

Finland's Report on Problems Concerning the Transposition of Directives

This report will answer the questions of the Rapporteur-General in the same order as they appear in the questionnaire.

I Questions concerning old directives (directives on the recognition of professional education and training)

1. Process of transposition

1.a.

In Finland the legislative power is exercised by Parliament in conjunction with the President of the Republic. To a certain extent, these legislative bodies may delegate their power to enact decrees to the Government and the Ministries and sometimes even to other administrative authorities.

Competence to transpose a directive depends on which legislative body has laid down the national provisions to be changed in the process of transposition. The principle is that the transposition will be carried out by the same legislative body. If, on the other hand, transposition requires enactment of entirely new legislation, the transposition will be carried out by the legislative body which, according to the Constitution, is competent to enact the corresponding national legislation. The Parliament has general legislative competence. For example, Directives 89/48/EEC of 21 December 1988 and 92/51/EEC of 18 June 1992, mentioned in the questionnaire, were transposed principally by an Act of Parliament and partly by a Presidential Decree.

If no amendment or reform of legislation but only administrative measures are required for the transposition, such measures can be taken by the Government or the Ministry in charge of the relevant administrative sector.

So far, no conflicts of competence have occurred concerning transposition. However, on a few occasions there has been some confusion as to whether an Act of Parliament was required for transposition or if a decree would be sufficient.

1.b.

The Supreme Administrative Court has no obligatory role in the transposition process. However, the Court provides the ministries with 10 - 20 statements each year on legislative proposals. If such proposals concern the transposition of a directive, the Court can present its views on how this can be achieved. The statements of the Court are not binding.

1.c.

Directives are mostly transposed by introducing the material contents of the directive into the national legislation so as to ensure the result to be achieved. At the same time the terms of a directive will be harmonized with the terms of the national legislation to facilitate its application and to ensure its consistent interpretation. If, in some cases, special accuracy was required in the transposition, the wording of the directive has been transferred into the national legislation as such. Occasionally the national act does not even reproduce the wording of the directive but includes merely a reference to the directive or to certain of its provisions as being the legal rules to be applied.

2. Legal effect of directives

Since Finland has been a member of the European Union for only a little over a year, the Supreme Administrative Court has so far given decisions on very few cases requiring the application of European Community Law. These cases have not included matters involving consideration of the legal effects of directives as indicated in the questionnaire. Consequently, as the Supreme Administrative Court cannot answer the questions on the basis of its own case-law or experience, the answers will relate to how these questions are dealt with in the Court's internal training and how the Court is expected to act accordingly. The underlying factor is an Act of Parliament passing the Treaty concerning the accession of Finland to the European Union. Pursuant to this Act the Community law in its entirety (acquis

communautaire) has been enacted to be applied as legislation in force in Finland.

2.a.

If the period stated for the implementation of a directive has not expired, the directive has no legally binding force as to the application of its provisions. At this stage, however, the directive indicates clearly the trend of development of the legislation. Therefore, the provisions to be applied in a case should be applied within its interpretative limits (*praeter legem*) and in a manner taking account of the purpose of the directive.

2.b.

In cases where there is no doubt as to the correct transposition of a directive, it still has an interpretative effect. The considerations contained in the preamble of a directive will further develop the interpretative conception of the purpose of the provisions (*ratio legis*). The exact terms of the directive in its different linguistic versions form an essential basis when specifying the interpretation based on the terms of the provisions to be applied.

If a national provision transposing a directive is interpretatively incompatible with the directive, the Court should fulfil the purpose of the directive through its own interpretation. Therefore a national norm should be interpreted according to the directive.

2.c.

Situations where a directive has not been transposed within the stated period or where its transposition is inadequate:

If a directive is sufficiently clear, precise and unconditional, private individuals may rely on it against a public authority (vertical direct effect). On the other hand, relying on it against another private individual (horizontal direct effect) is not possible. - In this respect the rules confirmed by the case-law of the Court of Justice of the European Communities are applied as far as possible.

In the absence of prerequisites for the direct effect of a directive (as in the case of

horizontal direct effect), the Court aims at applying a national norm in accordance with the interpretation alternative which most adequately and efficiently takes into account the purpose of the directive. Such an interpretation of the national provisions must not, however, go beyond their limits of legal interpretation (interpretation *contra legem*).

If the State of Finland has caused damage to a private individual by neglecting to transpose a directive or by transposing it inadequately, the private individual has a right to compensation from the state authorities for damages suffered in accordance with the rules which appear from the judgment of the Court of Justice of the European Communities in the case of Francovich (6/90). The Finnish national legislation concerning damages is sufficiently applicable to fulfil the responsibilities concerned.

II New Directive (Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 95/46/EC, 24.10.1995)

1. Procedure of transposition

The most important instrument of Finnish legislation governing data protection is the Personal Data File Act of 1987. Among other things the Council of Europe convention for the protection of individuals with regard to automatic processing of personal data has been taken into account in this act. The Personal Data File Act satisfies to a large extent the requirements of the Directive. In particular as regards the protection of the individual, the law will doubtless satisfy the requirements of the Directive.

Last year a reform of the civil rights entered into force in Finland. In connection with this reform, the right to privacy was stipulated in the Constitution as one of the civil rights. According to the Constitution the protection of personal data is enacted by law.

Transposition of Directive 95/46/EC will be carried out by amendment of the

Personal Data File Act where appropriate. A committee set up by the Ministry of Justice is determining the requirements for amending the Act. The time period set for the committee to complete its work expires at the end of 1996.

2. Contents of measures to be taken

At this stage it is possible to estimate that the Personal Data File Act will satisfy all requirements of the Directive when the Act has been amended and supplemented as follows:

- Certain definitions of the Personal Data File Act will be made more precise to correspond to definitions specified in the Directive.
- Article 7 (in particular its paragraphs e and f) concerning the legitimacy of data processing will be transposed to make up norms to be contained in the Personal Data File Act.
- The conditions for processing identification numbers (Article 8(7) of the Directive) will be made more precise.
- Providing information to a data subject when data relating to him are collected (Articles 10 and 11) will require certain supplements to be made to the Act.
- The Personal Data File Act is inadequate and has to be supplemented with respect to Article 15 concerning automated individual decisions.

According to the Personal Data File Act a citizen can turn to the Data Protection Ombudsman to claim his rights guaranteed by the law. The Data Protection Ombudsman, acting on his own decision or in certain instances by referring the case to the Data Protection Board, may oblige the controller of a file to provide for the legal rights of a data subject. A data subject shall also have the right to institute proceedings in a general court (court of first instance) against a controller of a file who has violated this Act (cf. Article 22).

According to the Personal Data File Act the controller of a file shall be liable to compensate damage incurred to a data subject through an unlawful act (cf. Article 23).

The sanctions for infringement of the Personal Data File Act shall be a fine or imprisonment for at most one year (cf. Article 24).

The Personal Data File Act implies that good data file practice shall be observed when acting under the law. Certain associations representing controllers of a file have drawn up codes of conduct for their members (e.g. for files used in direct marketing). These codes are not binding under the Act (cf. Article 27).

Compliance with the Personal Data File Act is supervised by the Data Protection Ombudsman whose duties and powers are in line with the duties and powers provided for by the Directive (Article 28).

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