

**Methodical Instructions
for the Organisation of Work when Meeting the Legislative
Obligations Ensuing from the Membership of the Czech Republic in
the European Union**

PART ONE

Introductory provisions

Article 1

Scope

(1) These Methodical Instructions set forth the approach to be taken by ministries and other bodies of the state administration (hereinafter “bodies of the state administration”) when meeting the legislative obligations ensuing from the membership of the Czech Republic in the European Union.

(2) These Methodical Instructions set forth

- a) the basic rules employed when meeting the legislative obligations ensuing from the membership of the Czech Republic in the European Union,
- b) the approach taken by bodies of the state administration when ensuring and evaluating the compatibility of the legislation of the Czech Republic with European Union law,
- c) the procedure to be followed when recording the extent to which the legislative obligations ensuing from the membership of the Czech Republic in the

European Union are being met by means of the Information System for the Approximation of Law (hereinafter the "ISAP").

(3) In respect of matters relating to the ISAP database which are not covered by these Methodical Instructions, procedures are followed as detailed by the instructions and user manuals issued by the Office of Government of the Czech Republic – the Department of Compatibility (hereinafter the "Department of Compatibility").

Article 2

Basic terms

(1) The terms specified hereunder will have the meanings ascribed to them

- a) **European Union acts** refers to primary and secondary law, international treaties, and acts passed on the basis thereof,
- b) **European Union law** refers to the European Union acts, case law and general principles of law,
- c) **primary law** refers to the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community, the Treaty on European Union, including protocols, appendices and declarations thereto, in the wording of treaties which amend or supplement them, and the treaties on the accession of individual Member States, including the protocols, appendices and declarations to said treaties,
- d) **secondary law** refers to acts which bodies of the European Union are authorised to issue by primary law, above all directives, regulations and decisions in accordance with Article 249 of the Treaty establishing the European Community, and decisions and framework decisions in accordance with Article 34 of the Treaty on European Union,
- e) **international treaties** refers to treaties binding the European Community or the European Union and its Member States, or treaties concluded between the Czech Republic and other countries for the purpose of carrying out the tasks stipulated by primary law,

- f) **case law** refers to the decisions of the Court of Justice of the European Communities, the Court of First Instance, and the European Union Civil Service Tribunal,
- g) **general principles of law** refers to principles recognised by case law which are binding on the bodies of the European Union and the Member States when implementing European Union law, above all human rights and basic liberties and the principles ensuing from the conception of the rule of law (e.g. the principle of legal certainty, the principle of the protection of legitimate expectations, the principle of proportionality, etc.).

(2) The following terms will have the meanings ascribed to them hereunder

- a) **implementation** refers to the preparation and process of passing legal acts of the Czech Republic aimed at achieving compatibility of the legislation of the Czech Republic with European Union law, and other measures which are necessary to ensure the proper application of European Union law,
- b) **transposition** refers to an amendment to the legislation of the Czech Republic intended to attain the objective and purpose of a specific directive,
- c) **adaptation** refers to an amendment to the legislation of the Czech Republic intended to secure the application of a regulation,
- d) **implementing act** refers to a legal act of the Czech Republic which transposes the requirements of a directive into the legislation of the Czech Republic, ensures the adaptation of the legislation of the Czech Republic to a regulation, or contributes to the application of European Union law by some other means,
- e) **referential duty** refers to the duties ensuing from a directive to make reference to said directive in the legal act of the Czech Republic which transposes the directive,
- f) **notification** refers to the duty to inform the European Commission of the legal acts of the Czech Republic transposing a directive,
- g) **coordinator** refers to a body of the state administration responsible for ensuring the proper implementation of a European Union act as a whole, above all its transposition, adaptation, or other such procedure which takes

account of the act; the coordinator always participates in such a transposition, adaptation or other such procedure,

- h) **joint coordinator** refers to a body of the state administration which participates in meeting the duties of the coordinator and is responsible within the scope of its remit, along with the coordinator, for meeting the duties ensuing from these Methodical Instructions.

PART TWO

The organisational and technical rules applied when meeting the legislative obligations ensuing from the Czech Republic's membership of the European Union

Chapter I

Allocation of coordination

Article 3

Allocation of coordination of European Union acts after their publication in the Official Journal of the EU

(1) Only one coordinator is allocated to each European Union act. The Department of Compatibility is responsible for allocating a coordinator and for holding records on coordinators. The allocation of a coordinator is carried out by means of the ISAP database no. 1A.

