

International and Comparative
Corporate Law Journal

Volume 9 • 2012 • Issue 1



CAMERON
MAY
INTERNATIONAL LAW & POLICY

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Published 2012 by CMP Publishing

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ISSN: 1388-7084

PRINTED BY HPMGROUP

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Volume 9 (Quarterly)
Annual subscription price £175.00

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**PRACTICAL OVERVIEW OF THE IMPLEMENTATION OF
COMMUNITY LAW IN FINANCIAL SECTOR:
A VIEW OF A LEGAL PRACTITIONER**

*Gintautas Pošiūnas**

Abstract

The timely and correct application of Community law is essential to maintain a strong foundation for the European Union and ensure that European policies have intended impacts, bringing benefits to citizens. The European institutions and Member States share an interest in keeping this foundation strong and need to make an even stronger commitment to assign high priority to the correct application of law.

Non-compliance with Community primary and/or secondary law constitutes a de-facto breach of law, ie, delict or as the case may be, a criminal offense, tort or wrong. Breach of Community primary law shall have vertical adverse effect to the legal system of the nation (sovereign or suzerain); while the breach of Community secondary law shall have horizontal adverse effect to the legal system of the nation (sovereign or suzerain). Therefore, the Member States of the EU should maintain their legal systems in order with Community primary law and Community secondary law.

Alongside with general legal regime of the Member States of the EU, there are certain specific provisions, which lay in detail the analysis of compatibility of national provisions with that of EU directives. That is most valuable experience, which might serve a good example to other Member States. Legal system of the Member State of the EU should contain specific provisions regulating the matters on transposition and application of Community law in the legal acts establishing the law making procedure.

National law making procedural rules should expressly state that the law making procedure in case of transposition and/or application of Community law completes only after adoption, publication, entering into force and notification of National Execution Measures to the European Commission.

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Preface

Article 1 (ex A)¹, Paragraph Two, of the Treaty on the European Union (the EU Treaty) provides: “This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. “ Article 1 of the Treaty on European Union signed in Lisbon in 2007 declares the same principle of closer union among the peoples of Europe and vests the Member States of the EU to confer the Union with competences to attain objectives, which are common to all Member States of the EU.

The Treaty on European Union and the Treaty on the Functioning of the European Union signed in Lisbon in 2007 has not altered the general obligation of the Member States to transpose Community law into national legal systems of the Member States of the EU. In pure legal technique sense, references to Articles of the EU Treaty and Articles of the Treaty establishing the European Community (the EC Treaty) were substituted by references to Articles of the Treaty on European Union and the Treaty on the Functioning of the European Union.

The cross-references are presented in Item “11. Correlation tables”. The notes about the substance of provisions of the treaties are inserted on a case-by-case basis.

1. Principle of compliance

Article 10 (ex 5) (ex ante 5)² of the EC Treaty provides for a principle of compliance with the EU law.

First Paragraph first sentence of this article foresees that Member States of the EU shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from an action taken by the institutions of the Community.

Second sentence of this Paragraph requires that Member States of the EU shall facilitate the achievement of Community’s tasks.

¹ Article 1 of the EU Treaty is former (ex) Article A of the EU Treaty signed in Maastricht in 1992. Authors’ remark.

² Article 10 of the EC Treaty is former (ex) Article 5 of the EC Treaty signed in Maastricht in 1992. It has substituted former (ex ante) Article 5 of the Treaty establishing the European Economic Community (the EEC Treaty) signed in Rome in 1957. Consequent citations of the number of articles in brackets with the words (ex) and/or (ex ante) refer to relevant articles of EC Treaty signed in Maastricht in 1992 and EEC Treaty signed in Rome in 1957. Authors’ remark.

Article 2 (ex 2) (ex ante 2) and Article 4 (ex 3a) of the EC Treaty provide for economic and legal convergence as one of the basic aims to be achieved by the Community. As of 1 December 2009, Article 3 of the Treaty on European Union and Article 119 of the Treaty on the Functioning of the European Union signed in Lisbon in 2007 have replaced in substance the above provisions.³

Article 3 (ex 3) (ex ante 3), Paragraph 1, Item (h), of the EC Treaty, entails the approximation of laws of the Member States of the EU, so as to ensure the proper functioning of the internal market. It provides: "For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein: (h) the approximation of the laws of Member States to the extent required for the functioning of the common market." As of 1 December 2009 Article 4, Paragraph 2, Item (a), of the Treaty on the Functioning of the European Union has replaced in substance the above provision. It foresees that shared competence between the Union and the Member States will apply in the principal area of internal market.⁴

Finally, Second Paragraph of Article 10 (ex 5) (ex ante 5) of the EC Treaty states that the Member States of the EU shall abstain from any measure, which could jeopardise the attainment of the objectives of this Treaty. As of 1 December 2009 the duty to take "appropriate measures" *secundum legem* and the duty to "abstain from any measure" *contra legem*, is the substance of Article 4, Paragraph 3, of the Treaty on European Union signed in Lisbon in 2007.

2. Acquis

Community law is shaped in a certain form of legal acts. Depending on the nature of the legal act, it is directly applicable or should be transposed by means of the national law.

2.1. Definition of l'acquis communautaire

"L' *acquis communautaire* – the corpus of Community acts; all regulations, decisions etc. adopted under the Treaties and all decisions taken since the setting up of the Communities."⁵

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01), *Official Journal of the European Union*, No C 115, 9 May 2008, p. 17 and p. 96-97.

⁴ *Ib id*, p. 51.

⁵ Herbst R., Readett A. G. *Dictionary of Commercial, Financial and Legal Terms*, Volume III: French-English-German, Second Edition, Revised and Enlarged, Thun, Switzerland: Translegal Ltd., 1990, p. 15.

2.2. Primary law

Community primary law is a source of the international public law. Thus, the main principle of “*pacta sunt servanda*” makes it directly applicable in all Member States of the EU.

Article 26 of the Multilateral Vienna Convention on the law of treaties concluded at Vienna on 23 May 1969 provides for the principle of “*pacta sunt servanda*”. It states, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith” or in other words it will mean “*pacta sunt servanda bone fide*”.⁶

2.3. Secondary law

Secondary law (*l' acquis communautaire*, in brief: *acquis*) is a source of Community Common Law (*Communauté Européenne Communitatis Europaeae* LEX, in brief: CELEX).

Direct effect of the unified norm of law (legal rule) is based on the principle of primacy (superiority) of the norms of law deriving from Community primary law. It is therefore reasonable to make the national law to be in line with the Community law. The primacy of the Community law does not eliminate the need to adapt national legislation.⁷

2.4. Adaptation of the Constitution

Upon accession to the EU, the Republic of Lithuania has adapted its national legal system. Constitutional Act “On Membership of the Republic of Lithuania in the European Union” was adopted by the Parliament (Seimas) of the Republic of Lithuania (Constitutional Act)⁸.

2.4.1. Competences of the Union – integral part of the legal system

Paragraph 2 of the Constitutional Act foresees that the norms of *acquis* of the European Union shall be an integral part of the legal order of the Republic of Lithuania. It states, “The norms of the European Union law shall be a constituent part of the legal system of the Republic of Lithuania.”

2.4.2. Vertical direct effect

⁶ Multilateral Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969, No. 18232, United Nations, Treaty Series, vol. 1155, p. 331.

⁷ Convergence Report 2004, European Central Bank, Frankfurt am Main, 2004, p. 24-25. Convergence Report May 2006, European Central Bank, Frankfurt am Main, 2006, p. 61. Convergence Report May 2008, European Central Bank, Frankfurt am Main, 2008, p. 19.

⁸ Constitutional Act On Membership of the Republic of Lithuania in the European Union (No IX-2343, 13 July 2004)/Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

Direct effect is when these norms arise from the founding Treaties of the European Union and the norms of *acquis* apply directly. First part of the second sentence of the same Paragraph states: “Where it concerns the founding Treaties of the European Union, the norms of the European Union law shall be applied directly.”

