

INDIRECT METHODS OF LEGAL SYSTEM INTEGRATION OF THE EUROPEAN UNION MEMBER STATES

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Introduction

The integration of the legal systems of the Member States results from adopting the appropriate measures in order to adapt national legislation to EU requirements and to fulfill obligations arising from the EU law and from the voluntary adaptation of legal solutions defined in EU legislation and case law to purely domestic situations. The effect of convergence of Member States' legal systems is achieved by various methods. The criterion that allows to define them is the "nature and intensity of legal action"¹. Unification and harmonization are examples of direct integration methods aimed to approach or unify national legal systems. Unification is the introduction of "uniform material rules"² in all Member States. Unification instruments are primarily treaties and regulations in so far as their provisions are directly effective while the concept of harmonization is interchangeably used in the Treaty on the Functioning of the European Union (TFEU) with the term "approximation of the laws" (*zbliżanie, rapprochement, rechtsangleichung*). This is due to the fact that harmonization is a process taking into account the diversity of legal traditions, theoretical assumptions and differences in law application practice in the Member States. Thus, harmonization leads to approximation of national legal systems³ and directives are the main instrument by which this method is implemented.

On the other hand, indirect methods of integration include: regulatory competition, structural method and new governance mechanisms (coordination, the use of soft law, informal administrative cooperation, peer review). The purpose of this article is to present these indirect methods of integration of national legal systems and to answer the question about the role played by these methods.

Structural method

The basis of the structural method is to create structures financing integration changes by means of legal instruments (treaties, regulations, decisions). The structural method is applicable for example in the case of cohesion policy implementation⁴: (European Social Fund - art. 162 TFEU, formerly art. 146 TEC),

¹ C. Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, Warsaw 2000, p. 592.

² *Ibid.*, p. 593.

³ B. Kurcz, *Dyrektywy Wspólnoty Europejskiej i ich implementacja do prawa krajowego*, Kraków 2004, p. 72.

⁴ <http://www.funduszeuropejskie.gov.pl/>

the European Regional Development Fund - art. 176 TFEU, formerly art. 160 TEC, the Cohesion Fund Article 177, formerly art. 161 TEC), as part of the EU's agricultural policy, the European Agricultural Guidance and Guarantee Funds (European Agricultural Fund for Rural Development, the European Agricultural Guarantee Fund – Art. 40, par. 3 of the TFEU, formerly article 34 TEC) and Fisheries (European Fisheries Fund).

The purpose of the projects financed under the funds is to support the restructuring and modernization of the economies of EU countries in order to enhance economic and social cohesion of the Union. The funds are directed to those sectors and regions which without financial assistance are not able to equal to the average level in the EU. However, the Cohesion Fund is implemented at the level of selected countries rather than regions. Its purpose is to facilitate the integration of less developed countries through the construction of trans-European networks in transport infrastructure and through financial support for environmental projects (art. 177 TFEU, formerly art. 161 TEC).

Other financial instruments supporting integration are educational programs such as Lifelong learning (Lifelong Learning Programme), the programme supporting pre-school, primary and secondary education (Comenius), higher education (Erasmus), vocational education (Leonardo da Vinci), adult education (Grundtvig), conducting studies and research on European integration (Jean Monnet). An example of the application of the structural structural method are also framework programs including Competitiveness and Innovation Framework Programme (CIP), designed especially for small and medium-sized enterprises. It includes: the Entrepreneurship and Innovation Programme (EIP), Information and Communication Technologies Policy Support Programme (ICT PSP) and the Intelligent Energy Europe programme (IEE)¹.

Regulatory competition

M. Szydło defines regulatory competition as “a process within which individual national legislators decide to consciously create a more and more competitive regulatory environment in order to strengthen the competitiveness of domestic businesses and discourage them from making attempts to seek another legal system, or also to attract to the given state (i. e. within the legal framework of the state) entities from other countries”². Legal regulations are, therefore, a tool used to create an environment which will be attractive for businesses, but also for workers and capital³.

Regulatory competition can only occur if the goods and services can move freely between Member States. Business entities will then have the opportunity to choose the best possible legal regime for themselves, producing goods and providing

¹ http://ec.europa.eu/cip/index_pl.htm

² M. Szydło, *Konkurencja regulacyjna w prawie spółek*, Warsaw 2008, p. 13.