(2) The Department of Compatibility allocates a coordinator 3 business days at the latest of the date a European Union act is published in the Official Journal of the European Union. At the same time it enters the act in the ISAP database no. 1A and informs the coordinator of its allocation by means of an entry in this database and by email. If a coordinator has already been allocated to the draft European Union act in

accordance with Article 4, the Department of Compatibility allocates the same coordinator to this act.

(3) The coordinator may refuse to accept its allocation within 10 business days of its being allocated. Refusal on the part of the coordinator is carried out within the framework of the ISAP database in which coordination was allocated. Such a refusal must be justified and must contain a justified proposal for another coordinator. If the coordinator does not refuse its allocation within this deadline, it is assumed to have agreed with its allocation and to have accepted it. The Department of Compatibility resolves refused coordination and any disputes during the acceptance of coordination through negotiation with the departments concerned, and proposes remedial measures. If agreement is not reached during such negotiations, the Department of Compatibility, in cooperation with the affected bodies of the state administration, prepares material which will be submitted to the Government in order for a final decision to be reached on the dispute.

(4) Coordination which has already been accepted may only be changed on the basis of a proposal submitted by the coordinator, to which the assent of the newly proposed coordinator to acceptance of coordination is attached. For the change of coordinator to take place this expression of agreement must be announced in writing to the Department of Compatibility, which records the change to the coordination in the ISAP database, unless it has any observations to make regarding the change.

(5) The Government is regularly informed of the allocation of coordination in accordance with Article 10 of these Methodical Instructions.

Article 4

Allocation of coordination of draft European Union acts and international treaties concluded within the framework of the European Union

Article 3 of these Methodical Instructions does not affect the allocation of coordination of the draft European Union acts covered by the Government Guideline

on the procedure when sending draft legislative acts of the EC/EU and materials of the European Commission to the House of Deputies and the Senate of the Czech Republic¹ and the allocation of coordination of international treaties concluded within the framework of the European Union.

Chapter II

Evaluation of European Union acts

Article 5

Analysis of the impact of European Union acts on the legislation of the Czech Republic during the course of the process by which they are passed

(1) The coordinator of the draft European Union act conducts an analysis of the impacts of the legislation on the Czech Republic in accordance with the Government Guideline on the procedure when sending draft legislative acts of the EC/EU and materials of the European Commission to the House of Deputies and the Senate of the Czech Republic, in accordance with point 3 of the specimen Framework Position/Opinion for the Parliament of the Czech Republic cited in an appendix to this Instruction. In the analysis the coordinator states, as specifically as possible, which legal acts of the Czech Republic it will be necessary to supplement, amend, repeal or replace with new acts in the event of the draft European Union act being passed. The coordinator regularly updates the analysis depending on how deliberations of the draft are progressing, and informs the Department of Compatibility of changes made. Prior to the act being published in the Official Journal of the European Union, and on the basis of available documents and information acquired during the process of deliberating the draft European Union act, the coordinator supplements the analysis, in as much detail as possible, by the new legal framework required in the Czech Republic and a timetable for the adoption thereof.

The Department of Compatibility monitors the analyses of the impacts of the draft European Union acts on the legislation of the Czech Republic, enters the relevant information in the ISAP database, and processes statistics and an overview

¹ Appendix to Government Resolution no. 415 of 13 April 2005.

of these impacts for the purpose of informing the Government and coordinators, gathering the data necessary for the compilation of a plan of the Government's legislative tasks, and for other purposes.

If the adoption of the draft results in a discrepancy with an international treaty concluded with third countries or international organisations, which does not have the character of the treaties specified in Article 2 paragraph 1 e), the coordinator stipulates this fact in the analysis of the draft European Union act and, as the case may be, suggests a method for removing such a discrepancy, if it is aware of one.

(2) In order to ensure the flow of information the coordinator sends the Department of Compatibility all the documents it has processed pertaining to the draft European Union act, such as the framework position, instructions, minutes from working parties of the Council, and other documents, especially if they contain information which could relate to the impacts of the draft act on the legislation of the Czech Republic, immediately after the compilation thereof. Upon being requested the coordinator informs the Department of Compatibility of other relevant information relating to the legislative impacts of the draft European Union acts on the legislation of the Czech Republic.

(3) Bodies of the state administration inform the Department of Compatibility of the commencement and course of the preparation of any new draft European Union acts they are aware of within the framework of their remit. Information regarding the commencement and course of the preparation of new draft European Union acts is recorded in the ISAP databases.