2.4.3. *Horizontal direct effect*

Conflict of laws is when, in the event of a collision between legal norms, the norms of *acquis* prevail over the laws and other legal acts of the Republic of Lithuania. Second part of the second sentence of the same Paragraph states: “While in the event of collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.”

2.5. Directives

Article 249 (ex 189) (ex ante 189), Paragraph Three, of the EC Treaty states: “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.”

It is reasonable to state that both above-mentioned principles will act in conjunction when it concerns the applicability of a directive in the national law of the Republic of Lithuania. Any EU directive is based on a source of Community primary law (eg Article 249, Paragraph Three of the EC Treaty). By its essence, any EU directive itself is a source of Community secondary law (*acquis*).

Article 288, Paragraph Three, of the Treaty on the Functioning of the European Union repeats the provisions of Article 249, Paragraph Three, of the EC Treaty word-by-word.⁹

2.6. Direct application of Community law – ECJ

Community law vests all subjects of Community law equal treatment in protecting their rights.

2.6.1. *Subjects of Law: Natural persons (nationals) – Article 17 (ex 8) of the EC Treaty*

Article 17 (ex 8) of the EC Treaty states that every person holding the nationality of the Member State shall be a citizen of the Union. Citizens

⁹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01), *Official Journal of the European Union*, No C 115, 9 May 2008, p. 17 and p. 171-172.

of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Article 17

1. Citizenship of the Union is hereby established. **Every person holding the nationality of a Member State shall be a citizen of the Union.** Citizenship of the Union shall complement and not replace national citizenship.

2. **Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.**

The essential feature of the nationality of a natural person is a permanent legal relation between the person and certain sovereign state. National is a person owing permanent legal allegiance to a state¹⁰.

2.6.2. *Subjects of Law: Legal persons and entities, where the commitments of the entity might not be severed from the commitments of the owners, co-owners or limited co-owners, – Article 48 (ex 58) (ex ante 58) of the EC Treaty*

Article 48 (ex 58) (ex ante 58) treats companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community in the same way as natural persons who are nationals of the Community.

Article 48

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

“Companies or firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those that are non-profit-making.

¹⁰ Black’s Law Dictionary, Abridged Sixth Edition, St. Paul, Minn.: West Publishing Co., 1991, p. 711.

2.6.3. Principle of legal capacity based on nationality

Community secondary law *acquis* serves a regulatory framework for legal relations among subjects of law of different Member States. It establishes the same principle of legal capacity based on the nationality, ie, domicile, of the subject of law. Persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.¹¹ Vice versa, natural and legal persons domiciled in a Member States of the EU may sue into the European Court of Justice and the Court of First Instance of the European Communities to protect their rights as nationals of a Community.

2.7. Article 230 (ex 173) (ex ante 173), Paragraph 4, – right of recourse to the ECJ

Article 230 (ex 173) (ex ante 173), fourth paragraph, of the Treaty follows the principle of equal treatment and confers a right to every subject of Community law to defend its' legitimate interests in the European Court of Justice by putting a claim.

It might be a natural person described in Article 17 (ex 8) of the Treaty or the undertaking foreseen in Article 48 (ex 58) (ex ante 58) thereof, which by it's form of organisation might have or not have the rights of a legal person.

Permanent allegiance of a person (natural and/or legal) with the Member State of the EU is a feature, which makes effective the right to sue into the European Court of Justice.

Article 230

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects *vis-à-vis*¹² third parties.

¹¹ Article 2(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, *Official Journal of the European Communities*, No L 12, 16 January 2001, p 3.

¹² *Vis à vis*. Face to face. One of two persons or things opposite or corresponding to each other. In relation to each other. Black's Law Dictionary, Abridged Sixth Edition, St. Paul, Minn.: West Publishing Co., 1991, p. 711.

2.8. Explicit competencies of the European Courts – Article 220 (ex 164) (ex ante 164)

Article 220 (ex 164) (ex ante 164) provides for explicit competencies of the European Courts, i.e., the European Court of Justice and the Court of First Instance of the European Communities. Paragraph One of this article states: “The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed. “

The observance of the law entails the duty to apply the norms of *acquis* despite any obstacles in the national legal systems of the Member States of the EU. Side by side with this principle, the European Court of Justice has exclusive jurisdiction in interpreting the provisions of Community primary law.

Article 234 (ex 177) (ex ante 177) *in corpore* or in common is a legal ground for remedy in the context of any conflict of a national law of the Member State of the EU *vis-à-vis* a Community law.

First Paragraph of this article provides a list of legal relations (and of legal norms or legal facts), which may be subject to the provisions of the EU law. It states “The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.”¹³

Article 19(3) of the Treaty on European Union extends the jurisdiction of the European Court of Justice. It states: “3. The Court of Justice of the European Union shall, in accordance with the Treaties:

- (a) rule on actions brought by a Member State, an institution or a natural or legal person;
- (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

¹³ As of 1 December 2009, Article 267 (Paragraph One) (a), (b) of the Treaty on the Functioning of the European Union has substituted Article 234 (Paragraph One) (a), (b) (c) of the EC Treaty. In pure legal technique sense, the reference to item (c) of Paragraph One of Article 234 referring to the jurisdiction of the European Court of Justice in interpreting the statutes of bodies established by an act of the Council, where those statutes so provide, has disappeared. However, the provision was replaced in substance by Article 19(3) of the Treaty on European Union signed in Lisbon in 2007.

(c) rule in other cases provided for in the Treaties.”¹⁴

2.8.1. Remedy in case of lack of jurisdiction (foreign law)

Second Paragraph of Article 234 (ex 177) (ex ante 177) provides for a remedy in case of a lack of jurisdiction (foreign law) by the national court¹⁵. It states: “Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.”

2.8.2. Remedy in case of lack of competence (remedy)

Meanwhile, the Third Paragraph of Article 234 (ex 177) (ex ante 177) provides for a remedy in case of a lack of competence (remedy) by the national court¹⁶. It states: “Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.”

2.9. Competencies of the Commission of the European Communities – Article 226 (ex 169) (ex ante 169)

The Treaty authorises the Commission to represent the interests of the entire Community. If, following the provisions of Article 226 (ex 169) (ex ante 169) of the Treaty, “the Commission considers that a Member State has failed to fulfil an obligation under this Treaty”, the Commission “shall deliver a reasoned opinion on the matter”, and if “the State concerned does not comply with the opinion during the period laid down by the Commission”, “the latter” (the Commission) “may bring the matter before the Court of Justice”.

¹⁴ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01), *Official Journal of the European Union*, No C 115, 9 May 2008, p. 27.

¹⁵ Republic of Lithuania Law on Banks (No IX-2085, 30 March 2004) Article 93, Paragraph 6, Subparagraph 1) provides for a remedy in case of a lack of jurisdiction (foreign law) where “the law of another Member State of the European Union rather than that of the Republic of Lithuania is applicable to the said transaction”. Republic of Lithuania Law on Banks/Seimas of the Republic of Lithuania, <http://www.lrs.lt>

¹⁶ Republic of Lithuania Law on Banks (No IX-2085, 30 March 2004) Article 93, Paragraph 6, Subparagraph 2) provides for a remedy in case of a lack of competence (remedy) where “the law applicable to the said transaction does not provide for a possibility to dispute the said transaction in the case pending in court”. Republic of Lithuania Law on Banks/Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

2.10. Competencies of the Member States of the EU – Article 227 (ex 170) (ex ante 170)

Article 227 (ex 170) (ex ante 170) of the Treaty vests the same right to the Member States of the EU. It establishes that: “A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring this matter before the Court of Justice”.

2.11. Consequences of non-compliance with the Community law – Article 228 (ex 171) (ex ante 171)

Article 228 (ex 171) (ex ante 171) foresees the consequences of non-compliance of the Member State with the Community law.