³ G. Davies, *The Legal Framework of Regulatory Competition*, online: <http://www.ssrn.com>, p. 1, Sun and Pelkmans ‘Regulatory Competition in the Single Market’ (1995) 33.1 *JCMS* 67; A. Ogus, *Competition Between National Legal Systems: A Contribution of Economic Analysis To Comparative Law*, “International and Comparative Law Quarterly” 1999, 48, p. 405.

services that can be sold across the EU. There are two principles of EU law which constitute the legal basis for the functioning of regulatory competition. First of all, it is the principle of mutual recognition of standards, according to which the standards adopted for products and services in one Member State should be recognized in the other Member States¹. In addition, the rule of origin should be mentioned. This rule was adopted in secondary law with regard to certain types of service sector activity (e. g. e-commerce, finance, media services). According to this rule, the law applicable to the providers and services from other Member States and to the control of these providers and services is the law of their country of origin / their home country.

The mechanism of regulatory competition is both criticized and praised in the legal and economic doctrine². Its supporters point out that it helps improve the quality of the laws, adapt them to new or existing local conditions, to maintain the diversity of legal systems and implement solutions that promote innovation. In view of the fact that regulatory competition may arise if the Member States have the possibility to freely create national law in a particular field, regulatory competition is often viewed as contrary to the harmonization and it is emphasized that regulatory competition does not require the creation of centralized rules, which correspond to a lesser extent to the specific needs of businesses, are more limited and static (it is harder to change them)³. On the other hand, critics of regulatory competition state that it is an economically and socially harmful phenomenon which allows business entities to succeed not because of the advantages of their business activity, but because of their location. Above all, however, the critics warn against the phenomenon of the race to the bottom, consisting in the lowering of standards and alleviating the conditions that business entities have to meet in order to make national legislation more attractive to businesses. Therefore, critics of regulatory competition see it as a mechanism threatening non-economic values and violating social regulations of the Member States⁴. Putting aside the issue of settling the dispute, it should be stated, that regulatory competition can be effective, that is to say, it can lead to an improvement of the economic situation and have a pro-social character, but only if adequate legal conditions are met. First of all, Member States must be free in the making of legal acts governing the conditions and standards of verification of the activities which are relevant from an economic perspective. Also, the European Union employer should be able to prevent unwanted development of regulatory competition, e. g. by issuing legal acts preventing specific risks (e. g., reducing the value of shares or

¹ Judgment of the Court of 20 February 1979 in Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, ECR. 1979, p. 649.

² J.-M. Sun, J. Pelkmans, *Regulatory Competition in the Single Market*, "Journal of Common Market Studies" 1995 no. 33, p. 67–89; A. Ogus, *Competition Between...* p. 405-418.

³ G. Davies, *The Legal Framework...* p. 2.

⁴ N. Reich, *Competition between Legal Orders: A New Paradigm of EC law?*, "Common Market Law Review" 1992 no. 29 (5), p. 861–896.

stocks of companies, shifting the negative external costs on third parties) or establishing appropriate conflict of law rules¹.

Integration mechanisms resulting from the new governance

In legal literature the concept of “new governance” appears in the context of a “change in the law, rules, methods and means of action of the European Union, institutional structure or decision-making processes that lead to alternative and innovative way of implementing EU policies and executing EU law.”² The new governance understood in this way is aimed to lead to the creation of less detailed and more flexible regulations and to the implementation of the EU policies without the use of a hierarchical and imposed formula. The concept of “governance” was adopted to describe the various processes which do not use traditional, formal legal instruments. Also, “governance” means involving in decision-making process entities other than state authorities. Governance, therefore, can be characterized as a shift away from command and control approach to “regulative” approach which is characterized by the principles of partnership and flexibility, a lower degree of hierarchy and commands. It is also related primarily to the ability to make binding decisions jointly and on the basis of cooperation³. Examples of symptoms of deformed approach is the use of soft law, informal networks of administration authorities designed to help entities exercise their rights resulting from the EU *acquis* and conduct peer review of the solutions adopted in the legal systems of the Member States in order to implement EU directives.

Soft law acts

Acts of soft law are defined in law doctrine⁴ as acts to which the Treaties do not explicitly attribute binding effect, but which may create actual and legal effects. This definition should be completed by pointing out that soft law acts are subordinate to the binding legislation and must be compatible with it.

