

Artur Trubalski¹

Incorporation of European Union Legal Acts into the Legal System of the Republic of Poland

Keywords: European Union law, legislative process, legislative power, executive power, implementation of EU law, transposition of EU law

Słowa kluczowe: prawo Unii Europejskiej, proces ustawodawczy, władza ustawodawcza, władza wykonawcza, implementacja prawa Unii Europejskiej, transpozycja prawa Unii Europejskiej

Abstract

The objective of this study is to analyze the process of implementing European Union law into the legal system of the Republic of Poland. EU law is to be incorporated in the Polish legal system in such a way as to safeguard its binding force. In other words, it is necessary to ensure the effectiveness of European Union law in the legal system of the Republic of Poland. The Member States are obliged to implement European Union law. This obligation arises out of the adoption of the treaties establishing the European Union, but it is also rooted in the Constitution. It is worth noting that a Member State has the autonomy to select the method of incorporating European Union law in its legal system. In the case of the Republic of Poland, the process of implementing European Union law is linked particularly closely to the adoption of statutes implementing the provisions of European Union law into the legal system of the Republic of Poland. Should Poland fail to implement EU laws in its legal system properly, it may incur financial liability to the European Union, as well as its own citizens.

¹ ORCID ID: 0000-0001-8020-9178, PhD, Department of Constitutional Law and Human Rights, Institute of Law Science, College of Social Sciences, University of Rzeszow. E-mail: atrubalski@univ.rzeszow.pl.

Streszczenie**Wykonywanie aktów prawnych Unii Europejskiej
w systemie prawnym Rzeczypospolitej Polskiej**

Celem opracowania jest analiza procesu implementacji prawa Unii Europejskiej do systemu prawnego Rzeczypospolitej Polskiej. Prawo Unii Europejskiej musi być wykonane w systemie prawnym Rzeczypospolitej Polskiej w taki sposób, aby zostało zapewnione jego obowiązywanie. Innymi słowy należy zapewnić skuteczność prawa Unii Europejskiej w systemie prawnym Rzeczypospolitej Polskiej. Implementacja prawa Unii Europejskiej stanowi obowiązek państw członkowskich wynikający z przyjęcia traktatów statuujących Unię Europejską. Obowiązek ten posiada również swoją podstawę konstytucyjną. Na uwagę zasługuje fakt, iż państwo posiada swobodę w zakresie wyboru sposobu wykonania prawa Unii Europejskiej w swoim systemie prawnym. W przypadku Rzeczypospolitej Polskiej proces implementacji prawa Unii Europejskiej jest związany w szczególności z uchwalaniem ustaw implementujących przepisy prawa Unii Europejskiej do systemu prawnego Rzeczypospolitej Polskiej. Brak prawidłowej implementacji może prowadzić do odpowiedzialności finansowej państwa członkowskiego względem Unii Europejskiej a także obywateli.

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I.

Acceding to the European Union, the Republic of Poland committed itself to ensure proper incorporation of European Union law in the national legal system. This commitment is directly stipulated in the treaties establishing the EU. Pursuant to the principle of sincere cooperation, the Art. 4 (3) of the Treaty on European Union² provides that the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from

² Official Journal of the European Union, C 202, 7 June 2016.

any measure which could jeopardise the attainment of the Union's objectives. A specific legal basis determining the duty of Member States to implement EU directives is provided in the Art. 288 (3) of the Treaty on the Functioning of the European Union³. It stipulates that a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

The obligation to implement European Union laws into the legal system of the Republic of Poland is also rooted in the provisions of the Polish Constitution⁴. The Art. 90 (1) of the Constitution states that the Republic of Poland may, pursuant to an international agreement, delegate the competence of state authorities in certain matters to an international organization or an international body. In this case, the competence in question pertains to law-making and results in the incorporation of laws adopted at the EU level in the Polish legal system⁵. The provision which should be regarded as a more general legal basis for the responsibility to implement EU law into the legal system of the Republic of Poland is expressed in the Art. 9 of the country's constitution, whereby the Republic of Poland shall comply with international law binding upon it.

With the accession of the Republic of Poland to the European Union, the *sui generis* legislation of the EU began to apply in Poland in addition to the Polish legal system and international law⁶. On the one hand, the treaties (primary legislation) of the European Union exhibit the characteristics of international law. On the other hand, there is also the EU secondary law, which is passed at the level of the European Union with the participation of the Member States and their representatives. The EU secondary legislation, therefore, cannot be classified either as national or international law. Although it has the features of both of these legal systems, it also has its particularities. It is constituted at the EU level by representatives of the Member States, with both executive and legislative bodies participating in the process. Therefore, it is true

³ Ibidem.

⁴ Constitution of the Republic of Poland of 2 April 1997 r. (Dz.U. No. 78, item 483, as amended).

⁵ K. Wojtyczek, *Przekazywanie kompetencji państwa organizacjom międzynarodowym. Wybrane zagadnienia prawnokonstytucyjne*, Cracow 2007, pp. 189–202.

