

## CONCLUSIONS

The Councils of State and the supreme administrative courts have met, for their fifteenth colloquium, in Brussels, on 22, 23 and 24 April 1996. The subject of the colloquium was the implementation in domestic law of directives of the European Union.

At the end of their discussions, the participants at the colloquy have come to the following conclusions :

1. A particular care should be given to the drafting of the directives. Deficient texts make the implementation difficult, and are a source of legal uncertainty.

It could be useful to create within the European Union a consultative body, of a permanent and independent nature, and having a general power to give opinions on draft texts, dealing among other things with the coherence and the clarity of the text.

Some participants find it useful to involve national parliaments and other consultative organs, such as Councils of State, at an early stage in the process of drafting of the directives, in order to avoid serious problems at the time of their implementation.

2. One should try not to make the implementation process unnecessarily heavy. It does not seem necessary, e.g., to maintain the mandatory consultation of consultative commissions, in cases where the implementation leaves barely any margin for manoeuvring to the national authorities.

Similarly, there can be good reasons for a legislator to empower the government to implement directives, while respecting constitutional provisions.

3. A directive can be implemented in domestic law, either by the adaptation of its wording to the domestic legal context, or by a literal reproduction of its wording, or even by a simple reference to the directive. Each method has its advantages and its disadvantages. These have to be appreciated on a case by case basis, in the light of the principle of legal certainty, and in particular of the requirements of accessibility for each individual and clarity of normative texts.
4. According to the well established case law of the Court of Justice, individuals are entitled to rely on the "unconditional and sufficiently precise" provisions of a non-implemented directive, after the expiration of the implementation period, against the defaulting Member State. The condition of unconditionality and precision of the provision is well understood when it comes to asserting rights recognised by the directive. The question has been raised, however, whether this same condition is justified when it comes to setting aside the application of domestic law, for infringement of the directive.

The participants in the colloquy were not at ons as to the reply to be given to that question. In truth, the question touches on fundamental problems, notably concerning the extent and form of the control of the legality of normative acts, to which different Member States have given different answers.

5. The participants at the colloquy consider that, in case of doubt, the interpretation of domestic law in conformity with a directive, can be a useful technique, notably to give a certain effect to a directive which has not been implemented or which has been incorrectly implemented.

They are of the opinion, however, that Community law can not impose an interpretation in a given way of a rule of domestic law. The judge should therefore not be prevented from choosing between, on the one hand, the "conform" interpretation, and on the other hand, the setting aside of that rule for infringement of the directive.

6. Even before the expiration of the implementation period, a directive can inspire the national judge in the interpretation of a provision of domestic law.

The participants at the colloquy have taken note of the fact that the Belgian Council of State has come to request a preliminary ruling from the Court of Justice on the question whether, during the implementation period, binding effects should be attributed to the directive. Subject to the ruling of the Court, the participants believe that Member States remain free in principle until the expiration of the period, but that they must not take measures contrary to the directive, where these show a lack of "good faith", as the term is used in Article 5 of the Treaty.

7. The clarifications brought recently by the Court of Justice to the principle of the responsibility of Member States for damage caused by the non-implementation of a directive, make it possible to meet a number of difficulties which the domestic jurisdictions of some Member States come across.

However, the preconditions for obtaining reparation are so strict that one can wonder if the threat of reparation constitutes an effective means to force a Member State to respect its obligations flowing from a directive. In any event, these preconditions must not prevent the application of national rules which are more generous for the victims.

8. The obligation on the supreme courts to request a preliminary ruling from the Court of Justice could sometimes be the cause for an unjustified delay in the progress of

domestic proceedings. Especially when urgent matters are involved, derogations to the said obligation should be admitted. It would also be interesting to study the possibility of granting to the Court of Justice the competence to hand down a judgement containing an interlocutory ruling.