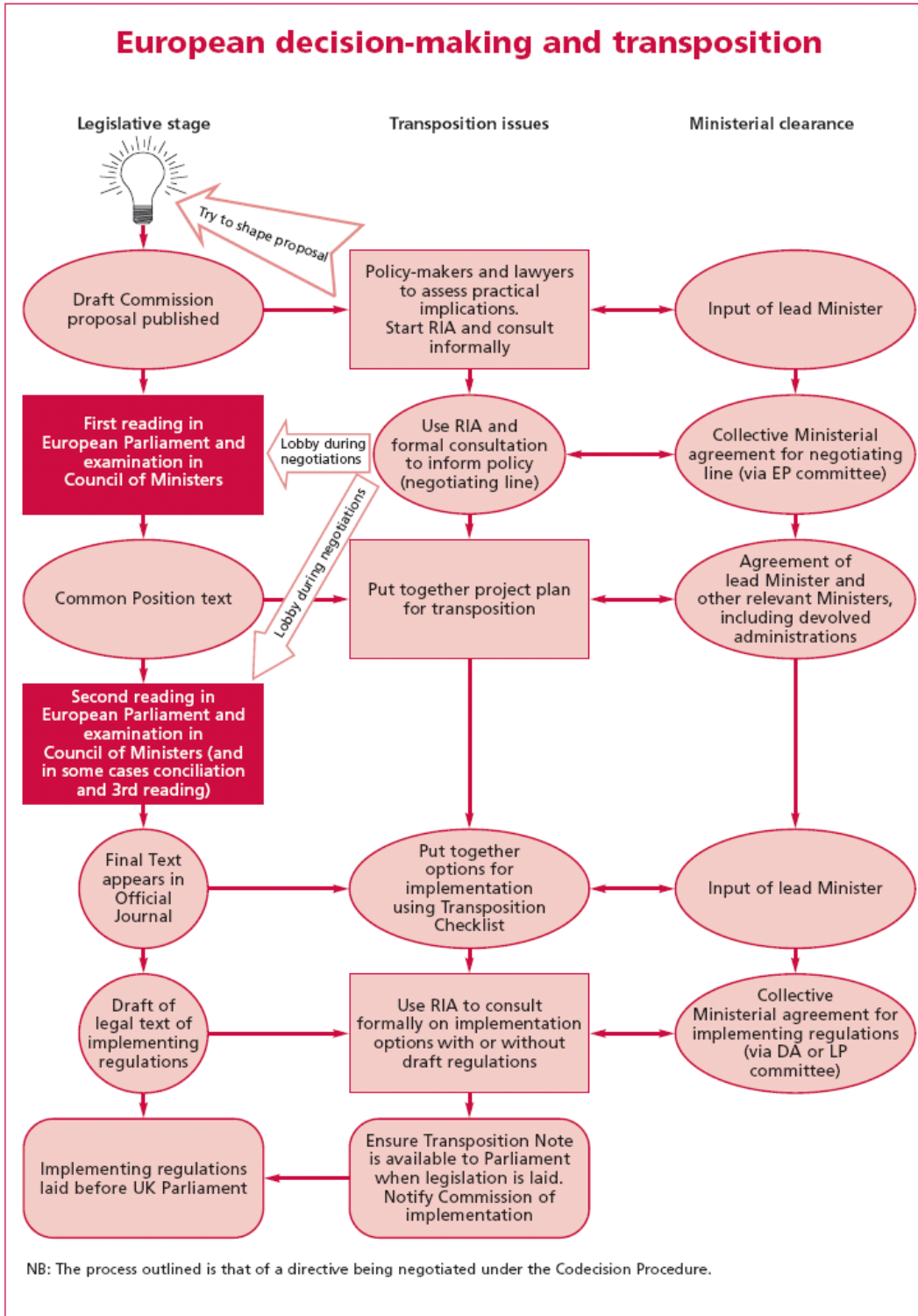
- Increased use of cross-Whitehall "EU Directive project teams" along the lines of the existing (UK) Bill project teams.
- The "copy-out" of ambiguous EU legislation into UK law (rather than elaborating the text with clarifications).
- Further strengthening of departmental drafting expertise.

³⁷ Cabinet Office, *Guide to Legislative Procedures*, October 2004, at http://www.cabinetoffice.gov.uk/secretariats/downloads/guide_legislative_procedure.pdf

³⁸ HC Deb 11 February 2004 c 1417 at http://pubs1.tso.parliament.uk/pa/cm200304/cmhansrd/vo040211/debtext/40211-05.htm#40211-05_head0

- Establishment of an independent body of lawyers with drafting expertise at the EU level. They should be independent and appointed in the same way as judges and advocates general of the European Court of Justice.³⁹

Mr Straw said in February 2004 that he had asked for responses to the Bellis recommendations within six months. A summary of views expressed in consultations from October to December 2003, is contained in Deposited Paper 05/247 (MGP 05/80) of 24 January 2004.