Legal literature⁵, according to the criteria of issuing authority, differentiates between: institutional soft law, Member States’ European soft law, private self-regulation and co-regulation and technical and financial standard-setting by or with private bodies. Within the soft law issued by the EU institutions, due to the functions of a soft law act we should point out: preparatory and informative instruments and steering instruments as well as interpretative and decisional instru-

¹ M. Szydło, *Konkurencja regulacyjna...* p. 207 et seq.

² P. Dąbrowska, *Nowe rządy w Unii Europejskiej*, in: *Ustrój Unii Europejskiej*, J. Barcz (ed.), Warsaw 2010, p. I-216.

³ G. de Búrca, J. Scott, *Introduction: New Governance, Law and Constitutionalism*, in: *Law and New Governance in the EU and the US*, G. de Búrca, J. Scott (ed.), Oxford, Portland, Oregon 2006, p. 2; R. Comelle, *New Governance Fatigue? Administration and Democracy in the European Union*, “Jean Monnet Working Paper” 2006, no. 6, p. 9 et seq.; I. Kawka, *Zasady dobrego rządzenia w prawie Unii Europejskiej. Sektory infrastrukturalne*, Kraków 2011, p. 16 et seq.

⁴ O. Stefan, *Hybridity before the Court: a Hard Look at Soft Law in the EU Competition and State Aide Case Law*, *E.L. Rev.* 2012, no. 37, p. 49.

⁵ A. Peters, I. Pagotto, *Soft Law as a New Mode of Governance: A Legal Perspective*, p. 16.

ments¹. Examples of preparatory and informative instruments are Green Papers, White Papers, action programmes and informative Communications which aim at preparing for the development and adoption of legally binding rules as well as conducting related consultations with the parties to which the future EU legislation will be related. The function of these acts consisting in providing the impetus for conducting negotiations and reaching a political consensus is also known as *pre-law function*². The steering instruments include acts whose function is to achieve the objectives of EU law in the form of enhanced cooperation between the Member States of uniform application of Community law, and even the harmonization of national laws by means of declaratory and policy measures which are not legally binding (*para-law functions*)³. This category includes the recommendations mentioned in the art. 288 TFEU, but also the conclusions, declarations, resolutions and guidelines issued by the EU institutions. The third type of soft law acts are *interpretative and decisional instruments* performing a *law-plus function*. They include guidance on how the EU institutions should interpret and apply EU law⁴. Examples of such acts include commission communications, notices and guidelines, opinions, recommendations issued by the Commission in the field of competition and state aid⁵.

Article 288 TFEU (formerly art. 249 TEC) provides that binding effect can be attributed only certain acts of EU legislation (that is, regulations, directives, decisions). In accordance with art. 288 paragraph 5 of the TFEU, recommendations and opinions do not have such power. Other acts of secondary legislation, including guidelines issued by the Commission, should also be classified as legally non-binding instruments. The Treaty in the art. 263 TFEU (formerly 230 TEC) specifying the acts, the legality of which may be referred to the CJEU, also uses the term acts intended to produce legal effects vis-a-vis third parties. Despite the diversity of the terminology it is assumed in the literature that the *concepts legally binding and producing legal effects* have the same meaning. L. Senden states that legally binding acts have the „capability to affect a person’s legal position and rights and obligation contained in it can be enforced or have to be complied with”.⁶ It should be noted that, according to the CJEU case law, not only acts to which the Treaty assigns the status of legally binding can be acknowledged as such acts. The Court adopted a broader concept (*an umbrella concept*), whereby the non-binding legal acts may be binding incidentally, as a result of the specific features of these acts (*incidental*

¹ L. Senden, Soft law and its implications for institutional balance in the EC, <http://www.utrechtlawreview.org/> Volume 1, Issue 2 (December) 2005, p. 81.

² A. Peters, Soft law as a new mode of governance, in: *The Dynamics of Change in EU Governance*, U. Diedrichs, W. Reiners, W. Wessels (ed.), Cheltenham, Northampton 2011, p. 34-35.

³ L. A. J. Senden, *Soft law...* p. 82; W. Sanetra, *Europeizacja polskiego prawa pracy*, Warsaw 2004, p. 45.