Article 6

Analysis of European Union acts published in the Official Journal of the European Union

(1) The coordinator assesses the extent and method of implementing a European Union act in the Czech Republic. When conducting this assessment the coordinator evaluates above all whether the European Union act lays a duty on the Czech Republic, the meeting of which would require that implementing acts be

adopted. If necessary, the coordinator also proposes which implementing acts should be adopted, the sponsor or processor thereof (hereinafter the “sponsor”), the anticipated dates of their submission to the Government, and when they will become effective.

If there are any doubts regarding the correct method of implementing the European Union act, the coordinator makes a request for consultation with the European Commission.

Where the analyses of the impacts on the legislation of the Czech Republic were made prior to publication of the European Union act in the Official Journal of the European Union in accordance with Article 5 of these Methodical Instructions, the coordinator acts on the basis of these analyses and the information entered in the ISAP databases.

(2) The sponsors are obliged to begin work on the preparation of draft implementing acts immediately after the extent and method of implementing the appropriate European Union act has been clarified. The coordinator ensures that the preparation of the implementing acts can already be initiated during the process of adopting the draft European Union acts, however no later than after publication of the act in the Official Journal of the European Union.

(3) When evaluating the European Union act in accordance with paragraph 1, a procedure is followed in which every one of its individual provisions is separately evaluated in order to ascertain:

- a) whether it requires the adoption of an implementing act,
- b) whether it involves impacts on the obligations of the Czech Republic ensuing from international treaties concluded with third countries or international organisations, which do not have the character of the treaties specified in Article 2 paragraph 1 e).

The preamble to the European Union act is also examined. European Union acts are evaluated according to their contents and not only according to their form².

² E.g. judgement in cases 789 and 790/79 Calpak SpA et Societa Emiliana Lavorazione Frutta SpA v Commission.

(4) If the coordinator cannot ensure the appropriate implementation of the European Union act on its own and within its remit, it proposes a joint coordinator with consideration for the character and contents of the act, and agrees with the latter on the extent to which they will participate on implementation. The joint coordinators, together with the coordinator, will be responsible for meeting the duties ensuing from these Methodical Instructions to the extent to which they participate in the implementation process. In the event of the sponsor of an implementing act being another body of the state administration distinct from the coordinator, the sponsor also becomes a joint coordinator in respect of the European Union act in question.

Upon being requested by the coordinator the Department of Compatibility resolves through negotiation questions linked with the designation of joint coordination and possible disagreements between the coordinator and joint coordinators, especially if these relate to the extent and method of implementing the European Union act. If agreement is not reached during these negotiations, the coordinator submits the matter to the Government for its decision.

The coordinator enters information regarding the joint coordinators in the appropriate ISAP database.

(5) The coordinator processes the results of the evaluation of the European Union act into a table of concordance, in which the provisions of the act are given on the left side and the title of the implementing act and the wording of the appropriate provisions thereof which take account of the provision of the European Union act, or, as the case may be, the title of the draft implementing act in which the provisions of the European Union act will be taken account of, are given on the right side. The anticipated deadline for the submission of this draft implementing act to the Government is specified, along with the date on which it will become effective. A specimen table of concordance is given in Appendix 1 to these Methodical Instructions.

When processing a table of concordance to a directive which has already been transposed or partially transposed by the existing legal acts of the Czech Republic, on the right side of the table, opposite the appropriate provisions of the directive, the coordinator gives the entire wording of the provisions of the legal act of the Czech Republic transposing the provisions of the directive, together with an evaluation of the level of transposition attained so far.

The coordinator compiles the initial table of concordance within 20 business days of acceptance of coordination. At the same time the coordinator enters the table of concordance in the ISAP database no. 2.

If the fact that a European Union act has been taken into consideration results in an inconsistency with the provision of an international treaty concluded between the Czech Republic and a third country or international organisation, which does not have the character of a treaty specified in Article 2 paragraph 1 e), the coordinator specifies in the table of concordance whether it is aware of this fact, and also specifies by what means and within what time limit this inconsistency may be resolved.

(6) If the coordinator concludes that the European Union act does not impose a duty upon the Czech Republic which would require the adoption of an implementing act, it is not obliged to compile a table of concordance, with the exception of directives and framework decisions. The coordinator specifies this fact, adducing reasons therefor, in the ISAP database no. 2, and informs the Department of Compatibility.

