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EU Twinning Project

Capacity Building of the National Center for Personal Data Protection of the Republic of Moldova MD 13ENPI JH0317 (MD/29)

Implementation of European Union Law into National law

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Agenda

1. Types of EU Law and the hierarchy of norms
2. Legislative and non-legislative acts
3. Implementation of secondary EU Law - regulations, directives, decisions into national law (methodology, legal technique and other aspects)
4. Legal impact assessment of draft law (including when EU Law is implemented into national law)

Used abbreviation:

EU – European Union

TEU – Treaty on European Union

TFEU – Treaty on Functioning of the European Union

EP – European Parliament

ECJ – European Union Court of Justice



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Types of EU Law

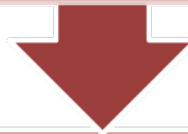
Treaties of the EU (Primary Law)

Treaty on European Union (TEU)

Treaty on the Functioning of the European Union (TFEU)

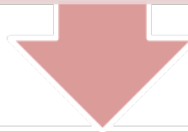
The Treaty Establishing the European Atomic Energy Community (Euratom)

General principles of EU law; Charter of Fundamental Rights of the EU; International agreements concluded by the EU



Legislative acts (Secondary Law) (regulations, directives, decisions)

adopted in ordinary or special legislative procedure (by EU Council + EP)
and based on the EU treaties



Non – legislative acts (Secondary Law) (regulations, directives, decisions)

adopted in non-legislative procedure (by EU Commission) and based on Legislative acts



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The hierarchy of norms (comparison)

NATIONAL

Constitution

Laws
(*Parliament*)

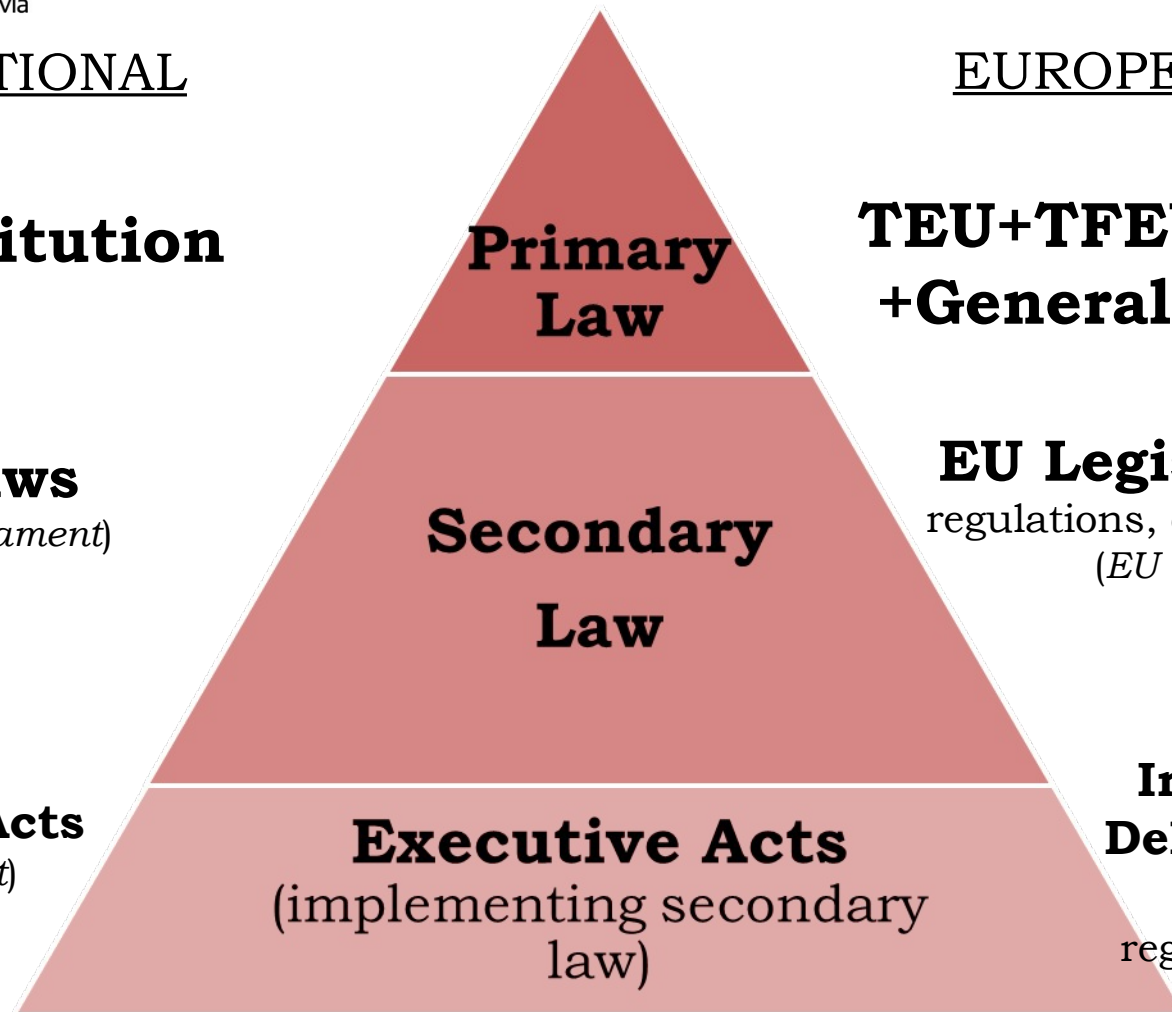
Executive Acts
(*Government*)

