

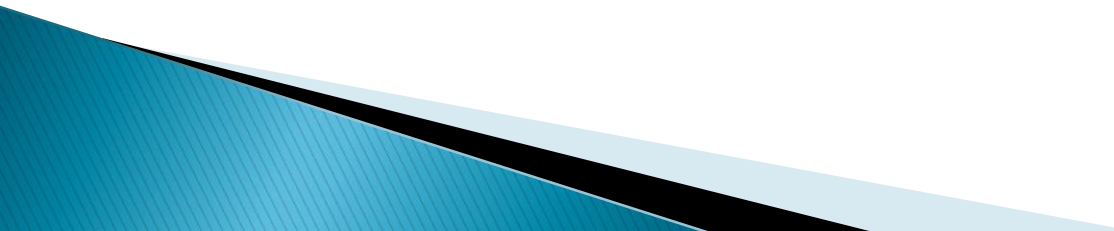
Implementing EU–Directives into national law

legal and linguistic challenges

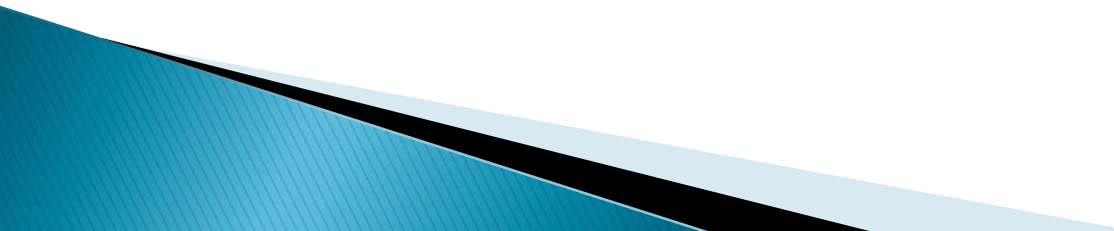
Alfred Stratil



Content

- ▶ **EU Legislation**
 - ▶ **Linguistic challenges**
 - ▶ **Conclusion**
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EU Legislation

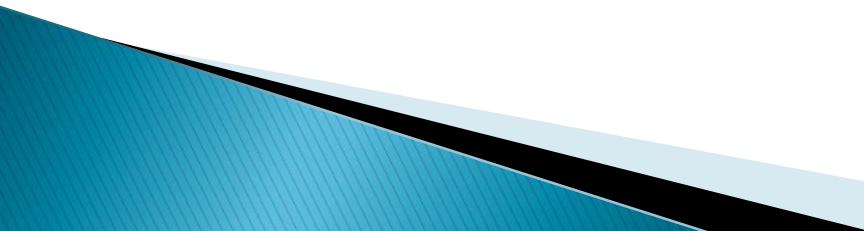
- ▶ Art. 288 of the Treaty:
 - ▶ **Regulations**
 - ▶ **Directives**
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Regulation

- ▶ **directly applicable in all Member States (MS)**
 - ▶ **applies automatically and uniformly**
 - ▶ **(self executing)**

 - ▶ **overrides all national laws**

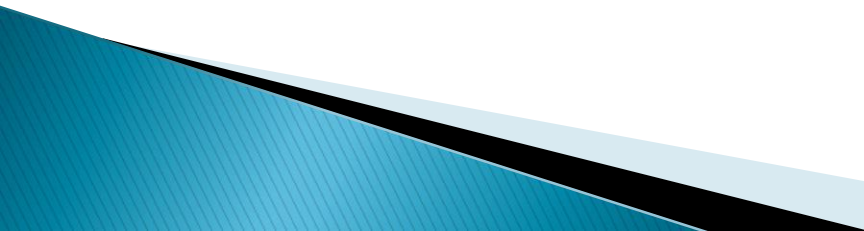
 - ▶ **most powerful form of EU legislation**

 - ▶ **no legal and linguistic problems by implementing**
 - self executing
 - ▶ **linguistic problems when executing.**
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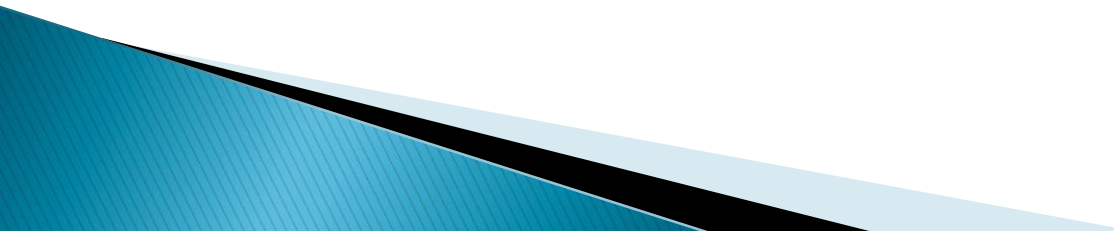
Directive