3.

Comparative table

Overview of the transposition process in the Member States⁴⁰

⁴⁰ Established on the basis of contributions received from 24 national parliament's documentation services

Overview of the transposition process in the Member States (24/27)

	(1) Respective roles of national parliaments and governments in the adoption of legislative transposition measures	(2) Transposing acts	(3) Individual transposition	(4) Global transposition	(5) Transposition by reference	(6) Consultation of civil society	(7) Reporting	(8) Central transposition body National transposition database	(9) Transposition difficulties
B	Governmental bill submitted to parliament	Acts + royal decree.	Always	No	No	Social partners. Transposition by collective agreement between social partners ratified by royal decree.	Regular hearing of European Affairs State secretary by the Parliament Advisory committee. Annual report.	No central body. Coordination by foreign affairs. Euro-coordinators network. Traject manager for each directive. State secretary. Central database	Federal structure. Consultation of socio-economic groups too extensive.

Overview of the transposition process in the Member States (24/27)

								Eurtransbel"	
BG	Governmental bill submitted to parliament	Act	Yes	No	No	NGOs. Social partners.		No central body	No
CZ	Governmental bill submitted to parliament	Acts + administrative decrees	Yes	No	No but allowed	Social partners		Department for the Compatibility of the Office of the government	No
DK	Governmental bill or transposition by delegation to government	Acts. Ministerial orders. Adm. circular Collective agreements	No	No	No	Large inclusion of all interest groups in the transposition process. Transposition by collective agreement between		No central body	Sometime difficult to sort out between domestic and transposed measures in the same act

Overview of the transposition process in the Member States (24/27)

						social partners			
D	Governmental bill or transposition by delegation to government	Acts or government regulations	Yes	No	Yes	Informal consultation		No central body	Federal structure
EL	Governmental bill submitted to parliament	Formal law. Presidential decree. Ministerial decision. Decisions. Reference to pre-existing national provisions.		Yes (Law 1338/1983 on the implementation of Community law)	No				Yes. Delayed transposition due to insufficient cooperation between ministerial departments in charge of transposition.
EE	Governmental bill or transposition by delegation to government	Acts. Government or Minister regulations	Yes	No	No	Consultation of social partners and NGOs in the negotiation and in the	Regular reports of the Government to the Parliament on delayed transposition measures,	No central body. Central database of the State Chancellery (electronic working plan for the government): directives in force,	Lack of capacity in impact assessment, too close to transposition deadline

Overview of the transposition process in the Member States (24/27)

						transposition phases	possible problems, infringement cases. 12 months forward-looking review.	deadlines, transposing acts and indicative transposing acts. The database supports the reports to the parliament.	
E	Governmental bill or transposition by delegation to government	Organic act. Act. Legislative Royal Decree. Royal- Decree-Law. Ministerial Order. Regulation from regulatory bodies.	Yes	No	No (used once: Royal Decree Law 1/1997)	Not available		No central body. Governmental coordination by Interdepartmental Commission for EU Affairs , chaired by vice Minister for EU Affairs. Sectorial conference on EU matters coordinates transposition by regions.	No
F	Governmental bill or transposition	Act. Decree.	Yes	No	Yes but limited to	Yes		Coordination by SGAE (Secrétariat	Too extensive consultations of civil

Overview of the transposition process in the Member States (24/27)

	by delegation to government	Decision.			the adaptation to technical progress			général aux Affaires européennes) Transposition by relevant Ministries.	society. Rewriting of directives provisions.
IRL	Transposition delegated to government by European Communities Act 1972 with system of annulment by Parliament - 1973 Act	Ministerial Regulation (vast majority). Act of Oireachtas. Regulations under Act other than EC Act 1972	Yes	No	Not available.	Yes	Early warning system lead by the ICCEUA when EU legislation likely to be difficult or costly to transpose.	Interdepartmental Coordinating Committee on European union Affairs (ICCEUA) with one EU coordinator per Department. ICCEUA is developing a central databank to monitor transposition of EC directives and issued guidelines.	No.
I	Annual Community Act. The governmental Community Bill	Legislative act. Governmental regulation enabled by	No	Yes (Annual Community Act)	Not available	Not available	Yearly debate on the Annual government report on	Not available	Not available