EUROPEAN UNION

**TEU+TFEU+Eurotam
+General Principles**

EU Legislative acts:
regulations, directives, decisions
(*EU Council +EP*)

**Implementing &
Delegated Acts (non-
legislative acts):**
regulations, directives,
decisions
(*EU Commission*)





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Types of non-legislative acts

Delegated Acts

Article 290 TFEU

- general application
- **supplement or amend certain non-essential elements of the legislative act**
- adopted by the EU Commission
- Checked by EU Council and EP

Implementing Acts

Article 291 TFEU

- **ensure uniform conditions for implementing legally binding EU acts**
- generally adopted by the EU Commission
- Controlled by EU Member States in Comitology procedure (regulation (EU) No. 182/2011 (16.02.2011.))



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Example

Article 24 of TFEU: *The EP and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative (..)*

↓

Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative

Article 7 Para 3: The Commission shall adopt, by means of **delegated acts** (..) appropriate adjustments to Annex I in order to reflect any modification in the composition of the European Parliament.

↓

Commission **Delegated Regulation** (EU) No 268/2012 of 25 January 2012 amending Annex I of Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative

Article 6 Para 5: By 1 January 2012, the Commission shall adopt technical specifications **for the implementation** of paragraph 4, in accordance with the regulatory procedure referred to in Article 20(2).

↓

Commission **Implementing Regulation** (EU) No 1179/2011 of 17 November 2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative



Implementation of EU legal acts into national law

1. Comparing EU law and National law → rules and regulations, case law of the courts and administrative practice



2. Does the existing national law and administrative practice comply/does not comply with the EU law



3. If does not comply, it is necessary to:

- *adopt new legislation*
- *amend legislation already in force*
- *invalidate concrete legislation*
- *change the existing judicial and / or administrative practice*



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Meaning of the «State» in EU Law

The EU Court of Justice explains scope of the «state» widely and includes:

- 1) any national regulatory authority
- 2) municipal authority (ECJ case C-103/88)
- 3) independent institution which is protecting public order and safety (ECJ Case C-222/84)
- 4) entrepreneur whose business is connected with security of the state (ECJ Case C-188/89)

«State» - any state's institution or any individual, who fulfils tasks delegated by the state





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Secondary EU Legislation

(Article 288 of TFEU)

