



LEARNING TOXICOLOGY
THROUGH OPEN EDUCATIONAL

NATIONAL HARMONIZATION OF EU LEGISLATION ON TOXIC POLLUTANTS

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1. GENERAL NOTIONS OF LAW AND HARMONIZATION RULES

Legislation in an area of interest is not just a simple set of normative acts, but a complex body with a certain structure and a certain way of interpretation and application.

To understand why Unit 2 *Harmonization at national level of European Union legislation on toxic pollutants* will only include references to EU directives and make no discussion on regulations and decisions or international regulations, a simplified presentation is required, on national, European and international legislation, the link between them and the way of application and interpretation.

Legislation in general, for any of the EU Member States, has three levels of regulation, depending on the issuer:

- national legislation, specific to each state,
- European Union legislation applicable to EU Member States and / or legal relationships concluded within the EU territory;
- international law, with specific conditions for the implementation of these acts by each state or by the EU.

1.1. National legislation

Each state, through its legislative power (usually the Parliament) issues normative acts that regulate at this level the rights and obligations of citizens and legal entities (commercial companies, institutions) in all areas, including the protection of the environment and human health. Another series of normative acts, issued through the executive power of the state, implement and enforce the rights and obligations stated in the acts issued by the legislative power.

1.2. European Union legislation

European Union legislation is a body of normative acts that form Community law. These regulations have supranational issuers (European Parliament, European Commission, European Council), having a legal force superior to the, national legislation, the domestic normative acts, democratically accepted under a certain procedure.

The regulations that have this force are strictly laid down in the EU Treaty and the constitutions of the Member States. The general rule shows that, as a result of accession, the provisions of the EU Treaties, as well as other binding Community regulations, take precedence over the contrary provisions of national laws, in compliance with the provisions of the Act of Accession. Compulsory Community regulations are **the regulation, the directive and the decision**.

The European Union has legal personality and therefore has its own legal order distinct from the international one. EU law has an effect on the law of its Member States both directly and indirectly and once it enters into force, it becomes an integral part of the legal system of each Member State. The EU legal order is made up of primary and secondary law, as will be presented below.

1.2.1. The primary law of the European Union

The Treaty on the Functioning of the European Union (TFEU), together with the general principles, are at the top of the hierarchy of rules and *constitute primary law*. Following the entry into force of the *Treaty of Lisbon* on 1 December 2009, the *Charter of Fundamental Rights* has the same value. International agreements concluded by the European Union are subordinate to primary law. At a lower rank, the derived right applies: these rules are only valid if they are in accordance with the acts and agreements that prevail over them.

1.2.2. The secondary right of the European Union



The legal acts of the European Union are listed in Article 288 TFEU. These acts are: *the regulation, the directive, the decision*, the recommendation and the opinion. Of these, only the first three are mandatory.

a) Regulation

The Regulation is a legal act as defined in Article 288 TFEU. It is of general application, it is binding in its entirety and applies directly in all countries of the European Union. As part of the secondary EU law, the regulation is adopted by the European institutions under the basic treaties. The objective of the Regulation is to ensure the uniform application of EU law in all Member States. In other words, the regulation:

- immediately apply as a rule in all EU countries, *without the need for transposition into national law*,
- create rights and obligations for individuals, which can therefore be invoked directly before national courts,
- can be used as a reference by people in their relationship with other people, EU countries or EU authorities.

The Regulation applies to all EU countries from the date of its entry into force, once established in the Regulation or, in the absence thereof, 20 days after its publication in the Official Journal of the European Union. Its legal effects are mandatory simultaneously, automatically and uniformly in all national laws.

b) Directive

The Directive is one of the legal instruments available to the European institutions to implement EU policies. This is a flexible tool, mainly used as a means of harmonizing national laws. The directive requires EU countries to achieve a certain outcome, but leaves them free to choose how they will achieve it.

And the directive, as part of EU secondary law, is adopted by the EU institutions in line with the basic treaties. Once adopted at EU level, the directive is then transposed by EU countries into their national legislation for implementation. Article 288 of the Treaty on the Functioning of the EU states that the Directive is binding on the recipient countries (one, several or all Member States) with regard to the outcome to be achieved, leaving the national authorities with the form and means.

The Directive differs from regulation or decision thus:

- unlike the Regulation, it does not apply directly to EU countries. This must first be transposed into national law before governments, businesses and individuals can make use of it
- unlike the Decision, the Directive is a text with general applicability in all EU countries.

For a directive to enter into force at national level, EU countries must adopt a normative act to transpose it. This national measure must achieve the objectives set by the Directive. National authorities must communicate such measures to the European Commission. In this way can be obtained the information that can be found in this unit.

EU countries have room for maneuver in this transposition process, from the point of view of the type of regulatory act. This allows Member States to take into account specific national characteristics. Transposition must take place within the deadline set at the time of adoption of the Directive, generally within two years.

If a country does not transpose a directive, the Commission may initiate infringement proceedings and may bring an action against the country before the EU Court of Justice. Failure to do so may lead to a new conviction, which may result in sanctions.

In principle, the Directive only comes into effect as soon as it is transposed. However, the EU Court of Justice considers that a directive that is not transposed can have certain effects directly if:

- transposition into national law has not occurred or has been carried out incorrectly,
- the provisions of the Directive are unconditional and sufficiently clear and precise,
- the provisions of the directive grant rights to individuals.

c) Decision

The decision is a legally binding act of general application or a specific recipient and is part of the EU's secondary law. Decisions are adopted by the EU institutions in accordance with the constituent treaties.

