



## THE REGULATION'S SIGNIFICANCE WITHIN EC/EU LEGISLATION

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Legal acts of the European Communities and European Union are similar in nature to national legal acts. It is necessary, however, to accord them a higher legal power owing to their superiority and precedence over national law. This statement is supported by Article 7(2) of the Constitution of the Slovak Republic, which in the second sentence states: "The legally binding acts of the European Communities and European Union shall take precedence over the laws of the Slovak Republic." This ultimately means that Slovak national law must be in compliance with them.

In connection with the principle of precedence, one of the EC/EU legal acts should be singled out: the regulation. Under Article 249 of the Treaty establishing the European Community (as amended by the Treaty of Amsterdam), regulations are fundamental instruments of secondary Community legislation and have general application. They are binding in their entirety and directly applicable in all Member States<sup>1</sup>. Regulations are typically issued by the Council in its capacity as the senior decision-making authority of the European Union.

In accordance with the first indent of Article 110(1) of the Treaty establishing the European Community (Amsterdam version), the European Central Bank is authorised to make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the European System of Central Banks and in cases laid down in the acts of the Council referred to in Article 107(6)<sup>2</sup>.

Regulations, which may also be referred to as European legislation, represent the key instrument in ensuring the uniform application of EC/EU law in all Member States.

A regulation has the following main attributes:

- it has general application,
- it is binding in its entirety,
- it is directly applicable.

<sup>1</sup> "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."

<sup>2</sup> "...make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and in cases which shall be laid down in the acts of the Council referred to in Article 107(6)."

A regulation must be observed by those to whom it is addressed, in other words private individuals, Member States, and institutions of the European Union. It may be addressed only to certain Member States.

Regulations are directly applicable in Member States without having to be transposed into national legislation. It suffices to publish them in the Official Journal of the European Union and in all the official languages of the European Union. Prior to 1 February 2003 the Journal was called the Official Journal of the European Communities. Unless it has been published in the prescribed way, a regulation cannot be binding on third parties. A regulation enters into force on the date stated therein, or if the date is not stated, on the 20th day after its publication. Regulations are signed by the President of the European Parliament and the President of the Council of the European Union (Article 254(1) of the Treaty establishing the European Community (Amsterdam version)). Upon entering into force they become part of the legal system of the Member States. At the same time, regulations prevent the use of national legal acts which are not in compliance with them. A Member State may not preclude the validity of a regulation within its legal system.

National law is applied only where allowed for in the regulation or where essential for effective implementation of the regulation. National implementing provisions must not change or extend the scope or effectiveness of the regulation (Article 10 of the Treaty establishing the European Community (Amsterdam version)). From the view of legal theory, if a Member State transposed a regulation into its internal law, it could hide the fact that the given provision was a provision of Community law. Moreover, if a Member State transposed a regulation in a modified form, there would be a risk of the regulation's content also being changed.

Nevertheless, a regulation may contain an enabling clause on the basis of which a Member State will adopt measures having an implementing or supplementing character.

It should be stated, on the other hand, that a Member State may apply national law in cases (fields of social relations) not governed by a regulation. This is also the situation where laws or institutional condi-



ons need to be created for the functioning (application) of a regulation, in which case the given country may adopt, amend, supplement or repeal legislation. A regulation may, however, contain a provision on the basis of which an authorised institution of the EU (e.g. the Commission) has the power to issue an implementing regulation. As has been mentioned, the basic regulations governing central principles are typically issued by the Council. Implementing regulations are issued by the Commission on the basis of delegated powers.

As regards ECB regulations, they are adopted by the Governing Council and are signed by the President of the ECB. Under Article 17.3 of the ECB Rules of Procedure (Decision of the ECB of 19 February 2004 no. ECB/2004/2, 2004/257/EC) the ECB Governing Council may delegate to the ECB Executive Board part of its normative powers in regard to the implementing of ECB regulations. Any such delegation must specify the limit and scope of the delegated powers. Details about the delegated powers will, if appropriate, be published. Any third parties on whom a delegation of powers has legal effects must be informed about the delegation. The Governing Council must be promptly informed of any legal act adopted by way of delegation. Each regulation states the reasons for its adoption.