⁴ L. A. J. Senden, *Soft law...* p. 82;

⁵ O. Stefan, *Hybridity before the Court...*p. 56; M. Aldestam, *Soft Law in the State Aid Policy Area*, in: *Soft Law in Governance and Regulation. An Interdisciplinary Analysis*, U. Mörth (ed.), Bodmin, p.11.

⁶ L. Senden, *Soft Law in European Community Law*, p. 237.

legally binding force)¹. In addition, the act which cannot be attributed legally binding force in the broad sense may produce indirect legal effects (*indirect legal effects*). According to the case law of the Court in Grimaldi's case², the fact that recommendations do not have binding effect does not mean that they do not produce any legal effects. They should be taken into account by the courts of the Member States in order to resolve the dispute pending before them. The judgment of the Court clearly indicates the hybrid nature of EU law which covers not only binding law, but also soft law specifying or indicating how to interpret Europeanized national law or EU law³. Indirect legal consequences may result from a particular interpretation of a legal act or from taking into account general principles of law above all the principle of legal certainty and the principle of protection of legitimate expectations. Soft law may in fact specify a policy or course of action used by the administration authorities, and thus create on the side of a given entity legitimate expectations that administrative decisions will be taken in accordance with the objectives of this policy, or in a certain way. The essence of indirect effects of non-binding legal acts is expressed in T.C. Hartley's statement: „legal effects is not an all-or-nothing characteristic : an instrument may have some legal effects but not others – for example, an instrument may not have direct legal consequences in its own right, but may affect the interpretation of another instrument and thus have indirect legal consequences”⁴. Soft law acts can thus only indirectly determine the legal situation of natural and legal persons, for example, by influencing legislative actions of the Member States and authorities which apply law in a particular area.

Coordination

Coordination cannot be regarded as harmonization, despite the fact that art. 50 par. 2 point g TFEU imprecisely describes coordination by means of directives. Coordination is the combination of national legal systems between one another without their unification or harmonization. Article 2 par. 5, indentation 2 of the TFEU provides explicitly that the means coordinating actions of Member States do not include harmonization of the laws and regulations of the Member States. Similar provision is stated in art. 149 TFEU (formerly art. 129 TEC) in the area of employment. Despite the fact that in the case of unification and harmonization TFEU does not list the areas in which these methods are used, the Union, according

¹ Ibid., p. 238.; A. Wróbel, Komentarz do art. 288 TFEU, in: Treaty on the Functioning of the European Union, Commentary, Volume III, A. Wróbel (ed.), Warsaw 2012, p. 632.

² Judgment of the Court of 13 December 1989, Case C-322/88, Salvatore Grimaldi v Fonds des maladies professionnelles, ECR 1989, p. 4407: „However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law”.

³ O. Stefan, Hybridity before the Court : a Hard Look at Soft Law in the EU Competition and State Aide Case Law, E.L. Rev. (2012) 37, p. 49 et seq.; D. M. Trubek, P. Cottrell, and M. Nance, “Soft Law,” “Hard Law,” and European Integration: Toward a Theory of Hybridity, Legal Studies Research Paper Series, University of Wisconsin Law School, November 2005, p. 30.

⁴ T. C. Hartley, The Foundations of European Community Law: an Introduction to the Constitutional and Administrative Law of the European Community, Oxford 1998, p. 89.

to art. 6 TFEU, have competence to carry out actions to support, coordinate or supplement the actions of the Member States in the following areas: protection and improvement of human health, industry, culture, tourism, education, vocational training, youth and sport, civil protection, administrative cooperation. In addition, in accordance with art. 2 TFEU, the Member States coordinate their economic and employment policies. An example of coordination activity is the Open Method of Coordination (OMC), which is applicable, for example, in employment policy.

Another instrument for the coordination of national legal systems is the use of uniform rules of conflict. The assumption that it is useless to establish uniform material solutions is characteristic of this type of coordination. It suffices to establish the rules pointing out to the legislation of a Member State which can be applied in a particular situation of an individualized entity¹. An example of this type of coordination is the regulation on the coordination of social security systems in relation to EU citizens and members of their families who are moving within the EU².