Article 228

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court’s judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227.

2.12. Community law at work

Therefore, as it works, following the principles of sovereignty in case of a republic¹⁷ and the principle of suzerainty in case of a monarchy¹⁸, the rights of commons (citizens, foreign nationals and persons without

¹⁷ Direct effect of sovereignty of the nation in case of the republic.

¹⁸ Indirect effect of sovereignty of the nation through the suzerainty of a monarch.

nationality having permanent legal relation with the Member State of the EU) are vested to the Community.

Community realises vested rights through its bodies (Parliament, Council, Commission, Courts), which are bound to perform basic tasks of the Community and to protect rights and legitimate interests of natural and legal persons domiciled in the Community. Thus, common sovereignty takes the shape of legal acts of the Community or Community action.

Deed acts, i.e., acts or omissions, and the legal facts, i.e., something that takes place, are the legal grounds to give rise to certain legal consequences. They may bind the subjects of law by acknowledgement of the fact, by the recognition of heir by an ancestor, by will or by an act of a sovereign.

3. Accession Process (TAIEX Progress database and Screening by the Commission)

In 1997, the Technical Assistance and Information Exchange (TAIEX) Office of the Directorate General (DG) Enlargement of the Commission of the European Communities has launched a project of TAIEX Progress editor. By essence, this program repeated the Directory of Community Legislation in Force (the Directory) and allowed the accession countries to fill in the national measures transposing EU directives and other acts of *acquis*.

TAIEX Progress editor was MS Windows based program, which allowed the accession countries' competent authorities to enter references of National Execution Measures¹⁹, which at that time were already in place in the national legal systems of the accession countries. Lithuania took part in the process as an accession country at that time.

The program was bound to make easier and more transparent the communication to the Commission of National Execution Measures, transposing the provisions of EU directives into the national law. In 1997, it has started as TAIEX harmonogram editor containing directives listed in a White Paper prepared by the Commission and containing essential parts of the *acquis*. In 1998, it was spread to the Directory. In succeeding years, it covered Pre 2000 Screening, Screening 2000, Screening 2001, Screening 2002 and Screening 2003, which were conducted by the Commission. At the change point in the fall of 2003, the EU directives²⁰ were allocated to the ASMODEE II²¹ and the program started to reflect this set.

¹⁹ Commonly used abbreviation of National Execution Measures is abbreviation of French term *Mesures Nationales d'Exécution* (MNE).

²⁰ In CELEX, the EU directives constitute part of Sector 3 "Secondary Legislation" marked by the letter code "L". Authors' remark.

²¹ ASMODEE stands for Automated System for Monitoring Directives Execution.

Side by side with TAIEX Progress editor, in fall 2003 TAIEX has launched a pre-notification database. It was created to ensure the transfer of data collected during the accession process to the Electronic Notification Database of the Commission of the European Communities. From the fall of 2003 to the spring of 2004, the data on National Execution Measures was filed into both programs, i.e., TAIEX Progress editor and Pre-notification database. On the date of accession to the EU (1 May 2004)²², the collected data was transferred to the Electronic Notification Database of the Commission of the European Communities.

From that time, the data is updated. National Execution Measures transposing newly adopted EU directives are filed into the Electronic Notification Database.

The Electronic Notification Database puts in practice the idea of electronic communication of National Execution Measures. In 2002, the Commission of the European Communities has prepared a Commission Communication on Better Monitoring of the Application of Community Law.²³ It was stated in the Commission Communication that the access to Community law and monitoring of conformity would be made easier by the electronic communication of National Execution Measures. The Commission has foreseen and implemented a standard method of electronic communication of National Execution Measures (single electronic form).

It was planned to interconnect the national official publications databases by using a single portal for access to Community law. N-Lex, the common access portal for national law, is already in place on the website of the EUR-LEX (<http://eur-lex.europa.eu>).

4. Type of National Execution Measures (MNE) – National discretion, National Practice, Obstacles, etc. (cf. Art. 249 of the EC Treaty) – cf. Reform Treaty

4.1. Requisites of National Execution Measures

EU directive is based on a source of Community primary law (see Preface, Item “2.5. Directives”) and itself it is a source of Community secondary law (*acquis*). EU directive is binding, as to the result to be achieved, upon each Member State to which it is addressed. It allows national authorities to choose the form and methods. Thus, Community law leaves certain discretion to national law and legal order of the Member States of the EU

²² Following the Electronic Notification Database records, the exact date of transfer of data is 29 April 2004. Authors’ remark.

²³ Commission Communication. Better Monitoring of the Application of Community Law. Brussels, 16.5.2003 COM(2002)725 final/4.

in selecting the type of National Execution Measures in transposing the provisions of EU directives²⁴.

It should be noted that the Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, has not amended the wording of Article 249 (ex 189) (ex ante 189), Paragraph Three, of the EC Treaty. The title of the EC Treaty was replaced by "Treaty on the Functioning of the European Union".²⁵

National Execution Measures are usually legal acts adopted by national authorities in the sphere of their regulatory competence.

TAIEX Progress editor program already contained these requisites of National Execution Measures: "Unique national ID", "Description (English title)", "Status of Measure (Law or Draft Law)", "Date or proposed date of adoption", "Date or proposed date of entry into force", "Compatibility (Full, Partial, Not, Unknown)", "Responsible Authority". It also contained a link to text file (txt) format "Remark".

Electronic Notification Database of the Commission of the European Communities has absorbed all these requisites. Some essential requisites, such as an official publication reference and the electronic format of official document in the official language of a Member State were added, hence this database does not accept the references to the draft laws and other legal acts, which are not published in the Official Gazette of the Member State concerned.

The database covers the following requisites of legal acts: "Declaration of transposition (Other, Partial, Complete)", "Comment", "Title of the NEM (original language)", "Document (Electronic file of the document from the official Electronic database of the Member State concerned)", Official publication reference: Name of the Official Gazette, Date, Page, Number", "Legal reference: Type of act: Law (*Loi*), Resolution (*Résolution*), Order (*Order*), Administrative measure, Concordance table or Correlation table

²⁴ Article 249 (ex 189) (ex ante 189), Paragraph Three, of the EC Treaty states: "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."

²⁵ Article 2, Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *Official Journal of the European Union*, No C 306, 17 December 2007, p 42.

Article 6, Paragraph 2, of the Treaty of Lisbon states: "This Treaty shall enter into force on 1 January 2009, provided that all instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step." Treaty of Lisbon has entered into force on 1 December 2009. Authors' remark.

(*Tableau de concordance*)"; "Number", "Date of entering into force", "Date of approval".

In case of Lithuania, National Execution Measures are officially published in a paper format in the Official Gazette "*Valstybės žinios*" (<http://www.valstybes-zinios.lt>) and consequently they are electronically published on the website of the Seimas (Parliament) of the Republic of Lithuania (<http://www.lrs.lt>) and on the website of the competent national authority adopting National Execution Measure. The Law on Entering into Force of Laws and Other Normative Legal Acts of the Republic of Lithuania makes electronic publication obligatory side by side with the paper format publication of the National Execution Measure²⁶. In the course of notification, an electronic file of the document, which has been placed on the website of the Seimas (Parliament), is retrieved, saved in a separate file and added to the notification.

The author of these lines has inquired a number of colleagues working in the national central banks of the Member States of the EU as well as the lawyers taking part in the activities of the European Society for Banking and Financial Law. According to the replies received in the course of this inquiry, national legal systems of Member States of the EU usually foresee the procedure for publishing and entering into force of national legal acts. National legal acts gain the status of National Execution Measures transposing provisions of Community directives into national law. The Member States of the EU notify National Execution Measures to the Commission of the European Communities. The Commission services accept the notification. Office for Official Publications of the European Communities transfers National Execution Measures to the European Law portal. References to National Execution Measures are available on the portal of the European law Eur-Lex at the address: <http://www.europa.eu>.

