

Issues Relating To The Steps Leading To The Entry Into Force of The Legal Acts of The Eu

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Abstract

This paper presents briefly legal acts of the European Union ", in terms of jurisprudence of EU Treaties Court of Justice of the European Union, referring to the steps leading to the entry into force of EU legal acts, namely: motivation, signature or notification (where applicable).Special emphasis is placed on the entry into force of the legal acts specified in terms of the Lisbon Treaty.

Keywords: European Union Legal Act, Motivation, Notice, Regulation, Directive, Decision, Opinion, Recommendation.

Introduction

Lisbon Treaty took the words "legal acts of the Union" that the Court has used it in its various judgments (Radulescu, 2012) and the Community Treaties have avoided using the regulations. "Legal acts of the Union" or secondary legislation, but must not conflict with primary law, otherwise they will have no legal effect (Manolache, 2006). Also must comply with the fundamental objectives, General Union / Communities (art. 3 TEU), and more specific objectives - which are accomplished through various policies of the Union / Community (Cruceru Popescu, 2006) and the general principles of Union law.

Legal acts of the Union are defined in art. 288 TFEU: 'To exercise the Union's competences, the institutions shall adopt regulations, directives, take decisions, and make recommendations and opinions. "With reference to these legal acts, the provisions of art. TEuratom 161 is similar.

Note that art. 249 TEC or other Community provision has not established a hierarchy among categories of acts listed "having any of the EU institutions to impose other vocation." Tests of rank were taken TEU (Tizzano, 1995) and TA (Monjal, 2000).

Also, there was a difference between granting institutions on one or some of their competence adopting several measures of all categories of acts, or only a category of acts (Kovar, 1997). Each institution shall act within the powers entrusted to them by the Treaties, in accordance with the procedures, conditions and objectives set by them (art. 23 para. 2 TFEU) (Militaru, 2011).

However, the Lisbon Treaty through art. 289, 290 and 291 TFEU introduces a hierarchy in terms of legal procedures for adoption of these acts, the ordinary legislative procedure,

according to which legislative acts are adopted, compared with non-legislative acts, acts implementing and delegated acts adopted by the Commission according to Art. 290 TFEU, the Commission and the Council (according to art. 291 TFEU).

Motivation Union legal acts

According to art. 296 par. 2 TFEU legal documents - legislative and non-legislative - be justified and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties.

The preamble to the act must include the statement of reasons, reasons of fact and law which led to the adoption of the measure.

The statement of reasons must state the facts on which the measure is based, as the argument of those facts which were decisive for the measure (Lefter, 2003). This condition is considered finished and if motivation is contained in an earlier measure adopted the measure in cause, in accordance with EU development policies of quality of life (Căescu, Constantinescu & Ploșteanu, 2012). Those arguments must be decisive and clearly formulated. Lack of motivation or insufficient motivation gives possibility Court of Justice to annul the act in question, under art. 263 TFEU (injunction), based on infringement of essential procedural requirements. To specify the grounds on which such a decision is justified, is to enable community organs jurisdiction to review the legality of the contested decision and the person concerned to provide sufficient detail for his permission to determine whether decision is well founded or to challenge its legality if vitiated by error (Manolache, 2006).

Regarding the legal reasoning, a legal act (the Union) may be canceled, for example, when the institution which adopted the measure in question chose the appropriate legal basis (Radulescu & Duta, 2012), which led to the violation of prerogatives Community institution in making decisions.

The declaration must not appear contradictory reasons. This could be a violation of art. 296 TFEU in order to affect the validity of the measure in question, if it is determined that due to the contradictions, the addressee of the measure is not in a position to appreciate, in whole or in part, the real reasons for the decision and, therefore, the operative part of its is wholly or partially, without any legal justification, such as the Directive. 90/366 Council which was canceled because it was competent to adopt in accordance with art. 7 paragraph. 2 TCE. (Now art. 12) and not according to art. 235 (308). Directive on the right of residence for students, in the context of their right to free movement, like that of the workers, and the Council, in making the decision to change the original proposal on the legal basis of the act.

Regarding proposals and approvals required indication is considered sufficient to note that they were required was irrelevant whether favorable or not (Lefter, 2003).

Signing and publishing legal acts of the Union

Regarding the solutions contained in the Treaties, on the entry into force of legal documents, they were inspired by the rules of law in the national legal order of the Member States and international law.

In this regard, the Court has made "a fundamental principle of the Community legal order according to which an act emanating from a public authority community (institution) is not enforceable against individuals before creating the possibility of making informed" (Isaac, 1978).

Prior to the Maastricht Treaty, binding only CEECs and TEuratom regulations were subject to publication. Decisions and directives, even if addressed to all Member States, the objectionable, exempted from publication.

The entry into force of TMS, according to art. 254 TEC, "repair, at least in part, this omission" (Isaac & Blanquet, 2001), stating that the publication requirement:

☞ regulations, directives and decisions adopted jointly by the European Parliament and the Council in codecision procedure;

☞ Council and Commission directives addressed to all Member States. In the absence of this publication, the documents were not "applicable" (Article 15 TEC) and not entered into force (Art. 254 TEC). The Court stated that "in the absence of publication only has effect on the binding nature of the text, not the legality of" "if institutions can not apply a regulation published, they can prepare the application taking the necessary measures to implement with provided that it does not come into force until after the main text becomes enforceable" (ECJ 100/74 CAM, 11.18.1975, Rec.1393).