Informal and non-hierarchical network of the authorities of Member States

Another informal solution helping resolve conflicts related to the application of EU law by national public administration authorities, and thus facilitate the integration of legal systems of Member States is the creation of informal networks. Examples of such networks are: On-line Problem Solving Network/Réseau de résolution de problèmes en ligne), PPN – (Public Procurement Network/Réseau européen des marchés publics) and ENO – (European Network of Ombudsmen/ Réseau européen des Médiateurs). Although hierarchical relations are not the foundation of the activities of these networks, their activity is effective as the worked-out solutions require cooperation between administrations authorities of the Member States and are therefore acceptable for them.

Peer review

Another way to influence Member States in order to ensure their effective implementation of the directives is the peer review procedure. It has been mentioned, for example, in the Services Directive. In accordance with art. 39 of this legal act, Member States were required to conduct the review and evaluation of national law (by 28 December 2009) with regard to the requirements concerning running companies providing service activities (art. 9, 15 and 25 SD), as well as with regard to the requirements applied to service providers with company headquarters in another Member State, providing temporary services (art. 16 SD) and to transfer of this information to the European Commission.³ On the basis of

¹ C. Mik, *Europejskie prawo...* p. 603.

² Regulation of the European Parliament and of the Council (EC) No. 883/2004 of 29 April 2004 on the coordination of social security systems, O.J. 2004 L 200/1, Regulation of the European Parliament and of the Council (EC) No. 987/2009 of 16 September 2009 on the implementation of regulation (EC) No. 883/2004 on the coordination of social security systems, O.J. 2009, L 284/1.

³ Information on the obligations of the EU Member States related to the review of national legislation and the process of peer review under Directive 2006/123/EC on services in the internal market, approved by the The European Committee of the Council of Ministers on 16 December 2009.

this information the peer review process was conducted in 2010. The process was concluded by a summary report of the Commission and proposals for additional initiatives¹. In a announcement summarizing the peer review process the Commission stressed the unprecedented nature of this procedure and its benefits. It allowed the introduction of a “structured dialogue between Member States”, provided “transparency of the results of the implementation of the Services Directive” and helped identify and popularize good regulatory practices². The Commission also stated that “discussions also accustomed Member States to engage in dialogue. As the process was going on Member States intensified interaction and exchange of information between them (in bilateral relations, in groups of five states and in large groups), thanks to which the process was successful.”³

Draft amendments to the Directive on recognition of professional qualifications provides a similar mechanism. In order to ensure greater transparency and to justify the fact of regulating specific professions with specific requirements in terms of qualifications, Member States will have to submit a list of their regulated professions and justify why these professions need to be recognized as regulated ones. Then, peer review supported by the European Commission is to be carried out. It will allow Member States to compare their regulatory approaches and, where appropriate, to simplify the national legal framework for regulated professions⁴.

Self-regulation

An example of informal influence of EU law into national law is the promotion of self-regulation in EU legislation (a sector regulates its action by itself). An example of self-regulation are good practice codes, which focus on adequate ways of solving problems, conflicts between the parties and on ensuring the quality of business activity conducted, and not on the specific substantive issues⁵. The definition of the codes of conduct is laid down in the directive on unfair commercial practices. In accordance with art. 1 point f) of this legal act a “code of conduct” means an agreement or set of rules that are not required by the laws, regulations and administrative provisions of the Member State and which define the behavior of entrepreneurs who undertook to comply with the code in relation to one or more specified commercial practices or business sectors⁶. Codes of conduct

¹ Communication from the Commission, Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive, Brussels, 27.1.2011, COM (2011) 20 final version.

² Communication from the Commission, Towards a... p. 7.

³ Ibid.

⁴ Proposal from the Commission, Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and regulation [...] on administrative cooperation through information exchange system on the internal market, Brussels, 19.12.2011, COM (2011) 883 final version, p. 13

⁵ A. Heritier, New Modes of Governance in Europe: Policy-Making without Legislating? MPI Collective Goods Preprint No. 2001/14, online: <http://ssrn.com/abstract=299431>

⁶ Examples of Polish codes of good practice are: 1. Code of Ethics in Advertising of 2004, <http://www.radareklamy.org/kodeks-etyki-reklamy.htm>, the entity liable: Advertising Council and the Commission of Ethics in Advertising; 2. The Code of Professional Ethics in Accounting in 2007, http://www.skwp.pl/files/zg/kodeks_etyki/kodeks_zawodowej.pdf, the entity liable: Accountants Association in Poland;

are therefore adopted voluntarily and their power derives from the commitment of the signatory companies to comply with the code signed by them. Point 20 of the directive on unfair commercial practices clarifies the role of the European Union and Member States in the promotion of codes, stating that “appropriate importance should be given to codes of conduct, which enable entrepreneurs to effectively apply the principles of this directive in the various sectors of economy. In sectors where there are specific mandatory requirements governing business activities, the codes of conduct should also form the basis of the assessment of professional diligence. The control at national and community levels exercised by code creators in order to eliminate unfair commercial practices may remove the need to use administrative or judicial procedures and should therefore be encouraged”.