- I. Regulation:** binding to everyone (to individuals as well) in its entirety and directly applicable in all EU Member States
- II. Directive:** binding, as to the result to be achieved, to each Member State to which it is addressed. Member States are free to choose the form and methods how to implement directives (to reach the result of directive).
- III. Decision:** binding to Member States or to those to whom it is addressed
- IV. Recommendations and opinions:** have no binding force, so called “soft law”. But:
 - ✓ the national courts are bound to take recommendations and opinions into consideration in order to decide disputes submitted to them (ECJ Case C-322/88)
 - ✓ it is not recommended to act contrary to recommendations and opinions



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Decisions

Decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them (Paragraph 4 Article 288 of TFEU)

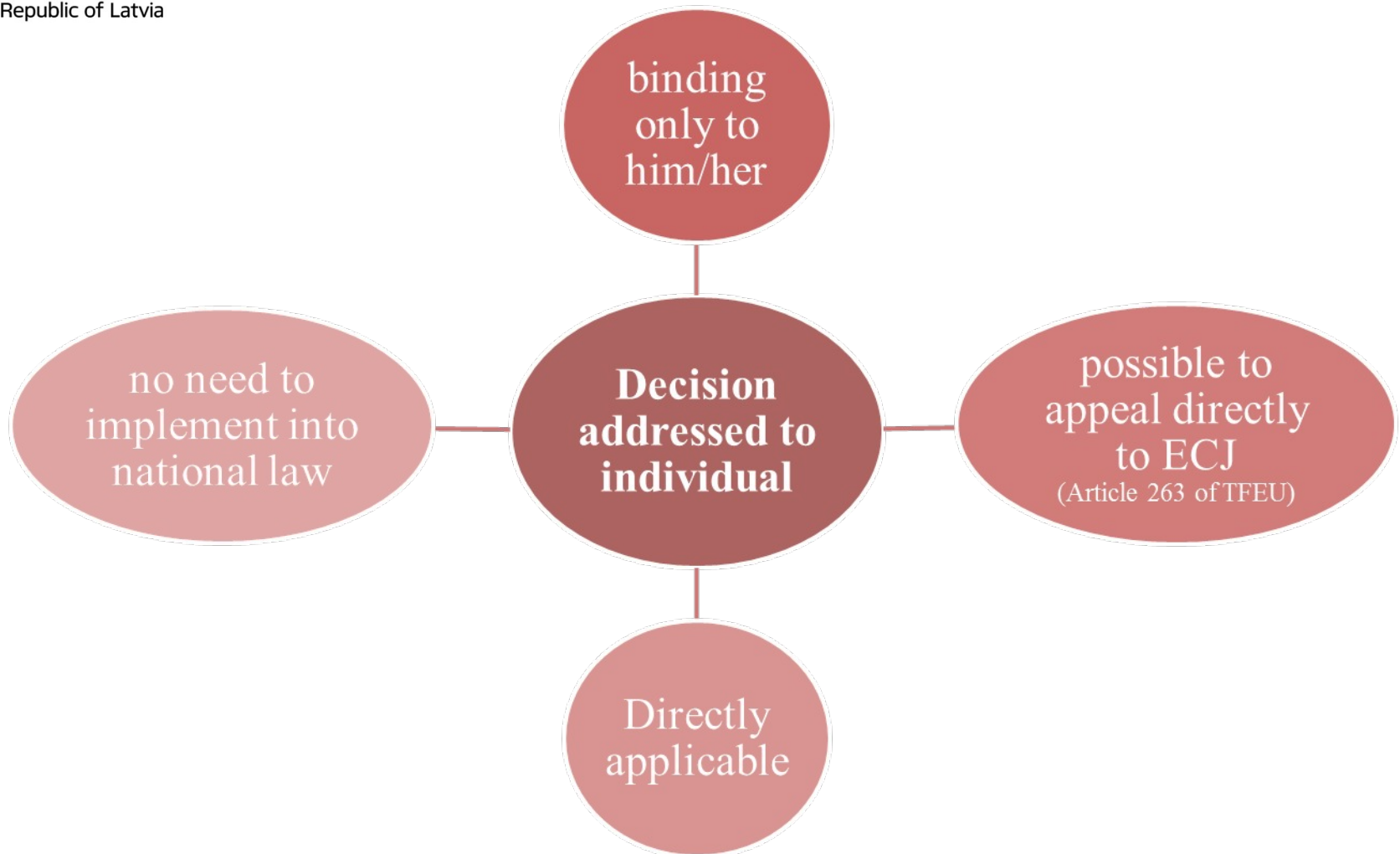
Decision addressed to Member States is binding to all state institutions, i.e. courts, legal persons under public law, autonomous public institutions, individuals who are fulfilling tasks delegated by State.

