



Spotlight on Parliaments in Europe

Drafted by the Directorate Relations with National Parliaments - Institutional Cooperation Unit
Source: European Centre for Parliamentary Research and Documentation

N° 24- February 2019

Monitoring of the Transposition of Directives and the Implementing Measures of EU Regulations

On 15th October 2018, the Bulgarian National Assembly submitted request 3914 to the ECPRD network asking about national parliaments' role regarding the transposition of directives and implementing measures of EU regulations into relevant law. 20 National Parliaments/Chambers responded and there was a clear majority that placed the emphasis on the role of their government in this context-allowing their parliament to take a role of secondary importance. The Bulgarian National Assembly request asked about Parliament's role in monitoring the transposition and implementation of Directives and the tools that the parliaments use to assess this legislation before, during and after implementation. It also inquired about the liability of Parliament for inappropriate or incomplete transposition and the procedures that national parliaments implement at the expiration of the transposition deadline. This briefing aims to provide a summary of the responses of the National Parliaments/Chambers.

I. Context

Transposition and implementation of EU Directives and Regulations is a very topical subject in the European Parliament now as the Committee on Legal Affairs and on Petitions held an interparliamentary meeting on this topic on the 27th November 2018. This meeting was based on “Empowering parliaments and enforcing citizens’ rights” and the debate focused on the implementation and application of EU law, especially from a national parliaments’ perspective. Alongside this, the European Parliament Research Service released a short document explaining the terminology linked with transposition, implementation and EU Law enforcement.¹ This document also outlined the role of the Member States. Member States are obliged to transpose directives into their legislation within the prescribed deadline and to apply EU law correctly and effectively. They are obliged to report to the Commission on the transposition of directives and on the performance of the legislation. Lastly, the Member States are responsible for the enforcement of EU law in their national legal systems.

Bulgaria’s National Assembly is completing a study on the experience of the other Member States’ Parliaments when adopting laws that introduce Directives and implementing EU regulations. The study is part of a project on “Improving the effectiveness of the implementation of the acts of the European Union in Bulgarian laws”. At the same time, Bulgaria also issued a request concerning their website where they stated their intention to “create a public software for the implementation of the Directives and the measures for transposition of the EU Acts into the Bulgarian legislation”.

II. Methods of transposition of directives and implementation of EU regulations

In the request, the Bulgarian National Assembly outlined four potential methods of introducing EU law and stated that they all apply in Bulgaria.

- a) Provision of the Act introduces rules, which comply with the requirements of the Directive
- b) Provision of the law transcribes exactly the text of the Directive
- c) Provision of the law does not introduce texts but refers in full to the relevant Directive
- d) Refers to a secondary legislation which introduces the relevant procedure

National Parliaments used a number of these methods for the transposition of Directives. In general, no strict rules seem to apply. Many chambers did not have a special procedure for the transposition of directives- they consistently

¹ At a Glance link http://www.epgencms.europarl.europa.eu/cmsdata/upload/09adb8a6-5006-4bfe-9b1e-d9a7afde2be2/EPRS_ATAG_627141_Transposition_implementation_and_enforcement_of_EU_law-FINAL.pdf

apply their general legislative procedure. In fact, like for Bulgaria, many parliaments seemed to use all or a number of the options listed above.

With reference to the technique of transposition, each member state seemed to take a slightly different approach. With regard to EU legislation and legislative procedures, each Member State has an obligation to complete transposition but the exact method of transposition or role that the national parliament should play is not specified and this has led to a discrepancy in practice.

For example, Czechia Chamber of Deputies' response made it clear that their parliament does not actively monitor either transposition or implementation of legislation and instead they leave the task to their government. The Parliaments of Austria and Hungary also specified that they have no special procedure. In practice, this means in Austria it is expected that the materials attached to bills will include reference to transposition matters and it is expected that monitoring will be done by institutional participants in consultation procedures in the pre-parliamentary phase. Hungary's National Assembly emphasised that the Government is responsible for the bill's drafting and the completion of the transposition requirements in the course of drafting. Therefore, parliament's role is limited.

In the case of Italy and the UK, their parliaments played a much bigger role in the transposition. The Italian Senate reinforced that transposition, implementation and maintenance of directives and regulations at a national level are managed by two fundamental instruments; the European Union bill and the European Delegation bill. One corrects rules incorrectly transposed, which may be subject of litigation, and the second identifies the acts that need to be transposed and delegates to government the adoption of one or more legislative decrees. The Italian parliament aids transposition through their committee system; each committee considers the parts of the bill that they are responsible for and they conclude work by adopting a report and appointing a rapporteur. Bills are also referred to 14th standing committee for general consideration.