- ▶ **addressed to Member States (MS)**
 - ▶ **require MS to achieve a certain result in a certain time**
 - ▶ **MS are free to choose how to do so**


 - ▶ **MS must adopt measures to incorporate the Directive into national law AND**
 - ▶ **MS must communicate these measures to the EU-Commission**

 - ▶ **EU-Commission may initiate infringement procedures**
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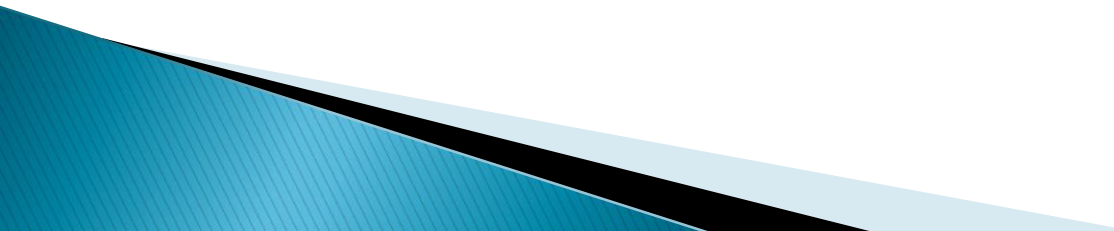
Regulations – Directives

- ▶ **Regulations:** self-executing
 - ▶ **Directives :** non self –executing; have to be transposed by MS
- 

Implementing a Directive

- ▶ Who is the **competent** law making authority ?
 - ▶ Do we find **existing legislation** to adapt or do we have to prepare new legislation?
 - ▶ Can the changes be accomplished by **minor amendments** or is it better to prepare a complete new law ?
 - ▶ Who is **responsible** for the work ?
- 

Linguistic challenges

- ▶ **Independant authority**
 - ▶ **Involved parties**
 - ▶ **„Hausbrieffachanlagen“**
- 

Independant authority

- ▶ Operator and regulator shall be **seperated**
- ▶ Regulator shall be **independent** from **political influence**

- ▶ In Austria:
 - ▶ courts : independant
 - ▶ authorities : non independant

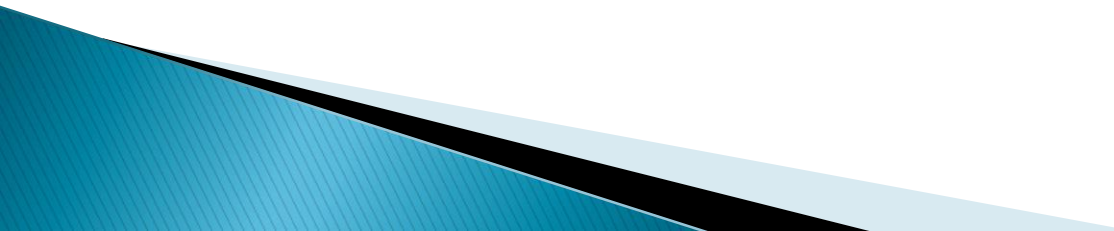
- ▶ Art. 133 Z. 4 B-VG: 3 persons / 1 judge + 2

Independant authority

- ▶ **problem of different legal and administrativ structures and different constitutional background**

Involved parties

- ▶ 2 aspects:
 - ▶ party involved
 - ▶ affected by a decision

 - ▶ *AVG:*
 - ▶ *Partei*
 - ▶ *Beteiligter*
 - ▶ *Unbeteiligter*
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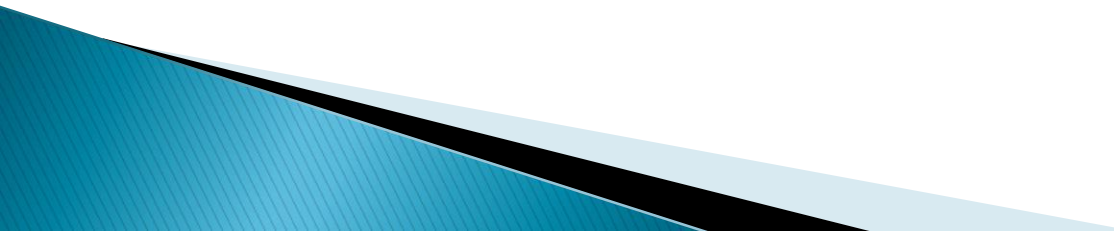
Involved parties