Eur-Lex Newsletter of 30 May 2008 provides detailed information about Sector 7 "National Execution Measures". Sector 7 is accessible through the Bibliographical notice of a Directive (MNE icon), by natural number, or directly with the CELEX number (for example: 72006L0070). Source: http://eur-lex.europa.eu/en/newsletter/newsletter_20080530.htm

²⁶ Article 2, Paragraph 1, and Article 13, Paragraph 1, of the Republic of Lithuania Law on Procedure of Publication and Coming into Force of Republic of Lithuania Laws and other Legal Acts (No. I-119, 6 April 1993). Version of the 10 December 2002 Law No. IX-1270 with effect as of 1 January 2003, as amended by 7 July 2005 Law No. X-331 with effect as of 21 July 2005. Republic of Lithuania Law on procedure of Publication and Coming into Force of Republic of Lithuania Laws and other Legal Acts /Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

4.2. Compatibility

TAIEX Progress editor already had an option of choosing the level of compatibility of National Execution Measures entered into program. This feature is reinforced in the Electronic Notification Database of the Commission of the European Communities. All data, which on the date of accession has been transferred by TAIEX to the Electronic Notification Database of the Commission of the European Communities, was marked with the tag "Other (AU)". The Commission services in cooperation with accession countries have examined the compatibility of data. In some cases, the data was corrected. The correspondence tables were drawn up and sent to the Commission. Finally, the data was marked with the tag "Complete (IN)".

It should be noted that the data in the Electronic Notification Database is marked with the tag "Partial (PA)" until it reaches the final compatibility and the final measure or measures are marked with the tag "Complete (IN)".

The abbreviations of compatibility are the abbreviations of French terms. Below is an example of these terms in French, English and Lithuanian. A Lithuanian origin user may view these terms in the Electronic Notification Database of the Commission of the European Communities.

FR	EN	LT
Déclaration de transposition:	Declaration of transposition:	Perkėlimo deklaravimas:
Autre (AU)	Other	Kita
Partielle (PA)	Partial	Dalinis
Intégrale (IN)	Complete	Užbaigtas

Correlation tables constitute an important source of information, setting out how Community directives are being applied in Member State regulations. These tables form a part of existing legislative processes in many Member States. They provide valuable information at minimal cost and burden. They contribute to transparency and accessibility, as well as to better understanding and application of the law, including the interpretation by courts.²⁷

In Lithuania, Article 12-1 of the Republic of Lithuania Law on Procedure of Drafting of Republic of Lithuania Laws and other Regulatory Enactments foresees the procedure for referring to the sources of Community *acquis*. The reference to the source of EU *acquis* is inserted in the general provisions chapter of the law and the annex. The fact that the law transposes the

²⁷ Item 1.2. Correlation tables, Communication from the Commission. A Europe of Results – Applying Community Law. Brussels, 5.9.2007 COM(2007) 502 final.

provisions of the source of the EU *acquis* is stated in the general provisions chapter of the law. It refers to the annex where the sources of the EU *acquis* are listed.²⁸ The preamble of other normative legal acts will contain the reference to the source of the EU *acquis*.²⁹

The references to the sources of the EU *acquis* should follow the recommendations approved by the European Law Department under the Ministry of Justice of the Republic of Lithuania.³⁰

The Government of the Republic of Lithuania approved a sample of correspondence table. It is Annex VII of the Rules for Coordination of European Union Affairs.³¹ The Department of EU Law Implementation of the Office of the Government of the Republic of Lithuania has prepared Recommendations for filing in the correspondence tables of the EU directives (other EU legal acts) and national legal acts (draft legal acts) of the Republic of Lithuania. On 22 November 2005, the Prime Minister of the Government of the Republic of Lithuania by his mandate No. 38-7978 has communicated these recommendations to ministries and other institutions. On 6 June 2008, the Prime Minister by his mandate No. 38-3855 has communicated the update of the above recommendations.

Non-compliance with Community primary and/or secondary law constitutes a de-facto breach of law, i.e., a delict or, as the case may be, a criminal offence, tort or wrong. The breach of Community primary law shall have a vertical adverse effect to the legal system of the nation (sovereign or suzerain); while the breach of Community secondary law shall have a horizontal adverse effect to the legal system of the nation (sovereign or suzerain). Therefore, the Member States of the EU should maintain their legal systems in order with Community primary law and Community secondary law.

²⁸ Article 12-1, Paragraphs 1 and 2, of the Republic of Lithuania Law on Procedure of Drafting of Republic of Lithuania Laws and other Regulatory Enactments (No I-872, 2 May 1995), Version of 11 June 2002 Law No. IX-946 with effect as of 29 June 2002. Republic of Lithuania Law on Procedure of Drafting of Republic of Lithuania Laws and other Regulatory Enactments /Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

²⁹ Article 12-1, Paragraph 3, *ib id*.

³⁰ Recommendations on submission of references to the legal acts of the European Union in laws and other legal acts. Approved by 13 December 2002 Order No. 106k of the Director General of the European Law Department under the Government of the Republic of Lithuania, version of 25 September 2006 order No. 129KKK with effect as of 1 October 2006. Recommendations on submission of references to the legal acts of the European Union in laws and other legal acts /Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

³¹ Resolution of the Government of the Republic of Lithuania "On Coordination of European Union Affairs" (No. 21, 9 January 2004), version of 29 April 2005 Resolution No. 478 with effect as of 5 May 2005. Resolution No. 21 of 9 January 2004 of the Government of the Republic of Lithuania "On Coordination of European Union Affairs" /Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

Legal systems of Bulgaria, the Czech Republic, Germany, Greece, Italy, Latvia, Luxembourg, Slovenia and Spain contain detailed rules about national legal acts, which take the shape of National Execution Measures transposing provisions of EU directives. Alongside with the general legal regime of the Member States of the EU, there are certain specific provisions, which lay in detail the analysis of compatibility of national provisions with those of EU directives. This is most valuable experience, which might serve a good example to other Member States.

In Bulgaria, the order for preparation, adoption and entering into force of national legal acts is laid in detail. It contains specific emphasis to National Execution Measures. The Constitution of the Republic of Bulgaria³² contains a legal norm ensuring vertical direct effect of Community primary law. Law on the Normative Acts³³ foresees a legal norm ensuring horizontal direct effect of Community secondary law (*acquis*). The Constitution of the Republic of Bulgaria recognises the general principle of *pacta sunt servanda*. Article 5, Paragraph (4) of the Constitution of the Republic of Bulgaria foresees that any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall take priority over any conflicting standards of domestic legislation. Article 7a in conjunction with Article 15, Paragraphs (1) and (2), of the Law on the Normative Acts ensure correlation of vertical direct effect of Community primary law and horizontal direct effect of Community secondary law. National legal norm eliminates the adverse effect of normative regulation *vis-à-vis* directly applicable sources of Community primary law and directly applicable sources of Community secondary law.

According to Article 7a, a normative act shall be issued also in the cases, where the adoption of measures on the national level is necessary for the application or implementation of acts of the European Union or international treaties concluded by the European Communities. Whereas, Article 15, Paragraph (1), states that the normative act has to comply with the Constitution and with other normative acts of higher power. To this effect, Article 15, Paragraph (2), eliminates the possibility of a fall-back rule (*ren voi*), where the choice of law may refer back to the law of forum. If a normative act contradicts a European Union Regulation, the Regulation shall apply. National law of Bulgaria puts in common the promulgation of EU regulations in the Official Journal of the European Union with the

³² The Constitution of the Republic of Bulgaria, Published in the Darjaven Vestnik, issue 56 of 13 Jul 1991, amend., issue 85 of 26 Sep 2003, amend. issue 1 of / 25 Feb 2005, amend., issue 27 of 31 Mar 2006, amend., issue 78 of 26 Sep 2006, amend., issue 12 of 6 Feb 2007

³³ Law on the Normative Acts, Published in the Darjaven Vestnik, issue 27 of 3 Apr 1973, amend., issue 65 of 21 Jul 1995, suppl., issue 55 of 17 Jun 2003, amend., issue 46 of 12 Jun 2007

publication of the Republic of Bulgaria laws, the decrees of the Council of Ministers and the normative acts of the Ministers and of the heads of other departments in the State Gazette (*Darjaven Vestnik*). The promulgation shall be considered as made on the day of issuing of the corresponding issue of the State Gazette (*Darjaven Vestnik*) or the Official Gazette of the European Union.

