

THE LEGISLATIVE ACTS OF THE EUROPEAN UNION

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Abstract

Whether we are specialist in law, economics, art or a simple individual, all the citizens of the European Union meet in daily life, with legal terms such as regulation, directive, decision. We also get in touch, directly or indirectly with the institutions of the European Union, The Parliament, the Council, the Commission etc. For the states of western Europe, members of the European Communities for decades, these institutions and legal notions are absolutely normal, commonplace. For the citizens of the states from central and eastern Europe, relatively new members of the European Union, after 2000, these legal terms are still novelty. This is the reason why, the scientific paper aims to analyze the provisions of the Lisbon Treaty, Section 1, Chapter 2, art. 288 and the following regarding the legislative acts of the European Union. According to art. 288 of the Treaty on the Functioning of the European Union, „to exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions”. The paper aims to presents their legal character, the competent institutions to adopt these legislatives acts, the procedure for adopting and entering into force of these acts. In achieving this scientific objective, we shall present these acts comparatively, emphasizing the similarities and the differences between them, considering both the provisions of the Lisbon Treaty, as well as the scientific works in the field of the European Union Law.

Keywords: regulation, directive, decision, recommendation, European Union, legal acts, European Parliament, European Commission, Council.

JEL Classification: K33

1. Introduction

According to art. 288 of the chapter 2, section 1 of the Lisbon Treaty „to exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions”².

There are institutions of the European Union, the European Parliament, the European Commission, the European Council, the Council of the European Union, the Central European Bank, The European Union Court of Justice and the Court of Accounts of the European Union. Of course, there are many other European Union entities, but only these 7, have acquired the status of institutions.

The first clarification to be made is that only these 7 European Union institutions have the power to adopt legal acts, obligatory either for all or only for some member states and their citizens, for institutions and for enterprises under all aspects or only on certain aspects.

The second clarification to be made is that the European Union institutions have the power to adopt not only regulations, directives, decisions, recommendations and opinions which are typical or named legal acts, but also other atypical or unnamed acts, such as declarations, communications, resolutions, white papers, green books, etc., which result from the practice of the institutions of the Union, without having an express regulation in the treaties³.

Depending on their binding force, the typical acts can be divided in binding acts, such as regulation, directive and decision and non-binding acts such as recommendations and opinions.

Depending on the adoption procedure, there are legislative acts adopted by the legislative, procedure (ordinary or extraordinary) such as regulation, directive, decision and non-legislative acts adopted by the Commission through the delegation of competences procedure, such as delegated acts and implementing acts.

Our scientific paper aims to analyze the legal acts adopted by the European Union institutions by the legislative procedure, ordinary or extraordinary.

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² The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, published in the Official Journal C 306, 17.12.2007, p. 1–271.

³ Ioana Nelly Militaru, *The European Union Law*, second edition, Universul Juridic Publishing, Bucharest, 2011, p. 126.

2. Regulation

According to art. 288 al. 2 of the Lisbon Treaty, „a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States”.

Starting from the legal text of the Lisbon Treaty, we can analyze the legal characters of the regulation⁴.

At this moment, the regulation represents the most powerful act adopted in European Union and the main source of the secondary law. Even if the Lisbon Treaty doesn't use the term, by its characters, the regulation is, in fact, what we are calling in the national legal system as the law because, as the art. 288 al. 2 says, it has general application, is fully compulsory and it is directly applicable.

The regulation is fully compulsory. It means that this legal act establishes both the binding result, but also the concrete means of implementation and execution to achieve the compulsory result. As a result, the national legislative authorities don't need to adopt an internal additional legal act in their country, because the regulation provides all.

The regulation has general character, it has general application. It means that the regulation contains general and impersonal provisions, like the national law. It is compulsory in all its elements⁵, providing mandatory provisions for all situations, problems in a specified field, offering also the concrete means of applying and achieving the mandatory result. Also, the regulation does not address to well-determined person or persons, but it addresses to all European Union member states, institutions, citizens and businesses, creating subjective rights for the benefit of individuals⁶.