According to Article 288 TFEU, the decision is binding in all its elements. Like the rule, it can not be applied incompletely, selectively or partially. The decision may be a legislative or non-legislative act.

Decisions are legislative acts when adopted jointly:

- by the European Parliament and the Council, in accordance with the ordinary legislative procedure;
- by the European Parliament with the participation of the Council;
- by the Council with the participation of the European Parliament in accordance with the special legislative procedure.

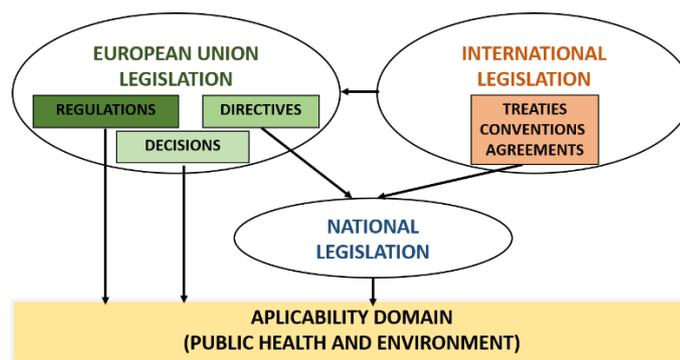
In other cases, decisions are non-legislative acts. These can be adopted, for example, by the European Council, the Council or the Commission. Non-legislative decisions may also take the form of delegated and implementing acts.

1.3. International regulations

International regulations are a manifestation of the will of the states. These normative acts are known as Treaties, Conventions, Agreements. The link between international regulations and national law is also laid down by the constitutions of states where, as a

general rule, they are to be ratified by States in order to be applicable and to be part of national law. Their ratification can also be done by the EU as an international law entity, in which case their provisions will be transposed into EU regulations.

Schematically these links can be presented as follows:



2. TRANSPOSITION OF GAZEIOUS POLLUTION DIRECTIVES

As far as gaseous pollutants are concerned, reference is made to harmonization:

- **Directive 2008/50 / EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe**, which is part of the general regulation on immissions of gaseous pollutants,
- **Directive 2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants**, which is part of the general regulations on gaseous pollutants,
- **Directive 2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from certain combustion plants** belonging to the group of specific regulations concerning gaseous pollutants in certain activities.

The references to the transposition of the industrial emissions **Directive 75/2010 (IPPC Directive)** can be found in Section 3, on the transposition of the directives on heavy metal pollutants into the air.

3. TRANSPOSITION OF HEAVY METALS DIRECTIVES

According to the presentation made in Unit 1, the protection of the environment against heavy metals is covered by general regulations for each affected environmental factor, as well as specific regulations for activities and / or products. The presentation of the transpositions of directives that benefit from reference to text through a link will follow the order given in Unit 1, Section 2, Regulations on heavy metals.

For general regulations on immissions of heavy metals into the air, the transposition is presented:

- **Directive 2004/107 / EC of the European Parliament and of the Council of 15 December 2004 on arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air;**
- **Directive 2008/50 / EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.**

For general regulation on heavy metal air immissions, the transposition of **Directive 2010/75 / EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions.**

For general regulations on immissions of heavy metals in water, the following directives are presented:

- **Directive 2000/60 / EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy;**
- **Directive 105 of 2008 on environmental quality standards in the field of water.**

Directive 2006/118 / EC of the European Parliament and of the Council of 12 December 2006 **on the protection of groundwater against pollution and deterioration.** Transposition of this directive would be required for the correct implementation and setting of threshold values.

For regulations on heavy metal pollutants in soil, the transpositions of the following directives are presented:

- **Directive 278 of 12 June 1986 on the protection of the environment, particularly the soil, when sewage sludge is used in agriculture;**
- **Directive 2011/65 / EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.**

4. TRANSPOSITION OF DIRECTIVES ON PESTICIDES

Since most regulations are in the form of regulations and decisions, this unit only presents the transposition of **Directive 128 of 2009 of the European Parliament and of the Council of 21 October 2009 establishing a framework for community action to promote the sustainable use of pesticides** at the level of the states involved in the project.

It is worth mentioning, once again, that the normative acts indicated as transposition differs in number and content from state to state, precisely because the directive requires the harmonization of the national legislation with the requirements of the Directive, by methods considered optimal by the national legislator. Reference may also be made to normative acts prior to the Directive, with the possibility of relying on previous national legislation as satisfying the requirements of the Directive.

5. PROVISIONS ON PERSISTENT ORGANIC POLLUTANTS



Regulations on POPs presented in Unit 1 do not require additional presentation in Unit 2, as normative acts are issued only in the form of a regulation, a normative act that does not require transposition.

As a brief conclusion, the following are required for this unit:

- the directive is part of the EU's secondary law, being adopted by the EU institutions in line with the basic treaties;
- once adopted, the directive is then transposed by EU countries into their national legislation for its application;
- the Directive is a flexible tool, mainly used as a means of harmonizing national laws;
- the directive requires EU countries to achieve a certain result, but leaves them free to choose how they will achieve it;
- translations differ from one country to another as a form and number of acts adopted.



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