Other acts of the Council and the Commission, that all decisions (including decisions addressed to all Member States, a situation considered a shortcoming of the treaty TCE) and directives which are addressed certain Member States to be subject to a notification. Rules of the Council (Article 17 TEC) provides that such directives and decisions are published "in the absence of a contrary decision of the Council or COREPER," but such publication is only the effect of informing the public (enforceability), not a condition of entry into force. The Court stated, moreover, that the publication of a decision notice does not replace it, because only the latter makes it enforceable (ECJ, 52/69 Geigy, 14.07.1972, Rec. 787).

Notification of legal acts of the Union

Directives are addressed to Member States and decisions are addressed, shall be notified to them and take effect upon such notification (art. 297 par. Ultimate TFEU).

The notification shall be sent by registered mail or by delivering notice to a person authorized thereto in exchange for a receipt of delivery. For Member States notification is basically through their permanent representatives in Brussels on individuals - individuals or businesses - notification is, in principle, by registered mail, but EU institutions opt to use diplomatic channels through Ambassadors accredited to them, particularly for notifications concerning companies falling under the jurisdiction of third countries. It is sufficient that the document "to enter the domestic sphere of the recipient, for example, to reach the company's headquarters" (ECJ, 8/56, Société Alma, 12.10.1957, Rec. 183, ECJ, 6/72 Europemballage, 21.02 .1973, Rec. 215).

Regarding the language, texts to the Member State or a private person falling within the jurisdiction of a Member State must be notified in the respective national languages. When a company has its registered office in a third country, the official language of choice decision / directive must take into account the relations established between that company within the common market, a Member State and the opening of an office in a Member Member may be determined (ECJ, 6/72, Europemballage, 02.21.1973, Rec. 215).

According to the provisions relating to the language, the official journal appears in all official languages of the Union. Despite the precautions taken by the institutions, in practice there was an increase of number of corrections, which aims, in principle, to remove errors due to translation and publication of materials in different collections corresponding official languages of the Union.

Entry into force of EU legal acts

The acts for which a notification shall take effect on the day of their notification, when documents are published in J. Of. EU enter into force on the date fixed in its content, or failing that, the twentieth day following publication.

Court stated that the "date of publication" means, not the day the Official Journal is available in each Member State, but the day is available at the Office of Official Publications of the European Union in Luxembourg, which coincides the date that is containing the text of the Official Journal, other solutions are considered to undermine the unity and uniform application of Community law imposing that the entry into force of a regulation occurs at the same time in all Member States (ECJ, 98 / 78 Racke, 01/25/1979. Rec. 69).

In codified practice in the written statement in the minutes of the 207th session of the Council of 09.02.1967, the Community institutions often provide an entry into force delayed-posterior of the 20th day after publication, or even delayed application an postponement of the effects, rear entry into force, allowing recipients to be placed not suddenly face new obligations and / or leave for national or Community authorities to take enforcement measures required.

When the deadline for entry into force as a matter of urgency, that is fixed before the 20th day after publication, but not before three days, approaching that used the Official Journal on the whole territory of the Union.

On the terms of entry into force immediately, on the same day of its publication in the Official Journal, it "should be used in case of urgent necessity in order to avoid a legal vacuum or divergent interpretations of Community texts". This type of entry into force shall in addition, under the control of the Court of Justice, seeking to prove that the author of the act "had serious reasons to consider that any time between publication and entry into force would have been the case, injurious to the EU Community (ECJ, 17/67, Max Neumann, 13.12.1967, Rec. 571).

In practice, the immediate entry into force is performed systematically, for example, the regulations set appropriate tax amounts applicable to imports and exports mainly agricultural products (refunds, levies, compensatory amounts etc.). Inconvenience immediate effect is mitigated to the extent that the Commission communicated by telex or the day before - evening - either on the same day with the advent of the Official Journal of amounts reported national services customs or agricultural intervention that appears before you apply. Regarding Directive specify not to confuse the effective date (the date of service, basically the 20th day following its publication) the implementation date ie the date (set in the Directive) implementation in domestic law. But this latest data breach - transposition - constitutes a failure to invoke the court determines.

The national jurisdiction , have, applying national law, to interpret it in light of the wording and purpose of a Directive in the area covered by it, even before the deadline for transposition (ECJ, 80/86, Kolpinghuis, 10.08.1986, Rec. 3969), then, considering that "a directive produces legal effects for the Member States of destination from the time of notification," that "even during the transposition period Member" must refrain to take those measures likely to impair result prescribed by that directive. "

Conclusion

Treaty of Lisbon introduces the concept of legal documents, a distinction between legislative and non-legislative acts, on the signature, publication and entry into force.

Legislative acts adopted under the ordinary legislative procedure, the European Parliament and the Council, together, signed by the presidents of each of these institutions.

Legislative acts adopted under a special legislative procedure, shall be signed by the institution which adopted them, either by the Council or the European Parliament, as appropriate.

Legislative acts shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following publication.

Recall that legislative acts are: regulations, directives, decisions, adopted by the procedures mentioned above.

Non-legislative acts adopted in the form of regulations, directives, decisions - delegated acts or implementing acts (of performance) - if the latter does not indicate recipients, signed by the institution which adopted them (Commission in the first case, the Commission or the Council, in the second case)

Regulations and directives which are addressed to all Member States and decisions if they do not disclose recipients will be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following its publication.

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