(7) A table of concordance must always be compiled in the case of directives and framework decisions. Above all, the coordinator will ensure that the anticipated dates on which those legal acts of the Czech Republic will become effective under which the provisions of the directive will be transposed precede the date by which the Czech Republic is obliged to transpose these provisions. The same duty applies during the preparation of legal acts under which a framework decision will be transposed.

(8) The coordinator regularly updates the table of concordance in such a way that it always correspond to the actual situation. If any circumstances occur which require a change to the information entered in the table of concordance, e.g. a change to the titles of implementing acts or the date on which it is anticipated they will be submitted to the Government, etc., the coordinator informs the Department of Compatibility of this fact and immediately enters the updated table of concordance in the ISAP database no. 2.

The coordinator is always obliged to update the table of concordance after the appropriate implementing act becomes valid and to supplement it with the text of the provisions under which implementation was effected. The coordinator is also obliged to immediately process an update to the table of concordance regarding a European Union act when a previous implementing act is revoked or replaced, or an amendment is made which relates to the implementation of the European Union act.

(9) The joint coordinators participate with the coordinator on the evaluation of the European Union act, the processing of a table of concordance, and the updating thereof. Above all, the joint coordinators provide the coordinator with the relevant processed parts of the table of concordance such that the coordinator may comply with the deadline specified in paragraph 5.

(10) If the Department of Compatibility or the Department of Government Legislation of the Office of the Government of the Czech Republic have any observations regarding the table of concordance, they submit them in writing to the coordinator, who is obliged to deal with them without unnecessary delay.

Article 7

Notification of transposition acts

(1) The Department of Compatibility will inform the European Commission of the legal acts of the Czech Republic transposing directives (hereinafter the “transposition act”). The coordinator will gather the data required to meet the duty to provide information and submit it to the Department of Compatibility; the coordinator is also responsible for the accuracy of the contents of said information.

(2) The European Commission is informed of individual transposition acts as they become valid. After each transposition act becomes valid which transposes a directive accepted for coordination or part thereof, the coordinator immediately, but within 15 business days at the latest, updates the table of concordance pertaining to the directive as the basis for carrying out a notification such that on the right side of the table, opposite the provisions of the directive which were transposed by the act, it

gives the entire wording of the appropriate provision of the transposition act. The coordinator enters the updated table of concordance in the ISAP database no. 2. The coordinator also gives the Department of Compatibility its consent in writing to the notification of the transposition act and explicitly declares whether the transposition of the directive has already been completed, or whether it will continue with the preparation and adoption of further acts. In this connection, if the coordinator ascertains that the intended level and scope of transposition has not been attained, it will immediately commence work on remedying this situation. It will indicate this fact in the table of concordance.

The coordinator grants the Department of Compatibility its assent to a notification being carried out by letter, a specimen of which is given in Appendix II hereto.

(3) The Department of Compatibility inspects the data for carrying out a notification in order to ensure it meets the formal requirements demanded of a notification, above all that it is accurate and complete in respect of formalities. The Department of Compatibility will inform the coordinator of any observations it has 10 business days at the latest of receiving all the data for carrying out a notification. If the Department has no observations regarding the data for carrying out a notification, it notifies the European Commission within the same deadline of the transposition act by entering it in the Commission's database. The coordinator is obliged to deal with the observations of the Department of Compatibility without delay.

(4) If the transposition act was compiled or is submitted within the remit of a joint coordinator, the joint coordinator is obliged to cooperate fully with the coordinator during the compilation of the data required to discharge the duty to carry out a notification. Above all it is obliged to provide the coordinator with all the information required for consent to be given to the carrying out of a notification, along with the relevant processed part of the table of concordance, such that the deadline detailed in paragraph 2 may be complied with.

(5) Notification of transposition acts takes place by the same method after:

- a) there is an amendment made to provisions which previously transposed a directive, or
- b) a legal act which had previously transposed a directive is revoked and replaced with a new legal act.

In these cases notification must always be accompanied by a declaration to the effect that transposition of the directive had already been completed, and must be supplemented by a new evaluation of the status attained vis-à-vis transposition of the directive.

Article 8

Evaluation of the status of the transposition of directives

(1) When evaluating the transposition of directives the following criteria are applied: “full transposition”, “partial transposition”, “non-transposed”, or “irrelevant for transposition”.