The creation of codes of conduct, and in particular the codes binding at EU level, is also promoted by the Services Directive (SD)¹. According to art. 37 SD, “Member States in cooperation with the Commission adopt accompanying measures to encourage the drawing up, at community level and particularly by societies, organizations and professional associations, of codes of conduct aimed to facilitate the provision of services or running a company by service provider in a different Member State, in accordance with community law. “Point 115 of the SD preamble

3. Code of professional conduct of members of the Polish Chamber of Civil Engineers <http://www.piiib.org.pl/>, the entity liable: Polish Chamber of Civil Engineers; 4. Code of Ethics in Roof Construction, <http://www.dekarz.com.pl/>, the entity liable: Polish Association of Roofers; 5. Code of Ethics of the Members of the Polish Association of Home Builders, <http://www.psbdb.pl/>, the entity liable: Polish Association of Home Builders; 6. Professional Standards of Real Estate Agents of 2005 <http://www.pfrn.pl/>, the entity liable: Polish Real Estate Federation; 7. Principles of Good Practice of Banking of 2007 <http://www.zbp.pl/>, the entity liable: the Polish Bank Association; 8. Good Practice Recommendation on the Polish Market in Bancassurance with regard to protection insurance related banking products, <http://www.zbp.pl/>, the entity liable: Polish Bank Association; 9. The Principles of the Good Practice of the Companies who are members of the Conference of Financial Companies in Poland (including: Principles of Good Practice for Credit Product Sales, Principles of Good Practice for Debt Recovery, Principles of Good Practice in BiG InfoMonitor) of 2008, <http://www.kpf.pl/>, the entity liable: Conference of Financial Companies in Poland; 10. Code of Good Practice of the Polish Association of Translation Companies, <http://www.psbtp.pl/>, the liable: Polish Association of Translation Companies; 11. Sworn translator Code of 2005 <http://www.tepis.org.pl/>, the entity liable: Polish Society of Sworn and Specialised Translators TEPIS; 12. Code of Good Practice for Institutional Investors of 2006 <http://www.izfa.pl/>, the entity liable: Chamber of Fund and Asset Management; 13. Code of ethics for entrepreneurs, <http://www.kig.pl/>, the entity liable: Polish Chamber of Commerce; 13. Code of Good Practice for the safe use of mobile phones of 2009 <http://www.piiit.org.pl/>, the entity liable: Polish Chamber of Information Technology and Telecommunications; 14. Good Practice Canon for Financial Market of 2008 <http://www.knf.gov.pl/>, recommending entity: the Polish Financial Supervision Authority and others; 15. Code of Ethics in Legal Counseling of 2007 <http://www.kirp.pl/>, the entity liable: National Council of Legal Counselors; 16. Code of Ethics of Wedding Consultants (11.01.2008) <http://www.pskp.pl/>, the entity liable: Polish Association of Wedding Consultants; an online list of codes: <http://www.dobrapraktyka.pl/1701.html>

¹ An example of such a code is the European Code of Conduct for Mediators, http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_pl.pdf

adds that codes of conduct at the EU level are intended to set minimum standards of conduct and complement national legal requirements. This means that they do not prevent Member States from adopting more stringent law measures. This also means that they do not prevent national professional societies to provide greater protection in their national codes of conduct.

The eco-management system EMAS is another example of promoting at the European level the entities' voluntary compliance with specific requirements. According to art. 1, par. 2, of Regulation 1221/2009, EMAS is "an important instrument of the action plan regarding sustainable: consumption, production and industrial policy" and its goal is "to promote continuous improvement in the environmental performance of the organization¹ through the establishment and implementation, conducted by organizations, of the environmental management systems, systematic, impartial and periodic evaluation of the effectiveness of such systems, the provision of information on environmental performance, engagement in open dialogue with the public and other interested parties as well as active involvement of organizations' employees and proper training."²

Conclusion

The European Union governance mechanisms moves away from the traditional, formal, legal instruments, and puts more emphasis on new ways of governing. The new ways of governing increase the efficiency of the European governance mainly by widening the scope of satisfactory solutions; a good example could be the informal way of resolving disputes within SOLVIT.