National law of Bulgaria describes in detail the procedure for the evaluation of compatibility of national legal acts. Article 28, Paragraph (2), Subparagraph 5, of the Law on the Normative Acts establishes that the “analysis for conformity with the European Union legislation” shall be a compulsory requirement prior to submission of the draft normative legal act for consideration and adoption by the competent body.³⁴ Decree No 883 for the implementation of the Law on the Normative Acts establishes the order for referring to EU directives in the national legal acts. The references shall constitute a separate section on additional provisions at the end of the legal act.³⁵ Ordinance No 85 of 17 April 2007 concerning the organisation and coordination of EU affairs requires the draft acts for the adoption of national measures necessary for the implementation and enforcement of European Union acts to be accompanied by a table of conformity.³⁶ The approval of draft acts to adopt measures for the implementation and enforcement of European Union acts on the national level shall be the competence of the Council of Ministers. The Council for European Affairs shall analyse the information concerning the implementation of the commitments arising from the Republic of Bulgaria’s membership in the European Union, and propose to the working groups to adopt priority actions in this respect. Article 67(1) of the Rules of Organisation and Procedure of the National Assembly foresees that bills shall be put to the vote twice at two separate sittings. Article 67(2) provides an exception, since the National Assembly may decide to take both votes at the same sitting. This provision shall be applicable only if no amendments or supplements to the bill have been made during the bill’s consideration.³⁷ Rules of Organisation and Procedure of the Council of Ministers and its administration require the positions submitted to

³⁴ *Ib id.*

³⁵ Decree No 883 for the implementation of the Law on the Normative Acts, *Published in the Darjaven Vestnik*, issue 39 of 21 May 1974, *amend.*, issue 46 of 2007.

³⁶ Ordinance No 85 of 17 April 2007 concerning the organisation and coordination of EU affairs, *Published in the Darjaven Vestnik*, issue 35 of 27 Apr 2007, *amend.*, issue 53 and 64 of 2008.

³⁷ Rules of Organisation and Procedure of the National Assembly, *Published in the Darjaven Vestnik*, issue 69 of 23.08.2005, amended and supplemented, issue 74 of 13.09.2005, supplemented, issue 101 of 15.12.2006, amended and supplemented, issue 18 of 27.02.2007, amended and supplemented, issue 26 of 27.03.2007, amended and supplemented, issue 107 of 18.12.2007, supplemented, issue 85 of 30.09.2008, amended and supplemented, issue 99 of 18.11.2008, supplemented, issue 107 of 16.12.2008, amended and supplemented, issue 110 of 30.12.2008.

the Council of Minister to comply with the EU legislation.³⁸ Meanwhile, the above-mentioned Ordinance No 85 of 17 April 2007 concerning the organisation and coordination of EU affairs regulates the responsibilities of the respective administrative bodies.

National law of the Czech Republic foresees the order for preparation, adoption and entering into force of national legal acts. Specific emphasis is made on the National Execution Measures to the extent that is necessary to ensure proper functioning of the national legal order. The Law on Collection of Laws and International Treaties (Act No. 309/1999 Coll.) provides for the kinds of regulations that are published in the Collection of Laws, their entering into force and the rules for the issue of the Collection of Laws.³⁹ National provisions defining the procedure for the evaluation of compatibility of National Execution Measures with the EU directives in the Czech Republic do not have the character of a legal norm. Such provisions are graded to have an effect of a national regulation, whereas the grading of written law sources is based on laws, regulations and administrative provisions. Legislative Rules of the Government (resolution of the government) unify the procedure of ministries and other central authorities of public administration during the preparation of legal regulations.⁴⁰ Methodical Instructions for providing works at fulfilling legislative obligations following from the membership of the Czech Republic in the European Union provide for the procedure under which the ministries and other central authorities of public administration shall fulfil their legislative obligations following from the membership of the Czech Republic in the EU. The Methodical Instructions foresee general provisions. They describe the distributions of questions at issue, the procedure for the provision and evaluation of compatibility of the Czech regulations with the EU directives. Methodical Instructions foresee the register of progress of fulfilling the obligations deriving from the membership in the EU. The Rules and the Methodical Instructions are binding only on ministries and other central authorities of public administration.⁴¹

In Germany, there are no specific provisions about National Execution Measures. Precise national legal order for the preparation, adoption and entering into force of national legal acts eliminates the possibility of dual interpretation of the direct effect of Community primary law.

³⁸ Rules of Organisation and Procedure of the Council of Ministers and its administration, *Published in the Darjaven Vestnik, issue 84 of 21 Oct 2005, last amended issue 10 of 6 Feb 2009.*

³⁹ Law on Collection of Laws and International Treaties (Act No. 309/1999 Coll.), Collection of Laws, Public Administration's Web sites <http://portal.gov.cz>

⁴⁰ Legislative Rules of the Government (resolution of the government), Government's Web site: <http://www.vlada.cz>

⁴¹ Methodical Instructions for providing works at filling legislative obligations following from membership of Czech Republic in European Union, Government's Web site: <http://www.vlada.cz>

Precise national legal order eliminates the possibility of any conflict of laws subject to the horizontal direct effect of Community secondary law (*acquis*).⁴²

Legal system of Greece provides for various types of legislative acts through which Community law can be implemented and the bodies competent for their issuance. Law 1338/1983 provides that National Execution Measures (NEMs) are published in the Official Gazette and, in general, enter into force as from the date of such publication.⁴³ Article 6 of Law 1338/1983 provides for the establishment of a Committee responsible for preparing the draft legislative act. The competent Minister and the Minister of Finance take the Decision on the establishment.⁴⁴ Article 1, Paragraph 3, of Law 1338/1983 foresees the cooperation of the Minister of Finance, if the legislative act is in the form of a Presidential Decree or a Ministerial Decision. If the legislative act is in a different form (i.e., a law), it is approved by the competent Minister and the Minister of Finance.⁴⁵

Legal system of Italy foresees detailed rules regulating the transposition and direct application of Community *acquis*. General rules governing the publication and entering into force of the Italian laws regulate the order for the publication and entering into force of National Execution Measures. National Execution Measures are addressed by Law no. 11 of 4 February 2005, enacting “General provisions governing Italy’s participation in the European Union’s legislative process and the procedures for complying with Community obligations”(Law no. 11/2005).⁴⁶ According to the said law, the Community Law (in Italian “*Legge Comunitaria*”) is the main instrument used to implement community legislation and specifies the timing and the manner for transposing directives. It constitutes a corpus of laws in the national legal system of Italy. The “*Legge Comunitaria*” ensures that national legislation is regularly harmonised with the Community *acquis*. The “*Legge Comunitaria*” is adopted by the Parliament once a year. A specific procedure applies. The draft “*Legge Comunitaria*” along with a Yearly Report is to be submitted by the Government before the Parliament by 31 January of every year. In any case, within every 4 months, the President of the Council of Ministers shall assess the compatibility of the Italian legal system and shall communicate the results of assessment to the competent bodies. Based on the said results and taking into account the comments received from the competent bodies, the Government shall present the draft “*Legge Comunitaria*” to the Parliament by 31 January of every year. The Parliament shall approve the “*Legge Comunitaria*”. After

⁴² Article 82 Basic Law for the Federal Republic of Germany, and Articles 76-78 Basic Law for the Federal Republic of Germany, <http://www.bundestag.de>

⁴³ Official Gazette A’34. Published also in the electronic database of the Athens Bar Association.