(2) Full transposition of a directive is deemed to be a case in which all the relevant provisions of the directive have been incorporated into the legislation of the Czech Republic and the transposition of the directive has been completed. Partial transposition is deemed to be a case in which only certain relevant provisions of the directive have been transposed into the legislation of the Czech Republic. Non-transposed refers to a situation in which none of the relevant provisions have been transposed into the legislation of the Czech Republic.

Article 9

Infringement Procedure

If proceedings are held against the Czech Republic for failing to fulfil an obligation under the Treaty³, or if the Czech Republic is found in breach of its obligations in such proceedings, at the same time as submitting information to the Government Representative for the Representation of the Czech Republic before the

³ Article 226 *et seq.* of the Treaty establishing the European Community, or Article 141 *et seq.* of the Treaty establishing the European Atomic Energy Community.

Court of Justice of the European Communities and the Court of First Instance⁴, the coordinator informs the Department of Compatibility of all the changes which it intends to make to the legislation of the Czech Republic in connection with the proceedings specified, of the draft legal acts of the Czech Republic which must be passed, the anticipated date of their submission to the Government, and the date on which they will become effective. If this relates to proceedings for the implementation of a European Union act for which a table of concordance has been processed, the coordinator updates the table of concordance and indicates the changes intended.

Chapter III

Submission of reports, information, and the resolution of problems

Article 10

Informing the Government of the Czech Republic

(1) On the basis of information held in the ISAP databases, every three months the Government of the Czech Republic is submitted a report on the allocation of coordination and the discharge of legislative obligations ensuing from the membership of the Czech Republic in the European Union. The report must include information regarding the status of the transposition of directives in light of deadlines for the implementation thereof, and, if necessary, a proposal for remedial measures to be taken.

(2) Once a month the Government of the Czech Republic and the coordinators are informed of the situation pertaining to the allocation of coordination and the discharge of legislative obligations ensuing from the membership of the Czech Republic in the European Union by means of statistical statements from the ISAP databases.

⁴ Government Resolution no. 113 of 4 January 2004 on the Status of a Government Representative for the Representation of the Czech Republic before the Court of Justice of the European Communities and the Court of First Instance.

Article 11

Working party

(1) The Department of Compatibility convenes as required, usually once a month, a working party comprising representatives of bodies of the state administration at which questions are discussed arising from these Methodical Instructions, as well as other questions relating to the discharge of legislative obligations ensuing from the membership of the Czech Republic in the European Union, including organisational-technical questions linked with the operation and functioning of the ISAP.

(2) A proposal that a working party be convened, the task of which is to be the resolution of a problem which relates to several bodies of the state administration, may be submitted to the Department of Compatibility by any of the bodies of the state administration concerned.

PART THREE

Basic rules and methods for the implementation of European Union law

Chapter I

Article 12

Evaluation of the compatibility of legal acts of the Czech Republic

(1) Legal acts of the Czech Republic and the drafts thereof (hereinafter the “legal acts of the Czech Republic”) are evaluated from the point of view of their compatibility with European Union law as “fully compatible”, “partially compatible”, or “incompatible”.

(2) For the purposes of assessing the compatibility of legal acts of the Czech Republic with European Union law, the following definitions apply:

- a) **full compatibility** refers to a situation in which
 - a legal act of the Czech Republic is not at variance with any of the provisions of European Union law, and
 - all the provisions of a European Union act which relate to a legal act of the Czech Republic in accordance with the current table of concordance have been taken into consideration, and the due application thereof is ensured,
- b) **partial compatibility** refers to a situation in which
 - a legal act of the Czech Republic is at variance only with provisions of European Union law which are not fundamental, or
 - the only provisions of a European Union act which relate to a legal act of the Czech Republic according to the current table of concordance which have not been taken into account are not fundamental provisions, and the legal act of the Czech Republic fails to comply only with certain requirements for ensuring due application thereof,
- c) **incompatibility** refers to a situation in which
 - a legal act of the Czech Republic is at variance with the fundamental provisions of European Union law, or
 - fundamental provisions of a European Union act which relate to a legal act of the Czech Republic according to the current table of concordance have not been taken into consideration, and the legal act of the Czech Republic does not meet the requirements for ensuring due application thereof,
- d) **fundamental provisions of European Union law**
 - the rules of the internal market within the framework of the European Union expressed by primary law in the form of the four basic freedoms (the free movement of goods, persons, services and capital) and in the form of the rules on competition,
 - the provisions of European Union acts, including the associated case law, which delineate the scope of these acts, or, as the case may be, other provisions, failure to take account of which represents a material breach of or failure to attain the objectives and purpose of the European Union act.