If Decision do not have addressee, then it is binding to EU and Member States, but **it is not binding towards individuals**.



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Decisions II





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Regulations

**Regulation shall have general application.
It shall be binding in its entirety and
directly applicable in all Member States**

(Paragraph 2 Article 288 of TFEU)

directly applicable
in territories of all
Member States

binding to all persons
(private and public)



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Enforcement of Regulations I

Regulations are, as such, **directly applicable in all Member States** and come into force solely by virtue of their publication in the Official Journal of EU



Consequently, all methods of implementation are contrary to the TFEU which would have the result of creating an obstacle to the direct effect of Regulations and of jeopardizing their simultaneous and uniform application in the whole of the EU
(ECJ Case C- 39/72)



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Enforcement of Regulations II

- **BUT** implementing measures which assure direct applicability are necessary



- Member States are obligated to adopt national laws and ensure administrative practice **if direct applicability of Regulations is possible just by said measures**
- **If legal provisions of the Regulation are complicated**, the national administration may adopt explanatory guideline for the application of a Regulation to clarify any doubts raised (ECJ Case C- 94/77)
- In exceptional cases it is aloud to incorporate (to copy) Regulation into national law, **if it is in the interests of individuals** and there is no other way how to achieve direct applicability of the Regulation (ECJ Case C- 272/83)





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Examples when Regulations need to be enforced

To adopt **additional national legislation for practical applicability** of the Regulation

- *Para 1 of Article 69 of the Regulation 600/201*
- **The Member State shall establish an effective exchange of appropriate information and effective cooperation** between their national accreditation body (..)

To appoint **competent authority** for execution of the Regulation

- *Para 1 of Article 39 of the Regulation 2137/85*
- **The Member States shall designate the registry or registries** responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration (..)

To impose sanctions for violations of Regulation

- *Para 8 of Article 5 of Regulation 2173/2005*
- **Each Member State shall determine the penalties** to be imposed where the provisions of this Regulation are infringed. Such penalties shall be effective, proportionate and dissuasive.



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Directives

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

Para 3 Article 288 of TFEU

Addressed to
Member States,
not individuals
(addressee could be
one, some or all
MS)

Individuals can have
obligations derived from
Directive only when
Member States have
implemented provisions
of the Directive into
national law

Member States are
free to choose the
form and methods
how to implement
directive, as far as
result of the
Directive is achieved



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For implementation of Directive is necessary to:

clarify **objective and scope** of
the Directive



evaluate national legislative
acts already in force



chose form and methods of
implementation



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Objective and the scope of the Directive

Preamble of
the Directive
consists of legal basis
and reasoning for
adopting the Directive

Operational text
of the Directive
consists of provisions
(norms) which are oriented
towards achieving result of
the Directive

Treaties of the EU
Case law of ECJ
General principles
of EU law



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Evaluation of national laws for implementation of Directive