The use of various methods of legal integration also results from the need to find answers to the multiple challenges of European integration. Frequently the use of indirect methods of integration is more efficient although it does not directly lead to unification or approximation of national legislation. An example of this phenomenon is a structural method, which focuses on the financing of specific projects whose direct aim is not the legal integration, but the economic and social cohesion, which in turn implies the connection of the Member States' legal systems.

It should be emphasized here that the less formalized forms of governing and the ones which are based on cooperation between various subjects cannot replace traditional binding European Union primary and secondary laws. Indirect methods of integration can only play a supportive role in European governance. In particular, the new ways of governing have only a supportive character and they cannot

¹ According to art. 2, point 21) of the Regulation of the European Parliament and of the Council (EC) No. 1221/2009 of 25 November 2009 on the voluntary participation by organizations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Decisions of the Commission 2001/681/EC and 2006/193/EC, OJ L 2009, L 342/1, the term "organization" means "a company, corporation, firm, enterprise, authority or institution, located in or outside the Community, or part or combination of the entities mentioned, whether incorporated or not, public or private, having its own functions and administration."

² Regulation of the European Parliament and of the Council (EC) No. 1221/2009 of 25 November 2009 on the voluntary participation by organizations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Decisions of the Commission 2001 / 681/EC and 2006/193/EC, OJ L 2009, L 342/1.

replace a proper implementation of the European Union legislation into a particular national legal system as well as its proper enforcement in formal procedures by courts and administrative organs of the EU Member States.

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15. *P. Dąbrowska*, *Nowe rządzenie w Unii Europejskiej*, in: *Ustrój Unii Europejskiej*, J. Barcz (ed.), Warsaw 2010, p. 1-216.

16. *G. Davies*, *The Legal Framework of Regulatory Competition*, online: <http://www.ssrn.com>, p. 1, Sun and Pelkmans 'Regulatory Competition in the Single Market' (1995) 33.1 JCMS

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Инга Кавка. Непрямі методи інтеграції в правову систему держав-членів Європейського Союзу

У статті розглянуті критерії, які дозволяють визначати методи інтеграції, серед яких: природа та інтенсивність судового позову, об'єднання і гармонізація – приклади прямих методів інтеграції, які прагнуть наблизитися або об'єднати національні правові системи. А також з іншого боку, непрямі методи інтеграції, які включають: регулярне змагання, структурний метод і нові механізми управління (координація, використання м'якого закону, неформальна адміністративна кооперація, огляд). У статті представлені і розкриті непрямі методи інтеграції національних правових систем і дана відповідь на питання про роль, яку грають ці методи.

Ключові слова: Європейський Союз, інтеграція, методи інтеграції.

Инга Кавка. Косвенные методы интеграции в правовую систему государств-членов Европейского Союза

В статье рассмотрены критерии, которые позволяют определять методы интеграции, среди которых: природа и интенсивность судебного иска, объединение и гармонизация – примеры прямых методов интеграции, которые стремятся приблизиться или объединить национальные правовые системы. А также с другой стороны, косвенные методы интеграции, которые включают: регулярное соревнование, структурный метод и новые механизмы управления (координация, использование мягкого закона, неформальная административная кооперація, обзор). В статье представлены и раскрыты косвенные методы интеграции национальных правовых систем и даный ответ на вопрос о роли, которую играют эти методы.

Ключевые слова: Европейский союз, интеграция, методы интеграции.

Inga Kawka. Indirect methods of legal system integration of the European Union Member States

In the article considered criterion, which allow to determine methods integrations among which: nature and intensity of court claim, association and harmonization, is examples of direct methods integrations which aim to be approached or unite the national legal systems. And also de autre part, indirect methods are integrations which include: regular competition, structural method and new mechanisms of management (co-ordination, use of soft law, informal administrative co-operation, review). In the article presented and exposed indirect methods of integration of the national legal systems and an answer is given for a question about a role which is played by these methods.

Keywords: *European union, integration, methods of integration.*

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