⁴⁴ *Ib id.*

⁴⁵ *Ib id.*

⁴⁶ Law 4 February 2005, no. 11, Official Gazette no. 37 of 15 February 2005.

the approval, the “*Legge Comunitaria*” shall be published in the Official Gazette.

Sometimes it is not possible to postpone the implementation or application of Community *acquis* until the submission of the annual “*Legge Comunitaria*” to the Parliament. Following a specific procedure, the Minister for Community Policies may submit urgent measures transposing Community *acquis* for the approval to the Council of Ministers or to the Central/Regional Governments Conference. The second option is to be chosen when, according to the administrative subdivision of the Republic of Italy, the subject matter of transposition or application of Community *acquis* belongs to regional competence. The possibility to adopt urgent orders shall guarantee the necessary promptness in complying with urgent obligations deriving from Community *acquis*, such as judgments and rulings handed down by the judicial organs of the European Communities and the European Union.

In specific cases, the “*Legge Comunitaria*” may also grant the Government the power to implement the European directives by means of normative legal acts (“regulations”).

Regions (administrative subdivisions of the Republic of Italy) are also granted the authority to implement community directives on matters under their jurisdiction. Failure to implement the European directives would expose the State of Italy to liability towards the European Union. Therefore, the State is entitled to take over the powers granted to a Region, if the latter fails to implement community directives within the scope of the competence vested to the Region.

Legal system of Slovenia foresees detailed rules regulating the transposition and direct application of Community law. Technical Instruction for the implementation of Decree on publication in the Official Gazette of the Republic of Slovenia foresees that the Government Office for Legislation shall examine the proposal of a legal act and approve the Declaration of conformity of the legal act with *acquis*. Only then, the act may be published in the Official Gazette.⁴⁷ Technical instruction for the preparation of the Conformity declaration of the draft legal act with the *acquis* and the Correspondence table with the Instruction for the implementation of the Rules of Procedure of the National Assembly foresee the Procedures of entering in the Register of legal acts (RPS database), including Conformity declaration issues.⁴⁸ Instruction for

⁴⁷ Technical Instruction for implementation of Decree on publication in the Official Gazette of the Republic of Slovenia, <http://www.svz.gov.si>

⁴⁸ Technical instruction for preparation of the Conformity declaration of the proposal of legal act with the Acquis and correspondence table with the Instruction for implementation of the Rules of Procedure of the National Assembly, <http://www.svz.gov.si>

the implementation of the Rules of Procedure of the National Assembly defines in detail the preparation of the Conformity declaration and at the same time represents the legal ground for using the RPS application in the preparation of the Correspondence table.⁴⁹ Terms for the preparation of legal acts foresee the Guidelines for coherent preparation of legal acts.⁵⁰

Legal system of Spain foresees legal norms that define procedural issues, which apply also to national legal acts transposing the provisions of the EU *acquis*. Article 10 of Law n.30/92 establishing the Rules for Public Administration and on the common administrative procedure foresees that “when according to a EU norm a national law or regulation must be communicated to the EU Institutions, the administrative bodies will notify the competent National Entity in due time.” Royal Decree N.1567/1985 provides for an Inter-Ministerial Commission in order to deal with economical issues related to the EU. Law n.2/97 provides for the “*Conferencia*” for the issues related to the EU between the National Government and the Regional Authorities. The “*Conferencia para Asuntos relacionados con las Comunidades Europeas*” is an institutional body composed of National Government representatives and Regional authorities representatives (“*Comunidades Autónomas*”) that also deals with technical aspects to transpose the provisions of EU norms into national and local laws. The indication that the legal act is implementing the Community Law has to be referred in the Final Provision of each legal act. The requirement in question stems from the Guideline number 42, paragraph b) of the Guidelines on legislative technique (Resolution of 28 July 2005 of the Sub secretary of the Minister of the Presidency, Spanish Official Gazette 29.7.2005).

Legal system of Latvia does not differ from the general regime applicable to the legal system and National Execution Measures transposing provisions of EU directives into the national law. The order for the publication and entering into force of National Execution Measures is regulated by general national legal acts and there is no difference in regulation regarding national legal acts transposing the provisions of EU directives. The Cabinet Regulation on Drafting Regulatory Enactments⁵¹ foresees the procedure for referring to EU legal acts. According to Part 4, the law or regulations may contain references to EU directives. In addition, Part 4 contains requirements for such references.

Luxembourg law provides for no specific procedure for implementing Community law. National Execution Measures are adopted pursuant to the order and procedure applying to regular national laws. The national

⁴⁹ Instruction for implementation of the Rules of Procedure of the National Assembly, <http://www.svz.gov.si>

⁵⁰ Terms for the preparation of legal acts, <http://www.svz.gov.si>

⁵¹ Official Gazette *Vēstnesis*, 17.02.2009, nr. 26

regular process of adopting legal acts in Luxembourg eliminates the possibility of dual interpretation of the direct effect of Community primary law.

4.3. Transitional periods – Act of Accession

It is possible for a Member State to negotiate a certain transitional period for adapting the national law to Community law. Typical transitional period in case of Lithuania was the transitional period regarding the minimum level of deposit guarantee schemes and the minimum level of investor compensation schemes. The Act of Accession has postponed the final date for the implementation of certain provisions of directives 94/19/EC and 97/9/EC on the minimum level of deposit guarantee schemes and the minimum level of investor compensation schemes.⁵²

4.4. Measures adopted at the end of transitional period – cf. Commission communication COM(2006) 729 final

In 2006, the Commission adopted a Communication from the Commission to the European Parliament and the Council concerning the review of Directive 94/19/EC on Deposit Guarantee Schemes, Brussels, 27.11.2006, COM(2006) 729 final. In case of Lithuania, it was necessary to adapt the national law at the end of a transitional period.

Republic of Lithuania Seimas (Parliament) adopted the Law on Amendment and Supplement of Articles 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 14, 15, 21, 24, 25 and Annex of the Law on Insurance of Deposits and Liabilities to Investors (No. X-1429, 18 January 2008)⁵³. The law is effective as of 5 February 2008. It foresees the minimum level of deposit guarantee schemes and investor compensation from 1 January 2008. The insured amount of the deposit and liabilities to an investor is EUR 22 thousand. Thus, the minimum level of compensation to each depositor and/or investor shall not be less than EUR 20 thousand. The Law was included

⁵² Annex IX: List referred to in Article 24 of the Act of Accession: Lithuania – 3 Freedom to provide services, Items: 1. 31994L0019 and 2. 31997L0009, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, *Official Journal of the European Union*, L 236, 23 September 2003, p. 838.

The cross references of transitional periods for Lithuania in CELEX and EUR-LEX databases are:

- 31994L0019 – 12003TN09/03 (minimum level of deposit guarantee schemes);

- 31997L0009 – 12003TN09/03 (minimum level of investor compensation schemes).

⁵³ Republic of Lithuania Law on Amendment and Supplement of Articles 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 14, 15, 21, 24, 25 and Annex of the Law on Insurance of Deposits and Liabilities to Investors/Seimas of the Republic of Lithuania, <http://www.lrs.lt>.

in the Electronic Notification Database of the Commission of the European Communities.

As an example, Estonia⁵⁴ and Latvia⁵⁵ also had transitional periods in applying provisions on the minimum level of deposit guarantee schemes and the minimum level of investor compensation schemes.

The abbreviations of transitional periods are the abbreviations of French terms. Below is an example of these terms in French, English and Lithuanian. A Lithuanian origin user may view these terms in the Electronic Notification Database of the Commission of the European Communities.