Because the regulation is compulsory in all its aspects, it is prohibited for the member states any incomplete or selective application of the regulation provisions⁷.

The regulation is directly applicable. It means that this legal act does not need a national additional legislative measure to enter into force; it produces legal effects in national legislative systems by itself, without any intervention. Not only the member states have to apply the regulation provisions, but also the European Union citizens, individuals and legal persons.

Because the regulations provides the obligatory result and the legal means of achieving the result, without the intervention of the national authorities, the regulation also has immediate applicability, becoming obligatory for all member states, the natural and legal persons and the European Union institutions from the date of its entry into force. According to art. 297 al. 3 of the Lisbon Treaty, the regulation shall be published in the Official Journal of the European Union. It shall enter into force on the date specified in it or, in the absence thereof, on the twentieth day following that of the publication.

Even if the Lisbon Treaty does not classify the regulations, according to European Union Court of Justice jurisprudence⁸, they can be divided in legislative regulations and non-legislative regulations (delegated and implementing regulations).

The legislative regulations are adopted according to art. 289 by the ordinary or special legislative procedure. The ordinary legislative procedure (co-decision) means, according to art. 294 of the Lisbon Treaty that the European Parliament and the Council join to adopt of a regulation. Before publishing in the Official Journal of the European Union, the regulation must be signed by the President of the European Parliament and by the President of the Council. The special legislative procedure means that, in some specified cases, the European Parliament adopts a regulation with the participation of the Council or, the Council adopts a regulation with the participation of the European Parliament. Before publishing in the Official Journal, the regulation adopted under a special legislative procedure must be signed by the President of the institution which adopted it. The

⁴ On the legal characters of the regulation see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 53; Cătălin-Silviu Săraru, *European Administrative Space - recent challenges and evolution prospects*, Adjuris - International Academic Publisher, Bucharest, 2017, p. 63 et seq.

⁵ Guy Issac, Marc Blanquet, *Droit communautaire general*, 8 edition, Dalloz, Paris, 2001, p. 143.

⁶ A. Lyon-Caen, G. Lyon -Caen, *Droit social international et europeen*, Dalloz, Paris, 1991, p.166.

⁷ Ioana Nelly Militaru, *op. cit.*, 2011, p. 131.

⁸ D. Simon, *Le system juridique Communautaire*, PUF, Paris, 1997, p. 202.

regulations adopted by legislative procedure shall constitute legislative acts. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of member states or of the European Parliament, on the recommendation of the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

The regulation must be motivated, indicating the legal reason, the purpose, the proposals, the initiatives and the recommendations that determined the adoption of the act⁹. After entering into force, the regulation will produce legal effects only for the future, not for the past. Still, the Court of Justice admitted that a regulation can produce legal effects before publishing, if this situation does not produce a prejudice for the interested parties.

3. Directive

According to art. 288 al. 3 of the Lisbon Treaty, „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”.

Starting from the legal text of the Lisbon Treaty, we can analyze the legal characters of the directive, totally different from the regulation¹⁰.

The directive is not fully compulsory. It means that this legal act establishes only the binding result, not the concrete means of implementation and execution to achieve the compulsory result. As a result, the national legislatures authorities need to adopt an internal additional legal act in their country to provide the legal mechanisms to achieve the compulsory results. That's why, the directive imposes to member states obligations of results, not obligations of means¹¹.

So, we can affirm that art. 288 al. 3 of the Lisbon Treaty only provides the compulsory results, as a measure to harmonize all the legal system in the European Union. After this, every member state has the liberty, the capacity to identify the best ways to achieve the compulsory result and to regulate these ways in a national law. Even there is not a unanimous opinion regarding the type of legal act to be adopted by the national authorities, the national legal system must provide sufficiently strong provisions to enable the compulsory result provided by the directive to be achieved.

Considering these, we can define the directive as a legal instrument for the member states to close and to collaborate with the European Union institutions aiming to uniformize and harmonize the national legislations.

