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Between politics and administration : compliance with EU Law in Central and Eastern Europe

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APPENDIX I

EC DIRECTIVES: LEGAL BACKGROUND

This book focuses on compliance with directives. A directive is binding, as to the result to be achieved, upon each member state to which it is addressed, but leaves to the national authorities the choice of forms and methods (EC Treaty, Art. 259, third para.). Unlike regulations, directives are not directly applicable in member states' domestic legal systems. They obtain their full legislation status only after they have been implemented in national law (Lenaerts and van Nuffel, 2005). Directives are an appropriate means of introducing Community rules which call for existing national provisions to be amended or fleshed out before the new rules can be applied (Lenaerts and van Nuffel, 2005). The provisions of directives must be implemented with unquestionable binding force, and the specificity, precisions and clarity necessary to satisfy the requirements of legal certainty. The member states must make sure that there is a clear legal framework, even where there is no practice in the member state which is incompatible with the directive in questions. It is also not sufficient to make a general reference to the applicable Community provisions and to the primacy of Community law (Lenaerts and van Nuffel, 2005). On the other hand, transposition of a directive does not necessarily require that its provisions are incorporated formally and verbatim. Directives do not have horizontal direct effect, but may have vertical direct effect, meaning that an individual may invoke directly effective provisions of a directive only against a member state which either failed to implement the directive within the prescribed period or implemented it incorrectly.

Harmonization and approximation are related legal concepts which are often informally used in the sense of transposition, and national adaptation to EU law more generally, but which have a specific meaning in the context of EC law. Specific Treaty provisions empower the Community to bring divergent national laws more in line with each other even though they are completely compatible with Community law, where the disparities between the legislation results in market participants being placed in different positions from the point of view of competition (Lenaerts and van Nuffel, 2005, 5-207). The Treaty supplements the provisions on free movement of goods, persons, services

Appendix I

and capital by providing a legal basis for harmonization, co-ordination, approximation and mutual recognition of national legislation or administrative provisions.

Another term often used throughout the book is *acquis communautaire*. The *acquis communautaire* or Community *acquis* is the body of common rights and obligations which bind all the Member States together within the European Union. It covers the content, principles and political objectives of the Treaties, the legislation adopted in application of the treaties and the case law of the Court of Justice, measures relating to the common foreign and security policy and justice and home affairs, as well as international agreements concluded by the Community and those concluded by the Member States between themselves in the field of the Union's activities. Hence, the concept of Community *acquis* is broader than Community law in the strict sense, as it includes all acts adopted under the second and third pillars of the European Union and the common objectives laid down in the Treaties.