FR	EN	LT
Type d'écheance:	Type of deadline:	Galutinio termino rūšis:
PT	PT	PT
Libellé:	Label:	Žymena:
Période transitoire	Transitional period	Pereinamasis laikotarpis

4.5. Transitional periods – Community primary law and Community secondary law

As the case may be, the Community primary law and/or Community secondary law may provide certain transitional periods for the application and/or enforcement of sources of Community primary law (eg, Treaties, Protocols, declarations) and sources of Community secondary law (*acquis*, eg, regulations, decisions etc. adopted under the Treaties and decisions taken since the setting up of the Communities).

⁵⁴ Annex VI: List referred to in Article 24 of the Act of Accession: Estonia – 2. Freedom to provide services, Items: 1. 31994L0019 and 2. 31997L0009, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, *Official Journal of the European Union*, L 236, 23 September 2003, p. 814.

The cross references of transitional periods for Estonia in CELEX and EUR-LEX databases are:

- 31994L0019 – 12003TN06/02 (minimum level of deposit guarantee schemes);
- 31997L0009 – 12003TN06/02 (minimum level of investor compensation schemes).

⁵⁵ Annex VIII: List referred to in Article 24 of the Act of Accession: Latvia – 2. Freedom to provide services, Items: 1. 31994L0019 and 2. 31997L0009, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, *Official Journal of the European Union*, L 236, 23 September 2003, p. 826.

The cross references of transitional periods for Latvia in CELEX and EUR-LEX databases are:

- 31994L0019 – 12003TN08/02 (minimum level of deposit guarantee schemes),
- 31997L0009 – 12003TN08/02 (minimum level of investor compensation schemes).

Transitional periods provided for in Community primary law shall be subject to vertical direct effect of Community primary law, while transitional periods provided in Community secondary law (*acquis*) shall be subject to horizontal direct effect of Community secondary law.

Joint sovereignty of the Community and Member States of the EU shall stand face-to-face (*vis-à-vis*) with the sovereignty of the nation, when the Member State concerned is a republic. It will stand face to face with the suzerainty of a monarch acting on behalf of its nation, when the Member State concerned is a monarchy.

It is a rule that the legal system of the nation (republic or monarchy) in the Community shall have no adverse effect on the unified norm (legal rule) of Community secondary law. Any fall-back (*ren voi*) rule may cause a conflict of laws. Any conflict of laws subject to horizontal direct effect of Community secondary law will be treated in favour of the source of Community secondary law.

The legal grounds for the defence of an infringed right deriving from the sources of primary and secondary law of joint sovereignty and/or suzerainty are: the general interest of the Community as a ground for the admissibility of the action; the direct effect of a source of primary law or a source of secondary law allowing the Court of Justice to interpret this source by adopting a preliminary ruling or allowing, as the case may be, the Court of Justice to take over the jurisdiction of the case; and finally the law or any act in dispute which evidences the existence of default.⁵⁶

Protocol No. 36 on transitional provisions annexed to the Treaty of Lisbon may serve an example of the vertical direct effect of Community primary law, where the provisions on the calculation of votes constituting the qualified majority in the EU Council shall remain in force until 31 October 2014.⁵⁷

Article 7(1) of Directive 94/19/EC as amended by Directive 2009/14/EC foresees coverage for the aggregate deposits of each depositor for at least EUR 50,000 in the event of deposits being unavailable. Member States will have to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2009.

⁵⁶ Judgement of the Court of 4 April 1974, Case 167/73, Commission of the European Communities v. French Republic [1974] ECR (European Court Reports) page 359 ("*Code du Travail Maritime*"). CELEX number: 61973J0167.

⁵⁷ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01), *Official Journal of the European Union*, No C 115, 9 May 2008, p. 17 and p. 322-323.

Article 7(1a) of the same Directive foresees an obligation for Member States by 31 December 2010 to ensure the coverage for the aggregate deposits of each depositor for EUR 100,000 in the event of deposits being unavailable.⁵⁸

The term of one and a half year starting from 30 June 2009 and ending on 31 December 2010 may be regarded a transitional period, when the insured amount of deposits shall remain at the fixed average level of EUR 50,000. However, all Member States of the EU on the due date shall have to comply with the established deposit insurance amount of EUR 100,000.

The Commission of the European Communities has launched a public consultation on further improvement of investor compensation schemes in the Community alongside with the recast of deposit guarantee schemes. The document is titled “Directive 1997/9/EC on investor compensation schemes. Call for evidence.” It is available on the internet site of the Commission.⁵⁹

5. Type of Communication – Notification database of the Commission of the European Communities: Infringements (incorrect transposition, transposition after due date, Correspondence tables, diligence by national authorities, diligence by Commission Services, etc.)

5.1. Direct application of Community law in the case of a gap in transposing measures or absence of transposing measures

The Commission may be made aware of the national implementing measures that are not in line with the Directive concerned either because of investigations by its own departments or via complaints. The fact that the case law of the Court of Justice has recognised the direct vertical effect of non-transposed or poorly transposed directives helps to overcome this problem in part. However, it does not relieve the Commission of its monitoring role.⁶⁰

The Commission will also publish more information on approaching deadlines for the implementation and performance of Member States in implementation and communicating correlation tables. It will initiate action to provide open access to its electronic database containing

⁵⁸ Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (Text with EEA relevance), Official Journal of the European Union, No L 68, 13 March 2009, p 3.

⁵⁹ Directive 1997/9/EC on investor compensation schemes. Call for evidence. European Commission, http://ec.europa.eu/internal_market/securities/isd/investor_en.htm

⁶⁰ Commission Communication. Better Monitoring of the Application of Community Law. Brussels, 16.5.2003 COM(2002)725 final/4, p. 18.

transposition notification and correlation tables pending the completion of arrangements for access to national databases. The Commission will continue to develop the EU law portal on the Europa website.⁶¹

5.2. Date for transposition of directives – date of accession to the EU (1 May 2004)

From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.⁶²

Thus, the provisions of *acquis* shall apply directly in the territory of the Member State from the date of the accession to the EU. In case of Lithuania, this date is 1 May 2004. That means that 1 May 2004 is the date for transposition of all directives, which were adopted and entered into force before the date of Lithuania's accession to the EU.

6. Case law of the European Court of Justice and the Court of First Instance of the European Communities

6.1. Direct effect of Community law – direct applicability in the national law system (in case of absence of transposing measures, incorrect transposition, and late transposition)

Where the provisions of a directive, in terms of content, are sufficiently precise and unconditional, individuals may plead them against a Member State, when the latter has failed to transpose the directive in time or has transposed it incorrectly, even if the deadline for bringing proceedings under the national law has expired (judgment of 25 July 1991 in Case C-208/90 Emmott v Minister for Social Welfare and Attorney General [1991] ECR I-4269).

The Commission will continue systematically to include an obligation for a correlation table to be communicated in each new proposal for a directive. It will insist on this during the legislative process. It will send a model correlation table to Member States following the adoption of each directive, asking to complete and return them to the Commission with the transposition measures. The Commission will also seek a general

⁶¹ Item 4.2. Increased transparency, Communication from the Commission. A Europe of Results – Applying Community Law. Brussels, 5.9.2007 COM(2007) 502 final.

⁶² Article 2, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, *Official Journal of the European Union*, L 236, 23 September 2003, p. 33.

commitment from the Council and Member States that correlation tables will be provided comprehensively.⁶³

6.2. Possibility to claim remuneration of incurred losses due to absence of transposing measures, incorrect transposition, and late transposition

At the end of the day, one of the best ways of combating recidivism in cases where the Court of Justice has already given judgment against the offender is to inform the public of their rights to compensation under the law as stated by the Court of Justice.⁶⁴

The Court gives individuals the possibilities of applying to the national courts for damages to compensate for infringements of Community law or failure to transpose directives. The legal profession is by now familiar with this ruling and its consequences for litigants who suffer loss because of a Member State's failure to comply with Community law, but individuals and firms are less familiar.⁶⁵

In Case C-6/60 *Humblet v Belgium* [1960] ECR 559 the Court held that "if the Court finds that a legislative or administrative measure adopted by the authorities of a Member State is contrary to Community law, that state is obliged ... to rescind the measure in question and to make reparation for any unlawful consequences thereof."