The directive has not general applicability. The directive beneficiaries aren't all citizens, enterprises, institutions and member states of the European Union. The directive provisions just aim the member states of the European Union who, in a certain period of time, must identify and regulate in their national legislative system the most adequate, suitable legal ways to accomplish the compulsory results established by the directive.

The directive cannot be invoked in the legal relations with the individual persons, because it doesn't determine rights and obligations for the natural and legal persons directly, but only for the European Union member states. This is the reason why we can affirm that the directive has not general applicability. But, when the directive addresses to all member states, it shall be applying simultaneously in all the country as an indirect legislative measure. In this case, the European Union Court of Justice considers that the directive has general applicability¹².

The directive is not directly applicable, but has direct effect. As we already explain, the directive establishes provisions only for the member states, not for the individuals. The individuals must respect the compulsory provisions of the directive only when their national legislative system will adopt legal measures to establish the compulsory ways to achieve the directive purpose. So, as

⁹ O. Manolache, *Tratat de drept comunitar*, 5th ed., C.H. Beck Publishing, Bucharest, 2006, p. 173.

¹⁰ On the legal characters of the directive see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 53, 54; Cătălin-Silviu Săraru, *European Administrative Space - recent challenges and evolution prospects*, Adjuris - International Academic Publisher, Bucharest, 2017, p. 63 et seq.

¹¹ Ioana Nelly Militaru, *op. cit.*, 2011, p. 134.

¹² CJCE, 7/0/83, Kloppenburg, 22.02.1984, Rec. 1075.

the other legal European Union acts, the directive will enter into force after publishing in the Official Journal, but, from that moment, only member states must comply with it in order to adopt a supplementary national legal act. Even more, the directive establishes a time, normally 2 years for the member states to identify and regulate the legal ways to achieve the compulsory provisions of the directive.

Like the regulations, the directives can be divided in legislative directives and non-legislative directives (delegated and implementing directives).

The legislative directives are adopted according to art. 289 by the ordinary or special legislative procedure. The ordinary legislative procedure (co-decision) means, according to art. 294 of the Lisbon Treaty that the European Parliament and the Council join to adopt of a directive. Before publishing in the Official Journal of the European Union, the directives must be signed by the President of the European Parliament and by the President of the Council. The special legislative procedure means that, in some specified cases, the European Parliament adopts a directive with the participation of the Council or, the Council adopts a directive with the participation of the European Parliament. Before publishing in the Official Journal, the directive adopted under a special legislative procedure must be signed by the President of the institution which adopted it. The directives adopted by legislative procedure shall constitute legislative acts. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of member states or of the European Parliament, on the recommendation of the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

The non-legislative directives are adopted by the European Commission, based on a legal act provided by the Council or the European Parliament, with general scope, aiming to complete or to modify nonessential clauses of a legal act (delegated directives). The implementing directives are adopted by the European Commission or by the Council by implementing compulsory acts of the Union.

The directive must be motivated, indicating the legal reason, the purpose, the proposals, the initiatives and the recommendations that determined the adoption of the act. After entering into force, the directive will produce legal effects for the member states only for the future, not for the past.

4. Decision

According to art. 288 al. 4 of the Lisbon Treaty, „a decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them”.

Starting from the legal text of the Lisbon Treaty, we can analyze the legal characters of the decision, which is fully compulsory individual act.

The decision is fully compulsory. It means that this legal act establishes both the binding result, but also the concrete means of implementation and execution to achieve the compulsory result. As a result, normally, the national legislatures authorities don't need to adopt an internal additional legal act in their country, because the decision provides all.