The UK House of Commons highlight that Directives can be introduced either by an Act of Parliament or by subordinate secondary legislation. Most are introduced as statutory instruments under s.2 (2) European Communities Act 1972 (ECA). Their response noted that the ECA provides the legal basis for the domestic law, *not* the way for parliament to monitor the transposition or implementation. Like Bulgaria, the UK appears to use all methods of transposition in different ways but their response highlighted that their government prefers 'copy out' transposition where possible. This preference is reflected in EPRS' briefing, which warned against the dangers of "gold-plating" which is "interpretation by national authorities exceeding the requirements of a directive by adding extra requirements and (potentially) additional red tape beyond that which derives directly from EU-level provisions."

The Bulgarian National Assembly specifically asked whether, when a Directive is amended by a regulation, the text which introduces the directive is altered. In general, the consensus seemed to be that these texts are modified. This is the case, for example in the replies by the Polish Sejm and by Estonia's Riigikogu. The response by UK's House of Commons mentioned the idea that statutory instruments can make ambulatory reference to EU legislation, which allowed automatic updates to the underlying EU directive. This system raised concerns and now is only used for technical updates. In addition, the Explanatory Memorandum of the Directive must make it clear that an ambulatory reference is being introduced. Therefore, it seems modification of the text is preferable in the name of clarity and transparency.

Preliminary Impact Assessment and Motives for Adoption

Considering that many chambers stated that their government took the lead regarding transposition, a preliminary impact assessment or motives for adoption are appropriate tools to allow parliament to play a role in the process. An impact assessment and/or the inclusion of motives for adoption means that governments are held to account and in practice, the majority of Chambers who responded to this question do implement them.

For the countries without a special procedure for directives, the ordinary legislative procedure applied. The Finnish Parliament stated they it does not have special procedures to monitor the transposition of directives as their Government is responsible for transposition and implementation. In general, it is expected that draft bills include reference to transposition matters. Romania's Camera Deputatilor highlighted that there were no imperative requirements in terms of content or motivation but motivation is required formally for every law introduced.

Instead of a traditional preliminary impact assessment, the UK House of Commons pressed the importance of the pre-transposition period for Parliament's role in the process. Their Houses looks at the *draft proposal* for EU laws

instead of monitoring transposition and the Explanatory Memorandum given by Government at the same time outlines the implementation that the government are planning.

The reply by the Italian Senato della Repubblica outlined that an impact assessment is required and submitted together with all government bills. Draft decrees for transposition and implementation are normally accompanied by a report illustrating the provisions, regulatory technology analysis of the legislative proposal, and explicit analysis of the compliance of the proposal with the European regulatory framework. In practice, all proposals are accompanied at least by a motivation.

The Bulgarian National Assembly also asked whether the motives, which are applied to the bill, state whether the bill is linked to infringement proceedings for incomplete or incorrect transposition or non-transposition. Their goal was to know whether the motives describe the specific violation, as well as the answer given by the Commission through the EU Pilot Project. Very few parliaments appeared to impose these criteria on the motives for adoption accompanying a bill. Hungary's National Assembly said that infringement would be mentioned in the bill. The Swedish Riksdag said that if infringement proceedings were initiated then it was likely to be included in the preparatory work of the proposal but it is not mandatory to include it in the bill or the motives.

Bulgaria's National Assembly also asked about whether TRIS technical regulation notification is included in the motives. Most of the Chamber's responses to this query did not mention TRIS. The Italian Senate did say that they are involved in the TRIS notification. The Polish Sejm made clear that they were open to TRIS being mentioned in the Explanatory Memorandum but not in the bill itself.

Procedure for a shorter process at the expiration of the transposition deadline for the bill

Most of the Chambers had no special procedure that they applied in the case of an expiration of the transposition deadline. The Swedish Riksdag's response noted that the pre-parliament inquiry and consultation process take a long time. In order to meet the time limit for transposition, the Government initiate the process as early as they possibly can. In Polish national law, there is a special procedure for bills implementing EU law. This process is shorter, but this is not linked to the transposition deadline. Likewise, Hungary's parliamentary law allows shortened procedures in special circumstances but this is a general solution not reserved exclusively for the expiration of transposition deadlines. The UK Chamber's response outlined that government guidance warns legal drafters to ensure deadlines are met and they quoted the Lords Guidance which states that the Lords Secondary Legislation Scrutiny Committee "will not be sympathetic to a request for expedited consideration to avoid infraction proceedings where it is simply a matter of poor planning".