- ▶ **example shows that European law can easily overrule Austrian law, in any case ! Even if the Austrian legal practice was based on an national law and well-established jurisdiction**

Hausbrieffachanlagen

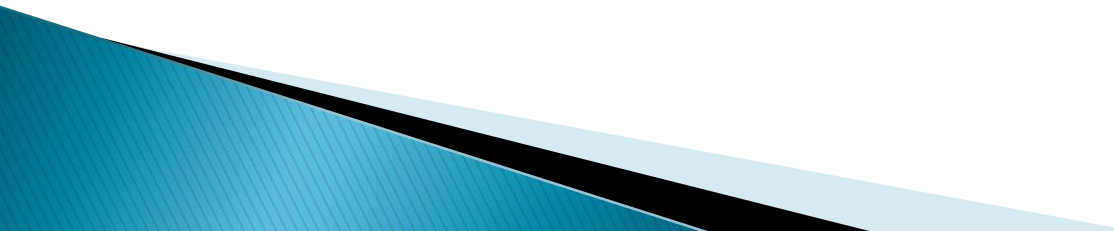
- ▶ Letter box
- ▶ Inhouse–letter box
- ▶ **problem of national language**

Conclusion

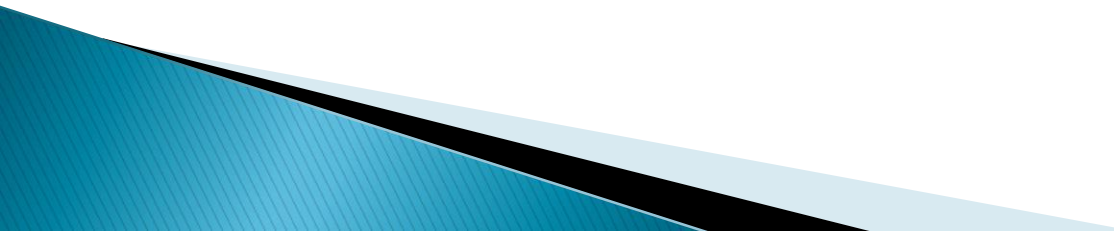
- ▶ **Creation**
 - ▶ **Implementation**
 - ▶ **Execution**
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Official version

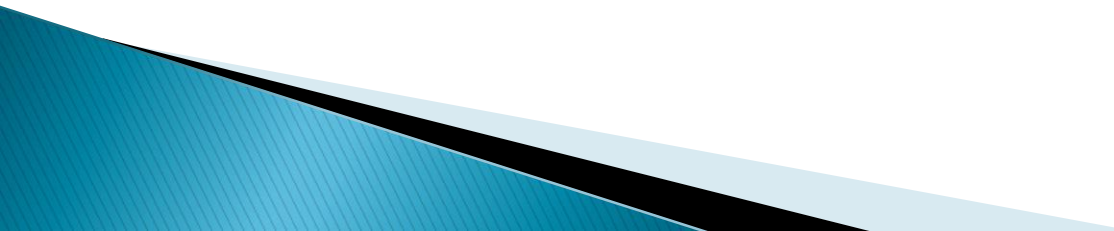
- ▶ Regulations and Directives are published in the European Journal in **24 languages**
 - ▶ **EACH** of them is authentic !!
 - ▶ **Not ONE** official and binding version !

 - ▶ **Recitals** useful but not binding law !
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European Commission

- ▶ At the very end it is the **EU-Commission** who decides if an interpretation is **in line with the wording** of the directive or regulation or is going beyond the legislation.
 - ▶ If a MS does not follow, the case will be brought to the EU Court of Justice. The court will have the last word.
- 

EU Commission + EU Court of Justice

- ▶ EU– Commission and EU Court of Justice ensure:
 - ▶ **consistent implementation of Directives and**
 - ▶
 - ▶ **(more generally) consistent application of EU law in all Member States.**
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Thank you very much !
Merci !
Danke
für Ihre Aufmerksamkeit !