The decision has not general character, it is an individual legal act. It means that the decision, generally, doesn't address to all member states, European Union institutions and individuals. Generally, the decision indicates its beneficiaries, certain member states or certain institutions or certain individuals. Still, it is possible for a decision not to mention its beneficiaries; in this case, the decision addresses to all member states, European Union institutions and natural and legal persons.¹³

The decisions can be divided in legislative decisions (adopted by the ordinary or special legislative procedure and before publishing, they must be sign by the president of the European Union institution that adopted it) and non-legislative decisions (delegated, adopted by the European Commission, based on a legal act provided by the Council or the European Parliament, with general scope, aiming to complete or to modify nonessential clauses of a legal act and implementing adopted

¹³ Guy Issac, Marc Blanquet, *op. cit.*, 2001, p. 145.

by the European Commission or by the Council by implementing compulsory acts of the Union)

Like the regulation and the directive, the decision must be motivated, indicating the legal reason, the purpose, the proposals, the initiatives and the recommendations that determined the adoption of the act. After entering into force, the decision will produce legal effects for its beneficiaries only for the future, not for the past.

5. Recommendations and opinions

According to art. 288, final part of the Lisbon Treaty „ recommendations and opinions shall have no binding force”. The main issue about these acts is that, as the Treaty says, they shall have no binding force. So, the question is, why these non-compulsory acts are considered legal acts of the European Union.

First, if an act is non-compulsory, it does not mean that it does not have legal effects¹⁴; it produces for its beneficiaries rights and obligations and the beneficiaries choose to respect and apply these recommendations and opinions, even if there isn't any legal consequence.

Because they are non-compulsory acts, they cannot be verified by the European Union Court of Justice using the action for annulment.

The recommendations can be adopted by the European Commission, by the Council and by the European Union Central Bank and they represent invitations for the beneficiary member state to adopt legal measures in order to accomplish obligations from compulsory legislative acts. The recommendations purpose is to help member state to find the right measures to harmonize their legal system with the European Union law.

The opinions are adopted by the European Commission and the beneficiaries are the member states or enterprises who, in case of any doubt regarding the application of a legal act, ask the Commission for a point of view on that problem.

6. Conclusions

According to the Lisbon Treaty, the legal acts of the European Union are compulsory for all their beneficiaries, members states, institutions, natural or legal persons and, after entering into force, they become part of member states internal law.

Depending on the importance of these legislative acts, we can say that the regulation has the greatest legal force. This is because the regulation applies to all EU member states, institutions, citizens and businesses. It establishes the compulsory result and the legal means of fulfilling the result. That is why, the regulation applies directly and immediately from its entry into force, as a rule on the 20th day after its publication in the Official Journal of the UE, without the need for an internal normative act to facilitate its implementation in the European Union.

The directive, however, is totally different from the regulation. The only similarity between the two categories of legislative acts is the compulsory character. Otherwise, the two legislative acts are different. The directive establishes only the obligatory result, not the concrete means of accomplishing it. It is not addressed to all the member states of the European Union, to all institutions, citizens and companies, as the regulation, but it is addressed only to the member states that have the obligation, within the term provided by the directive, to adopt the internal normative act that identifies the concrete means of achieving the objective of the directive. As a result, the directive is not directly and immediately applicable from its entry into force, on the 20th day after its publication in the Official Journal of the UE, but becomes mandatory from the entry into force of the internal normative act.

The decision, as a legislative act, is very similar to the regulation and different from the directive. Like the regulation, the decision establishes the obligatory result and the concrete means of accomplishing it. As a result, the decision has direct and immediate applicability since its entry into

¹⁴ R. Kovar, *Ordre juridique Communautaire*, Juris-Classeur Europe, 1990, Fasc. 410, n. 127.

force, as a rule on the 20th day after its publication in the Official Journal of the EU, without the need for an internal normative act of implementation. The decision differs from the regulation as regards the recipients, in the sense that it is addressed only to one or more well-defined European Union member states, not to all the subjects of European Union law, such as the regulation

The recommendation and the opinion are different from the other legislative acts, first of all, by the fact that they are not binding. Also, the procedure for adopting recommendations and opinions does not require a collective decision of the Parliament and the Council, as the competent institutions, when it considers it necessary, can issue them. They are not addressed to all subjects of European Union law, but only to states or national institutions that are facing difficulties in applying European Union law.

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