Chapter II

General requirements on implementation

Article 13

(1) During implementation of European Union law the entire scope of European Union law is taken into account. The results of the meetings and consultations of bodies of the European Union regarding matters relating to intended modifications, including the conclusions and obligations which ensue from these discussions, are also given consideration. For orientation purposes legislative conclusions and draft European Union acts are also taken into consideration. The methods of implementing European Union law in other Member States may also be taken into consideration on an auxiliary basis.

(2) During the implementation of European Union law all appropriate measures are taken to meet the legislative obligations ensuing from the membership of the Czech Republic in the European Union. Provisions which are at variance with these obligations are removed from the legislation of the Czech Republic⁵.

(3) During the implementation of European Union law it is necessary to ensure that the European Union acts can be properly applied. For the purpose of their proper application it is necessary to take measures which ensure that the exercise of the rights and duties ensuing from European Union law are enshrined institutionally.

(4) Sanctions for breach of the rights and duties ensuing from European Union law must be sufficiently effective, must act as a deterrent, must be proportionate, and may not be less strict than those sanctions applied in the event of a breach of similar rights and duties, the disposition of which is subject to the exclusive competence of the Czech Republic.

⁵ Article 10 of the Treaty establishing the European Community.
Article 192 of the Treaty establishing the European Atomic Energy Community.

Article 14

(1) During the implementation of European Union law the coordinator of a European Union act ensures that the implementing act takes the form of a legal act. A form other than a legal act, e.g. internal rules, may be used only in exceptional cases if the law so permits, and on condition that the contents of such rules will not immediately impinge on the rights and duties of natural persons and legal entities or the competencies of administrative bodies, as well as bodies of local self-administration. In the case specified in the second sentence the coordinator or the sponsor will send the Department of Compatibility for its information the wording of these rules immediately after they have been approved.

(2) The sponsor of the implementing act will compile and submit a proposal so that the implementing acts become effective at the latest on the date stipulated in the appropriate European Union act for the due implementation thereof. If it is possible, a reasonable period should be provided between the date on which the law comes into force and the date on which it becomes effective (*vacantia legis*).

Article 15

(1) In the draft implementing act the sponsor will give consideration precisely to that part of the personal and material scope of the European Union act which relates to this implementing act according to the table of concordance, except in cases referred to in Article 20 paragraphs 3 and 4.

(2) The terms contained in European Union acts are interpreted such that they be accorded the meanings ascribed to them in European Union law. If doubts arise over the meaning of a certain term in a European Union act, which cannot be removed even by reference to the preamble to this act, primary law, case law, or other sources of European Union law, the meaning of such a term shall be specified

using a comparison of the individual language versions of the European Union act in question, or by comparing the implementing legislation adopted by individual Member States.

(3) The preamble to European Union acts is not transposed into the legal acts of the Czech Republic. However, in order to ensure the objectives of the European Union act are met, the preamble is taken into consideration. The appropriate provisions of primary law are taken into consideration when ensuring that the objectives of secondary law are met.

(4) In the legislation of the Czech Republic those provisions of European Union acts which are irrelevant to the Czech Republic are not implemented, e.g. the provisions intended explicitly for other Member States or provisions which impose a duty on the bodies of the European Union. The provisions of European Union acts which impose a duty on bodies of the state administration to inform bodies of the European Union, e.g. provisions covering the notification of transposition acts to the European Commission, do not always have to be implemented in legal acts of the Czech Republic.

Article 16

When implementing European Union law it is also ascertained whether and to what extent the European Union acts, on the basis of appendices to the Agreement on the European Economic Area or to the agreements between European Community, or, as the case may be, the European Community and its Member States and the Swiss Confederation⁶, are relevant to the Republic of Iceland, the

⁶ Agreement on the Free Movement of Persons between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part.

Agreement between the European Community and the Swiss Confederation on Air Transport.

Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road.

Agreement between the European Community and the Swiss Confederation on Trade with Agricultural Products.

Agreement between the European Community and the Swiss Confederation on Mutual Recognition to Conformity Assessment.

Agreement between the European Community and the Swiss Confederation on Certain Aspects of Government Procurement.

Principality of Liechtenstein, and the Kingdom of Norway, or to the Swiss Confederation. If it is ascertained that the European Union act is also relevant to these countries, the sponsor adapts the wording of the implementing act to this fact such that the relationship to these countries is expressed in relations with a cross-border element.