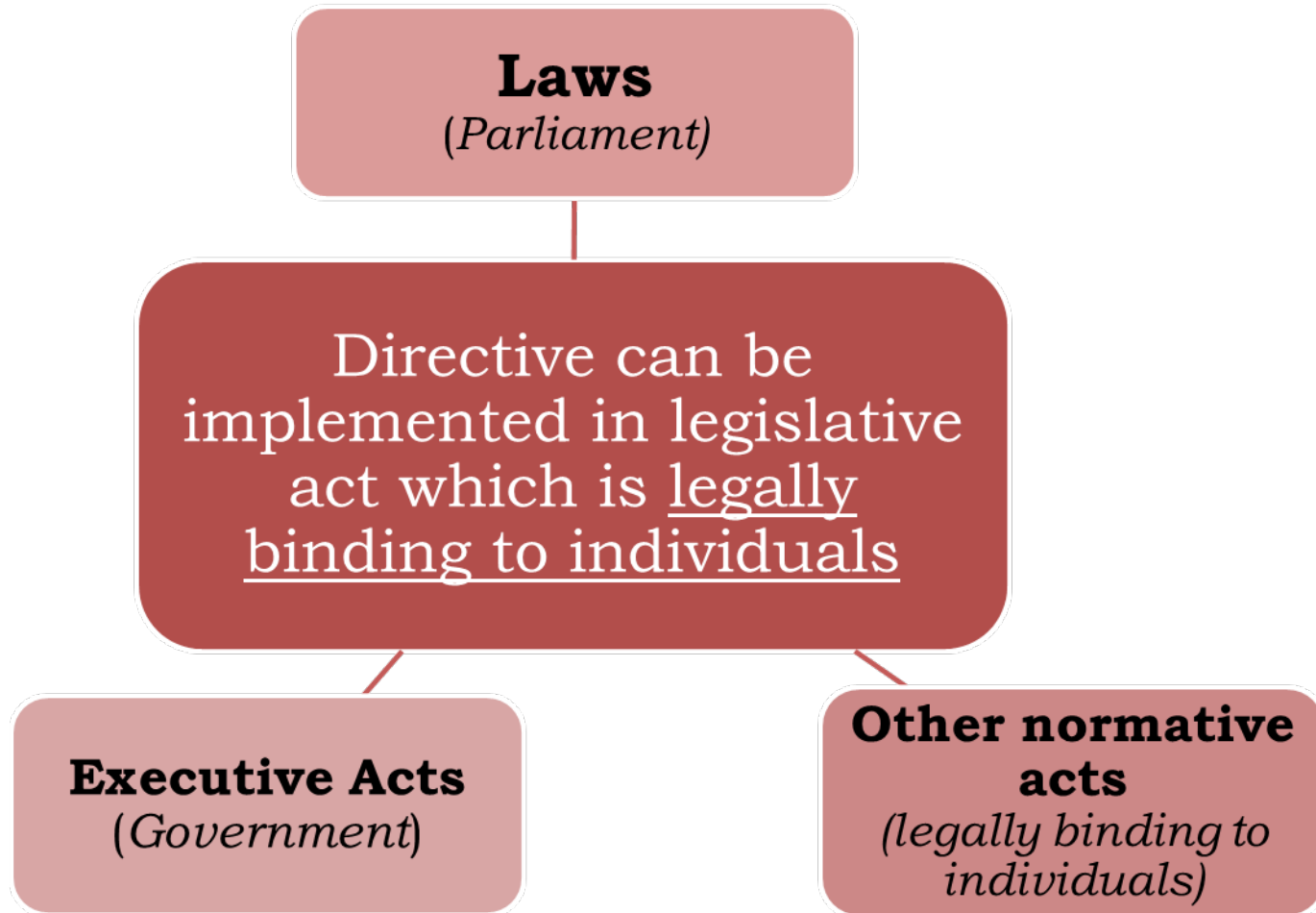
It is necessary to **evaluate all legislative acts** which is covered by scope of the Directive by that identifying whether it is necessary to:

- 1) adopt new** national legislation
- 2) amend** specific national legislation already in force
- 3) no action needed** if national legislation in force already fully complies with Directive



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Form of the implementation of Directive





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Implementation methods of Directive

Transposition method

Implementation of
Directive into
national legislation
by “copy + paste”

Reformulation method

Incorporation of the
Directive’s “essence”
into national
legislation



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Choice of method for implementation

To select the most appropriate method of implementation it is important to take into account not only the rules of the directive, but also the language (phrasing) and legal technique of the national legislation in which the implementation of directive is planned.