Overview of the transposition process in the Member States (24/27)

	<p>is submitted to the Parliament by Jan. 31st each year.</p> <p>The Community Act may delegate transposition to the Government.</p>	<p>parliament. Decisions.</p>					<p>Italy's participation to the EU.</p>		
CY	<p>Governmental bill submitted to parliament.</p>	<p>Legislative acts. Regulations. Ministerial Decrees.</p>	N/A	N/A	<p>Transposition by reference is an exception</p>	<p>Social partners and interested parties consulted</p>	<p>Regular report of the government on directives to be transposed.</p> <p>Monthly letter of the Parliament to the Government on transpositio</p>	<p>Coordination by the Harmonization Coordinator and the Planning Bureau</p>	<p>Negative influence of groups of interests</p>

Overview of the transposition process in the Member States (24/27)

							n delays.		
LV	Governmental bill submitted to parliament. Implementing regulations.	Acts. Government Regulations.	Not compulsory	Not excluded	Yes under strict conditions	Yes (social partners)	Informative report of the Ministry of Justice to the Cabinet of Ministers and Parliament three times a year. European Affairs Committee.	No central body. Coordination by the Ministry of Justice.	No
LT	Governmental bill submitted to parliament. Government regulations.	Acts. Government regulations. Adm. order	Yes	No	No	Social partners	National position submitted by government to parliament. Government report	No central body. Coordination by the Chancellery of the government.	No

Overview of the transposition process in the Member States (24/27)

							every 6 months on transposition		
							Yearly debate on Commission work programme		
L									
HU									
MT									
NL	Governmental bill submitted to parliament.	Ordinary acts. Regulations.	Yes	No	Yes	Experts and other actors.		Department for European Affairs (Ministry of Foreign Affairs)	No
A	Governmental bill submitted to parliament.	Laws Decrees (in German: Gesetze, Verordnungen)	Yes	No.	No	Social partners and other institutions		No. Monitoring of the transposition process: Federal Chancellery	No
PL	Governmental bill or transposition	Acts. Government	Yes	No	Yes	Social partners		No central body.	No

Overview of the transposition process in the Member States (24/27)

	by delegation to government	regulations.						Office of European Integration Committee responsible for monitoring implementation of EC law.	
PT	Governmental bill or transposition by delegation to government, depending on matters concerned	Laws. Decree-laws. Regional legislative decrees.	Yes	No	No	Social partners		No	Long drawn-out process for transposition bills
RO	Governmental bill or transposition by delegation to government (ordinances)	Acts. Government ordinances / decisions. Ministerial orders.	Yes	No	No	No		The European Integration Ministry gives opinion on compatibility with EC law	No
SLO	Governmental bill submitted to parliament	Law. Governmental Regulation. Decree.	Yes	N/A	Possible in particular for technical annexes.	No	Annual work program including transposition measures	Government Office for Legislation supervises transposition and monitors	No

Overview of the transposition process in the Member States (24/27)

					Excluded for rights and obligation s of persons			constitutionality and legality	
SK	Government bill	Acts. Government decrees. Regulations. Ordinances. Ministry orders.	Yes	No	No	No		No central body. Institute for the Approximation of Law	Translation of EU legal terminology.

Overview of the transposition process in the Member States (24/27)

SF	Governmental bill	Act of Parliament. Presidential / Governmental / Ministerial decree. Administrative regulation. Circular.	Yes	No	No (not allowed)	Social partners. Parties with a material interest (e.g. industry organisations).		Prime Minister's Office oversees transposition with a centralised database.	No
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Overview of the transposition process in the Member States (24/27)

SV	Governmental bill.	Act of Parliament. Governmental decree. Regulations of public authorities.	Yes	No	No	Yes. NGOs, universities, academic institutions, trade unions, employers, trade associations. Transposition by collective agreement between social partners.	Commission of inquiry when more extensive EC directives to be transposed	No central body	Swedish Agency for public Management report (1998): - tendency of public authorities to over regulate when transposing directives; - sometimes delay in Government transposing bills.
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Overview of the transposition process in the Member States (24/27)

UK	<p>Majority of EC legislation is enacted by Statutory Instrument under Section 2(2) of the <i>European Communities Act 1972</i></p>	Primary or secondary legislation.	Not available	Not available	<p>No transposition by reference. Two techniques :</p> <ul style="list-style-type: none"> - copy-out of directives texts; - elaboration (rewriting of EC text in a clearer way in UK law) 	Not available	Government transposition notes if primary legislation needed	No central body	Gold-plating ("elaboration technique")
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