Ex post Impact Assessment

Many national parliaments made clear that ex post Impact Assessment played no role in their parliamentary practice e.g. the Parliaments/Chambers of Croatia, Czechia, Romania, Slovakia and Poland. The Swedish Riksdag stated that their committees have a legal obligation to carry out in depth follow-ups and evaluations of decisions taken and laws enacted in Parliament. The findings are often documented in a report in the series 'Reports from the Riksdag.' In Greece parliamentary control procedures enable MPs to question the competent Minister on the implementation of the provisions introduced by national legislation which introduce acts of the EU. However, there are no explicitly adopted procedures for ex post control.

In the case of Italy however, an impartial body; the Senate's Impact Assessment Office, which is chaired by the President of the Senate, works to help spread, develop and enhance the evaluation culture in Italy, within the institutional perimeter. It conducts analysis and assessment of public policies based on the study of risks, costs, benefits and efficacy.

Potential Lawsuits

In a similar vein, Bulgaria asked about potential lawsuits against national Parliaments for damages caused by incomplete or inappropriate transposition of European legislation and about who is responsible in these suits. When the Italian Senato responded, they mentioned the Francovich model for damages, which was envisaged by the European Court of Justice. This model would hold the State as a whole responsible for inappropriate transposition not the national parliament or any initiator of a Bill. The vast majority of the parliaments did not foresee their national parliament would be the subject of lawsuits. Slovakia made it clear that the Slovakia National Council does not have passive legitimation.

The Estonian Riigikogu stated that EU policy is shaped under Prime Minister and is part of general government policy. Any fines or periodic penalty payment imposed by Court of Justice are paid from the Government ministry responsible for transposition. The Polish Sejm on the other hand did foresee lawsuits against the Polish Parliament for damages caused by incomplete or inappropriate transposition of EU law.

The Bulgarian query also asked about the potential responsibility of the initiator of the bill for the relevant proposal. This was understandably not accepted as a possibility by any of the responding Member States.

Databases with information on the laws introducing the Directives.

The Bulgarian request inquired about any database containing information on the laws introducing Directives and implementing measures. For many of the respondents, there was no such database e.g. Sweden, Slovakia, and Romania. However, some of the parliament's responses referred to some kind of databases that they used which, obviously took very different forms.

For example, the Czech Chamber of Deputies noted that a database does exist but access to the part dealing with transposition was very limited. Despite a number of attempts, the Chamber has not been granted access as it is for selected employees of ministries and is administered by the Ministry of Foreign Affairs. Similarly, Croatia's parliamentary database contained all laws aligned with EU law but no specific database for laws introducing a directive. The database for alignment of EU legislation which contains information on infringement procedures is used only by government bodies and is not publically available. However, the Sabor can request any document pertaining to European affairs from the Government. . Their Government also deliver to the Sabor any information regarding actions brought against Croatia on the grounds of EU law infringement.

In its response, the Italian Senato highlighted that their database was notably narrow but it did include infringement procedures. This is available on the website of the Italian Presidency of the Council of Ministers Similarly the list from government given to the Senate of both litigation and pre-litigation procedures on a bi-annual basis is published but documents are not publically available. In Lithuania, the coordination of EU affairs is done through the EU information management system Linesis which is administered by Ministry of Foreign Affairs and is accessible to registered users in the Seimas. This system has a tool for coordinating transposition, implementation and enforcement, which is managed by European law department. In the Finnish parliament, the civil servants of the European Affairs Committee can access the Government's information system EUTORI, which contains information on transposition and notification.

Parliamentary practice of monitoring and controlling the implementation of the provisions introduced by your legislation introducing acts of the European Union

Several respondents highlighted that their National Parliament did not provide any parliamentary practice in this area e.g. the replies by the Parliaments/Chambers of Czechia, Slovakia, Romania and Poland. Lithuania's Seimas highlighted the importance of their committee system. Their Joint Committee on EU affairs and special committees are responsible for the monitoring of implementation of EU law through parliamentary control of strategical questions. Hungary's National Assembly similarly noted s.21 of the Act on the National Assembly of Standing Committees, which outlines that a special subcommittee examines implementation of legal instruments. "All standing committees shall set up a subcommittee for monitoring the implementation, the social and economic impacts of the Acts falling within the committee's functions and the deregulation processes."

Croatia's Sabor noted the importance of parliamentary scrutiny over government e.g. interpellations, MP questions and consideration of governmental reports. They use this in place of a particular practice controlling or monitoring implementation of provisions introducing acts of the European Union.

In conclusion, the responding Parliaments/Chambers monitor the transposition of directives and implementing measures of EU regulations into the relevant law in different ways but they all clearly recognise the importance of an effective system of transposition and implementation.