Considering that text of the Directive is compromise between 28 Member States (the text is complicated)
reformulation method is most appropriate method of implementation



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Categories of norms that directive contains

Preamble (recital)

- measure for interpretation the Directive;
- not necessary to implement into national law

Operational part

- **provisions that are relevant to individuals:** must be clearly implemented into national law considering legal technique that is typical for State
- **obligations which are relevant only to Member States:** not obligatory implement into national law. Could be implemented in internal regulations as well.
- **obligations for EU institutions:** no implementation into national law needed



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Exception



The only reason (excuse) when transposition of directive is not mandatory is
the **reasons of geography**

when EU law rules, for example, certain mountains or waters which are not part of the territory of the Member State concerned, or otherwise because of the geographical situation of the Member States cannot apply to it (ECJ Case C- 372/00)



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Ex-ante impact assessment of draft laws

- ⇒ **The aim** of impact assessment (explanatory note) is to **ensure that the social, economical impact and fiscal impact** on state and/or municipal budget of draft law **are estimated**.
- ⇒ Impact assessment **helps to exclude possibility to adopt mutually conflicting legal acts**.
- ⇒ Impact assessment is the **technical tool for planning further short and medium term actions**, ensuring that sudden negative financial or legal consequences will not appear.



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Content of impact assessment (in Latvia)

I.

- **Necessity of draft legal act** (present situation; concept of the draft legal act)

II.

- **The impact on the development of the society and national economy** (macroeconomic; simplification of administrative procedure; social consequences)

III.

- **The impact of the draft legal act on the state budget and the municipal budgets** (incomes and expenditures; financial impact; compensatory measures)

IV.

- **Possible impact on the system of legal norms in force** (what legal acts should be additionally issued)

V.

- **Conformity of draft legal act to the international obligations of the Republic of Latvia** (EU/international law; concordance table)

VI.

- **Involvement of society and activities of communication** (NGOs; public; international consultants)

VII.

- **Impact of draft legal act on the functions and human resources of governmental institutions** (necessity for new institutions)



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Check list for a good legal act

1. Think before write
2. Focus on the reader
3. Get document into shape
4. Keep it short and simple
5. Make sense
6. Cut out excess nouns
7. Be concrete, not abstract
8. Prefer active verbs to passive
9. Beware of jargons and abbreviations
10. Revise and check.

“How to write clearly” – European Commission



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Ensure consistency

The terminology used in a legal act shall be consistent both internally and with acts already in force, especially in the same field



Formal consistency:

- ✓ Words must be used in their ordinary sense. If a word has one meaning in everyday or technical language, but a different meaning in legal language, the phrase must be formulated in such a way as to avoid any ambiguity
- ✓ In the interests of precision and to avoid problems of interpretation, it may be necessary to define a term.

Substantive consistency:

- ✓ Consistency of terminology must also be checked with regard to the content of the legal act itself. There must be no contradictions inherent in the legal act.
- ✓ Definitions must be respected throughout the legal act. Defined terms must be used in a uniform manner and their content must not diverge from the definitions given.



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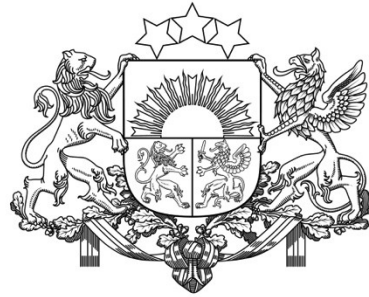
Sources



Case Law of ECT
<https://curia.europa.eu/>

Access to EU
law
<http://eur-lex.europa.eu/>





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Thank you for your attention!

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