

**DRAFT CONCLUSIONS.**

The Councils of State and the supreme administrative courts have met, for their fifteenth colloquy, in Brussels, on 22, 23 and 24 April 1996. The subject of the colloquy was the transposition 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 transposition difficult, and are a source of legal uncertainty.

It could be useful to create within the European Union a consultative body, called upon to give opinions on draft texts, dealing among other things with the coherence and the clarity of the text and respecting requirements of a logistic nature.

It also seems useful to involve national parliaments at an early stage in the process of drafting of the directives, in order to avoid serious problems at the time of their transposition.

2. One should try not to make the transposition process unnecessarily heavy. It does not seem necessary, e.g., to maintain the mandatory consultation of consultative

commissions, in cases where the transposition leaves barely any margin for manoeuvring to the national authorities.

Similarly, there can be good reasons for a legislator to empower the government to transpose directives. The participants at the colloquy consider that an effective system might be the one, existing in Italy, according to which the government presents each year a bill to parliament, enumerating the directives which have to be transposed and for which the power to transpose is requested.

3. A directive can be transposed into 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 and clarity of normative texts.

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-transposed directive, after the expiration of the transposition period, against the defaulting Member State. The condition of unconditionality and precision of the provision is well understandable when it comes to

asserting rights recognised by the directive. The question arises, 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 at the colloquy hope that the Court of Justice could be invited to reconsider this question.

5. The participants at the colloquy consider that the interpretation of domestic law in conformity with a directive, can constitute a means to give a certain effect to a directive which has not been transposed or which has been incorrectly transposed.

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. The choice to be made constitutes, to a certain extent, the expression of "judicial policy".

6. Even before the expiration of the transposition 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 transposition period, binding effects should be attributed to the directive. Subject to the ruling of the Court, the participants believe that Member States remain free until the expiration of the period. Of course, this does not change the fact that it is in general not opportune to take measures going against the directive.

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-transposition 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.

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 a provisional ruling.