

Implementing EU-Directives into national law

legal and linguistic challenges

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Content

- ▶ EU Legislation
- ▶ Linguistic challenges
- ▶ Conclusion

EU Legislation

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

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.

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

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 administrative structures and different constitutional background

Involved parties

- ▶ 2 aspects:
- ▶ party involved
- ▶ affected by a decision
- ▶ *AVG:*
- ▶ *Partei*
- ▶ *Beteiligter*
- ▶ *Unbeteiligter*

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**

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 !

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.

Thank you very much !
Merci !
Danke
für Ihre Aufmerksamkeit !