The ECB Governing Council has adopted the following regulations:

a) European Central Bank Regulation (EC) no. 2157/1999 of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4) as amended by Regulation (EC) 985/2001 of 10 May 2001 (ECB/2001/4);

b) European Central Bank Regulation (EC) no. 2548/2000 of 2 November 2000 concerning transitional provisions for the application of minimum reserves by the ECB following the introduction of the euro in Greece (ECB/2000/11);

c) European Central Bank Regulation (EC) no. 2423/2001 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector (ECB/2001/13) as amended;

d) European Central Bank Regulation (EC) no. 63/2002 of 20 December 2001 concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations (ECB/2001/18);

e) European Central Bank Regulation (EC) no. 1745/2003 of 12 September 2003 on the application of minimum reserves (ECB/2003/9);

It may be said that, as a rule, regulations are not transposed and are not even elaborated or supplemented by legal acts of Member States.

Regulations lay down law and impose obligations on those to whom they are addressed. An individual may equally invoke regulations and national laws, but the legal consequences will only be the same where the conditions for their application are the same.

The application and interpretation of regulations has been the subject of many decisions of the Court of Justice of the European Communities, which fleshes out and specifies the nature, characteristics and use of regulations. Some examples of its judgements are as follows:

**Case 6/68 Zuckerfabrik Watenstedt GmbH v Council:**

A measure which is applicable to objectively determined situations and involves legal consequences for categories of persons viewed in a general and abstract manner constitutes a regulation.

**Case 39/70 Norddeutsches Vieh- und Fleischkontor GmbH v Hauptzollamt Hamburg-St. Annen:**

The uniform application of Community provisions allows no recourse to national rules except to the extent necessary to carry out the regulations.

**Case 43/71 Politi s.a.s. v Ministry for Finance of the Italian Republic:**

All regulations have direct effect and are, as such, capable of creating individual rights which national courts must protect.

**Case 93/71 Orsolina Leonesio v Ministero dell'agricoltura e foreste:**

The legal provisions of a member state cannot hinder the direct applicability of the Community provision and consequently of the exercise of individual rights created by such a provision.

**Case 18/72 NV Granaria Graaninkoopmaatschappij v Produktschap voor Veevoeder:**

Member States may not, in the absence of a provision of Community law to the contrary, have recourse to national measures capable of modifying the application. The judgment also mentions the requirement of simultaneous and uniform application of regulations.

**Case 20/72 Belgian State v NV Cobelex:**

The provisions of the regulation are immediately applicable in all the Member States and are binding upon those concerned without the need for additional announcement by the Member States.

**Case 34/73 Fratelli Variola S.p.A. v Amministrati-one italiana delle Finanze:**

A legislative provision of internal law cannot be set up against the direct application of regulations of the Community, this being an essential condition of the simultaneous and uniform application of Community regulation throughout the Community.

**Case 50/76 Amsterdam Bulb BV v Produktschap voor Siergewassen:**

In the absence of any provision in the Community rules providing for specific sanctions to be imposed on individuals for a failure to observe those rules, the Member States are competent to adopt such sanctions as appear to them to be appropriate.

**Case 94/77 Fratelli Zerbone Snc v Amministrazione delle finanze dello Stato:**

Even in the event of doubts or difficulties in the interpretation of a regulation, the national authorities cannot issue binding rules of interpretation.

**Case 128/78 Commission of the European Communities v United Kingdom (Re Tachographs):**

The adopted regulation stipulated that national authorities were to implement certain provisions.

**Case 272/83 Commission of the European Communities v Italian Republic:**

The fact that, in special circumstances, regional laws incorporate some elements of the Community regulations for the sake of coherence and in order to make them comprehensible to the persons to whom they apply, cannot be regarded as a breach of Community law.

**Case 72/85 Commission v The Netherlands:**

All the Member States are bound to select and put into effect specific measures (legal regulations) which will make possible the exercise of rights under the regulation, in other words to adopt the measures necessary for ensuring the application of the regulation.

**Case 403/98 Azienda Agricola Monte Arcosu v Regione Autonoma della Sardegna:**

A regulation may require Member States to adopt implementing measures.