Article 17

On principle, only fully compatible draft legal acts of the Czech Republic are submitted to the Government. The sponsor confirms the fact that a draft is fully compatible in an explanatory memorandum to the draft. As well as the differential table detailed in Appendix 5 to the Legislative Rules of the Government, the sponsor may also submit the current table of concordance compiled in accordance with Article 6 of these Methodical Instructions.

Chapter III

Special requirements on implementation

Article 18

Case law and the general principles of law

(1) During the implementation of European Union law, case law is taken into consideration – especially in cases in which it construes terms contained in the provisions of primary law or secondary law – which supplements or clarifies the personal and material scope of a European Union act, or which construes the general principles of law and specifies the application, impacts and limits thereof.

(2) General principles of law are taken into consideration in order that a discrepancy does not arise in the legislation of the Czech Republic with the appropriate principle and in order that the intended result of this principle is achieved.

Article 19

Implementation of primary law

(1) During the implementation of primary law discrepancies are removed with primary law, especially with the rules of the European Union internal market as expressed in the provisions on the free movement of persons, goods, services and capital, with other provisions with direct effect, and with the provisions on the policies of the European Union.

(2) The removal of discrepancies with the rules of the internal market as described in paragraph 1 refers above all to the removal of direct discrimination which cannot be subordinated under any of the exemptions specified by primary law, the removal of indirect discrimination and measures restricting the free movement of persons, goods, services and capital for which sufficient justification cannot be adduced, and the removal of discrepancies with the rules on competition.

(3) If the proper implementation of primary law requires modifications to the legal acts of the Czech Republic, the procedure outlined in the provisions of Part Three relating to regulations is followed.

Article 20

Transposition of directives

(1) Transposition acts must meet the objective and purpose stipulated by the transposed directive.

(2) The contents of a transposition act must be clear, intelligible, transparent and unambiguous, in order that doubts do not arise regarding the scope and contents

of the rights and duties of natural persons and legal entities affected by the transposition act. The transposition act may not contain conditions or requirements which are not essential for the application of the directive, if these could obstruct the result which is to be attained under the directive or could result in the directive not being transposed within the prescribed deadline. The transposition act must also respect the systematic of the legislation of the Czech Republic and conform to the Constitution. If it is possible in order to ensure full transposition, terms are used in the transposition act which are already used in the legislation of the Czech Republic. Examples of a correct and incorrect transposition of directives are given in appendix III.

(3) Deviations from the provisions of a directive are possible if this is explicitly permitted by European Union law or if it ensues from the nature of the provision concerned.

(4) It is possible to undertake transposition in such a way that the amendment contained in the transposition act has a wider personal, material, and, as the case may be, territorial scope than the transposed directive, unless this is at variance with European Union law.

(5) The referential duty in the draft transposition act is met by means of a reference to the transposed directive in the form of a footnote in accordance with the Legislative Rules of the Government.

Article 21

Adaptation of legal acts of the Czech Republic to regulations

(1) If the regulation requires the supplementation of the legal acts of the Czech Republic, or if such supplementation is necessary in order to ensure the proper application of, performance of and compliance with the regulation, such a supplement is carried out in the form of an amendment to an existing legal act of the Czech Republic or the issue of a new act (hereinafter the “adaptation act”). In the

adaptation act reference is made to the regulation in a footnote in accordance with the Legislative Rules of the Government.

The adaptation act must meet the criteria specified in Article 20 paragraph 2.

(2) If it is not possible to ensure the clarity and intelligibility of the legislation of the Czech Republic by other means, it is possible, in exceptional cases and if proper application requires a complex combination of the provisions of the regulation and the legislation of the Czech Republic, to transfer part of the contents of the regulation into the legal act of the Czech Republic⁷.

(3) The provisions of legal acts of the Czech Republic which are at variance with the regulation are modified in such a way that this discrepancy is removed.

(4) If the regulation presupposes the exercise of a certain competence on the part of a domestic body and if, under the legislation of the Czech Republic, said domestic body does not have the competence specified, or, as the case may be, if such a body does not exist, it is necessary to draft a direct amendment to the Act or to draft a separate Act; the same applies if sufficient procedural rules are not stipulated in the legislation of the Czech Republic.

(5) If it is necessary to ensure the proper application of the regulation, a sanction will be included in a statute for the event of failure to comply with this regulation. In the case of regulations which contain clear substantive provisions, the definition of a misdemeanour or administrative delict is formulated in such a way that it express the type of illegal conduct, usually without reference to the appropriate article of the regulation in the text of the statute.