In Joined Cases C-6/90 and C-9/90 *Francovitch et al v Italy* [1991] ECR I-5357 the Court of Justice reasserted, in particular, the possibility for an individual to seek reparation of damage sustained because of an infringement of Community law by a Member State. The Cases here concerned Italy's failure to transpose Directive 80/897/EEC on the protection of workers in the event of the employer's insolvency. It upheld and refined this ruling in Joined Cases C- 46/93 and C-48/93 *Brasserie du Pêcheur SA v Bundesrepublik Deutschland* and *The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others* [1996] ECR I-1029.

According to Article 235 (ex 178) (ex ante 178) of the EC Treaty, the Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 288. Following second paragraph of Article 288 (ex 215) (ex ante 215) of the EC Treaty, in the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States,

⁶³ Item 1.2. Correlation tables, Communication from the Commission. A Europe of Results – Applying Community Law. Brussels, 5.9.2007 COM(2007) 502 final.

⁶⁴ Commission Communication. Better Monitoring of the Application of Community Law. Brussels, 16.5.2003 COM(2002)725 final/4, p. 19.

⁶⁵ *Ib id*, p. 19-20.

make good any damage caused by its institutions or by its servants in the performance of their duties.

The Court of Justice has ordered that a primary remedy shall be the payment by the defendant to the appellant of just and equitable sum (principal amount), remaining unpaid sum in respect of the costs incurred during the proceedings (subsidiary amount), default interest on the above sums and of all the costs and expenses of the proceedings. This is an example of a positive decision by the Court of Justice in the appellate proceedings in Case C-513/08 P. The appellant will gain full compensation of damages and suit. In the alternative, the Court of Justice has ordered to refer the case back to the Court of First Instance for a fresh decision.⁶⁶ Subsidiary remedy alters persistence of default or fall-back rule (*ren voi*).

As opposite to the above, in Case T-128/05 the Court of First Instance has dismissed the action and ordered the applicant to pay the costs. The applicant has made the action for damages pursuant to Article 235 and the second paragraph of Article 288 of the EC Treaty. The action was based on two grounds. The principal ground was the unlawful conduct of the Council and the Commission in the establishment of the rules relating to the import of a certain product into the Community. The alternative or subsidiary ground was the liability of the Community in the absence of unlawful conduct by those two institutions.⁶⁷

7. Application of Article 228 (ex 171) (ex ante 171) of the EC Treaty

The possibility of imposing financial sanctions on a Member State that has failed to implement a judgment establishing an infringement was introduced by Article (ex 171) of the EC Treaty signed in Maastricht in 1992. It has amended former Article (ex ante 171) of the EC Treaty signed in Rome in 1957 and Article 143 of the Euratom Treaty⁶⁸. Now it is Article 228 of the EC Treaty signed in Nice in 2002.

⁶⁶ Appeal brought on 26 November 2008 by Luigi Marcuccio against the order of the Court of First Instance (Fourth Chamber) of 9 September 2008 in Case T-143/08 Marcuccio v Commission (Case C-513/08 P) (2009/C 32/31), Official Journal of the European Union, No C 32, 7.2.2009, p. 19.

⁶⁷ Judgment of the Court of First Instance (Eighth Chamber) of 13 November 2008 — SPM v Council and Commission (Case T-128/05) (Non-contractual liability of the Community — Common organisation of the markets — Bananas — Rules for importing of bananas from ACP countries into the European Union — Lawful or unlawful conduct — Loss allegedly suffered by independent ACP producer) (2009/C 6/39), Official Journal of the European Union, No C 6, 10.1.2009, p. 20.

⁶⁸ Former reference to Article (ex ante 171) of the Treaty establishing the European Community signed in Rome in 1957 apply also to Article 143 of the Treaty establishing the European Atomic Energy Community (E.A.E.C. – EUROATOM) (Euratom Treaty) signed in 1957 in Rome, as the wording is identical.

The fixing of the sanction must be based on the objective of the measure itself. That is to ensure effective application of Community law. The Commission considers the calculation should be based on three fundamental criteria:

- the seriousness of the infringement,
- its duration,
- the need to ensure that the penalty itself is a deterrent to further infringements.⁶⁹

8. Conclusion

The timely and correct application of Community law is essential to maintain a strong foundation for the European Union and ensure that European policies have intended impacts, bringing benefits to citizens. The European institutions and Member States share an interest in keeping this foundation strong and need to make an even stronger commitment to assign high priority to the correct application of law.

Community law requires Member States of the EU to transpose into national law common rules of behaviour established in Community law and to achieve a result of proper functioning Common market. It leaves to the national authorities the choice of forms and methods in transposition and application of common rules of behaviour established in Community law.

The legal system of each Member States of the EU establishes an order for drafting, coordination, adoption and implementation of the rules of behaviour in the legal system of the nation. The order is a part of law making procedure, which organises law making in the Member States of the EU.

Alongside with general legal regime of the Member States of the EU, there are certain specific provisions, which lay in detail the analysis of compatibility of national provisions with that of EU directives. That is most valuable experience, which might serve a good example to other Member States. Legal system of the Member State of the EU should contain specific provisions regulating the matters on transposition and application of Community law in the legal acts establishing the law making procedure.

National law making procedural rules should expressly state that the law making procedure in case of transposition and/or application of Community law completes only after adoption, publication, entering into

⁶⁹ Item II. General principles, Communication from the Commission. Application of Article 228 of the EC Treaty. SEC(2005) 1658.

force and notification of National Execution Measures to the European Commission.

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11. Correlation tables

11.1. Correlation table of references of Articles of the Treaty on the European Union and the Treaty on European Union

Reference of Article of the Treaty on European Union signed in Lisbon in 2007	Reference of Article of Treaty on the European Union signed in Amsterdam in 1997 and Nice in 2001	Former reference of Article of the EU Treaty signed in Maastricht in 1992
Article 1	Article 1	(ex Article A)

11.2. Correlation table of references of Articles of the Treaty establishing the European Community and Articles of the Treaty on the Functioning of the European Union

Reference of Article of the Treaty on the Functioning of the European Union signed in Lisbon in 2007	Reference of Article of Treaty establishing the European Community signed in Amsterdam in 1997 and in Nice in 2001	Former reference of Article of the Treaty establishing the European Community signed in Maastricht in 1992	Former reference of Article of the Treaty establishing the European Community signed in Rome in 1957
Replaced in substance by Article 3 of the Treaty on European Union	Article 2	(ex Article 2)	(ex ante Article 2)
Replaced in substance by Articles 3 to 6 of the Treaty on the Functioning of the European Union	Article 3	(ex Article 3)	(ex ante Article 3)
Article 119	Article 4	(ex Article 3a)	-
Replaced in substance by Article 4, Paragraph 3, of the Treaty on European Union	Article 10	(ex Article 5)	(ex ante Article 5)
Article 20	Article 17	(ex Article 8)	-
Article 54	Article 48	(ex Article 58)	(ex ante Article 58)
Replaced in substance by Article 19 of the Treaty on European Union	Article 220	(ex Article 164)	(ex ante Article 164)
Article 258	Article 226	(ex Article 169)	(ex ante Article 169)

Article 259	Article 227	(ex Article 170)	(ex ante Article 170)
Article 260	Article 228	(ex Article 171)	(ex ante Article 171)
Article 263	Article 230	(ex Article 173)	(ex ante Article 173)
Article 267	Article 234	(ex Article 177)	(ex ante Article 177)
Article 19(3) of the Treaty on European Union extends the jurisdiction of the European Court of Justice			
Article 268	Article 235	(ex Article 178)	(ex ante Article 178)
Article 288	Article 249	(ex Article 189)	(ex ante Article 189)
Article 340	Article 288	(ex Article 215)	(ex ante Article 215)