Article 22

Implementation of international treaties and acts adopted on the basis thereof

⁷ Judgement in case 272/83 Commission v Italy.

(1) If the proper implementation of international treaties requires modifications to the legal acts of the Czech Republic, the procedure is followed as detailed in the provisions of Part Three relating to regulations.

(2) The provisions of Part Three which relate to the removal of discrepancies with primary law are used similarly for international treaties, if it ensues from their nature that the rules of the internal market or provisions on the policies of the European Union may also be applied to the legal relations under these international treaties.

(3) Legally binding acts adopted on the basis of international treaties are implemented in the legislation of the Czech Republic to the same extent as decisions under Article 24 paragraph 1. Legally non-binding acts adopted on the basis of international treaties are implemented in the legislation of the Czech Republic in accordance with Article 23.

Article 23

Implementation of recommendations and other legally non-binding acts of secondary law

(1) In the implementing acts consideration is given to recommendations or other legally non-binding acts of secondary law which supplement or construe the binding acts of secondary law implemented in these implementing acts. The implementation of other recommendations or other non-binding acts of secondary law is left to the discretion of the sponsor.

(2) The acts of secondary law which lay a duty upon the Czech Republic to exert every effort to attain a certain objective (e.g. resolutions, the conclusions of the European Council, guidelines, etc.) are implemented in such a way that it be possible to attain this objective to the greatest extent given the possibilities of the Czech Republic.

Article 24

Implementation of other European Union acts

(1) The provisions of decisions under Article 249 of the Treaty establishing the European Community, which have the nature of directives, above all in cases where they amend or supplement directives, are implemented similarly to directives. The provisions of a decision under Article 249 of the Treaty establishing the European Community, which can be applied directly, are implemented similarly to a regulation. If it is not possible to proceed in accordance with the first and second sentence, the decision is implemented in the legislation of the Czech Republic in accordance with paragraph 3.

(2) The provisions of Part Three relating to directives are used similarly for framework decisions of the European Union, unless their nature excludes this.

(3) Other European Union acts binding on the Czech Republic are implemented in the legislation of the Czech Republic if this is explicitly required or if it is necessary to meet an objective which such acts stipulate. Implementation in this case refers to an amendment to, or, as the case may be, the revocation of an existing legal act of the Czech Republic or the issue of a new legal act.

PART FOUR

Monitoring and simplifying the legislative process

Article 25

Monitoring the legislative process

(1) The Department of Compatibility carries out overall monitoring of all draft legal acts of the Czech Republic under preparation. Information on these drafts is entered in the ISAP databases.

(2) The sponsors inform the Department of Compatibility of all relevant facts which relate to the submission and adoption of draft legal acts of the Czech Republic, or, as the case may, the legislative thereof. Without being requested the sponsors provide, without delay, current information on the title of a legislative task, its anticipated submission to the Government, when it should become effective, and the state of preparations or negotiations. The sponsor is obliged to provide other relevant information if so requested by the Department of Compatibility.

Article 26

Linking up the drafts of legal acts

(1) If such a course of action does not put at risk the discharge of other legislative obligations ensuing from membership of the Czech Republic in the European Union, and if it is objectively possible, the sponsor refrains from submitting a draft amendment to a legal act of the Czech Republic if it is clear that in the near future, usually during the course of the following 6 months, a European Union act will be adopted, the implementation of which requires another amendment to the same legal act. Sponsors integrate the original draft into the draft of the legal act in which the European Union act is taken into consideration. The draft of this legal act is compiled in accordance with the rules detailed in Part Three of these Methodical Instructions, especially Article 20, if this involves a draft transposition act.

(2) The Department of Compatibility evaluates the impacts of the draft legal acts of the Czech Republic under preparation ensuing from the tables of concordance and the information provided by the coordinators and sponsors on the legislative process in the Czech Republic. For the purpose of simplification they may propose linking up the legislative tasks in order that amendments are not repeatedly submitted to the same legal act of the Czech Republic within a period of 6 months.

PART FIVE

Final provisions

Article 27

Bodies of the state administration designate a contact person responsible for compiling and updating the tables of concordance, monitoring the course of the implementation of European Union acts within their remit, and communication and the submission of information and data to the Department of Compatibility in accordance with these Methodical Instructions.

Article 28

These Methodical Instructions apply without prejudice to the Legislative Rules of the Government.

Article 29

These Methodical Instructions become effective on 1 January 2006.