⁶ K. Wójtowicz, *Zasady stosowania prawa wspólnotowego w państwach członkowskich Unii Europejskiej*, Warsaw 2003, pp. 4–8.

that European Union law is a legal system hitherto unknown in the views of legal academics and commentators of both international and constitutional law⁷. This is primarily due to the fact that the European Union is an international organization of a very distinctive nature. Hence the distinctive character of the secondary law adopted at the EU level. It also results from the fact that some sources of secondary law exert an immediate effect on the legal system of a Member State, while the other require the process of implementation into the national legal system. In this respect, implementation signifies the incorporation of European Union law into the legal system of a Member State in such a way as to ensure its effectiveness in the national legal system. Should it fail to incorporate the provisions of European Union law in its legal system in a proper manner by the set deadline, it may incur financial liability to the European Union. Furthermore, this may also result in the liability of a Member State to its own citizens⁸. In the light of the foregoing, timely and correct implementation of European Union law in the legal system of the Republic of Poland appears to be an important issue.

II.

In the matters pertaining to the European Union secondary law, one should first consider the regulations and directives of the European Union, as these are the principal sources of the EU secondary legislation. European Union regulations are addressed to all Member States and become automatically binding in Member States' legal systems. They do not require implementation in the national legal system as they are applied immediately⁹. However, European Union directives are, in principle, addressed to all countries and are aimed at harmonizing legal regulations applied in the Member States of the European Union¹⁰. Given the system differences in the sources of law in

⁷ A. Trubalski, *Prawne aspekty implementacji prawa UE do systemu prawnego RP*, Warsaw 2016, pp. 3–5.

⁸ *Ibidem*, p. 182 et seq.

⁹ A. Wróbel, *Źródła prawa Unii Europejskiej*, [in:] *Stosowanie prawa Unii Europejskiej przez sądy*, ed. A. Wróbel, Warsaw 2010, p. 62.

¹⁰ A. Trubalski, *Wybrane aspekty implementacji dyrektyw Unii Europejskiej do systemu prawnego Rzeczypospolitej Polskiej*, "Przeгляд Prawa Konstytucyjnego" 2013, No. 1, pp. 178–181.

the particular Member States, the purpose of EU directives is to standardize the specific legal measures introduced by the States. Therefore, the directives comprise appropriate legal regulations which are to ensure that this goal is achieved. However, it should be noted that the Member States are at liberty to decide how they harmonize legal measures. It is crucial that the particular Member States attain the objective indicated in the directive, yet they are free to choose the steps they will take to do so. Following the adoption of the directive, Member States are typically given several years to introduce the solutions laid down in the directive into their national legal systems. The process of adopting these solutions is, in fact, the incorporation of the directive provisions in the legal system of a Member State. Therefore, it is referred to as the implementation of the directive provisions¹¹.

In addressing the process examined in this paper, legal academics and commentators also employ the term *transposition* of European Union law to the national legislation of a Member State¹². In my view, each of these terms has a different scope of meaning. These terms should not thus be used interchangeably. Upon the analysis I conducted, it was possible to conclude that the notion of implementation should denote the process of incorporating European Union law in the legal system of the Republic of Poland in the broad sense. In this vein, implementation comprises drafting, adopting and promulgating an implementation statute and the application of European Union law through court decisions. In other words, the implementation of European Union law into the legal system of the Republic of Poland is a process involving executive, legislative, and judicial bodies. It is only with the participation of all these state organs that the implementation process may ensue in a complete and correct manner, which, in fact, ensures that European Union law is fully effective in the legal system of the Republic of Poland.

As for the transposition of European Union law into the legal system of the Republic of Poland, the notion should be understood in the strict sense, i.e. as the adoption of implementation statutes. It is, therefore, reasonable to claim that the legislative and executive bodies are involved in the transposition pro-

¹¹ Ibidem, pp. 183–187.

¹² C. Mik, *Metodologia implementacji europejskiego prawa wspólnotowego w krajowych porządkach prawnych*, [in:] *Implementacja prawa integracji europejskiej w krajowych porządkach prawnych*, ed. C. Mik, Toruń 1998, p. 21.

cess. By drawing a distinction between those terms, it is possible to conclude that the process of transposing European Union law into the national legislation of the Republic of Poland is part of the process of implementing European Union law into the legal system of the Republic of Poland. However, both transposition and implementation are processes aimed at incorporating European Union law in the legal system of the Republic of Poland by ensuring its effectiveness.

It should be noted that the correct incorporation of European Union law in the legal system of the Republic of Poland requires that these provisions be fully implemented. Correct and complete incorporation of European Union law in the Polish legal system may denote a comprehensive action, not limited to timely adoption of an implementation statute. It is also necessary to issue appropriate implementing acts and court decisions aimed at applying European Union law in the legal system of the Republic of Poland. With regard to court decisions, the participation of courts in the implementation process means, in particular, the enforcement of the provisions of implementation statutes, as well as application of executive provisions so that these provisions are binding and effective to the maximum extent possible¹³. Of course, it should be stressed that the process of implementation requires that the process of transposition must be properly conducted in order to be considered valid in its entirety. Indeed, the indisputable groundwork for the correct implementation of European Union law in the legal system of the Republic of Poland consists in timely adoption of an implementation statute which properly incorporates the directive provisions in the national legislation. It must, therefore, be recognized that the transposition of European Union law into the legal system of the Republic of Poland is the most pivotal and fragile stage of the entire implementation process.

In the practice of the Polish legal system, the incorporation of European Union directives in the strict sense consists in adopting implementation statutes. The notion of implementation statutes used herein is merely technical, as the sources of law of the Republic of Poland form a closed system, in which the concept of laws, acts or statutes is not subdivided into particular

¹³ A. Łazowski, *Proeuropejska wykładnia prawa przez polskie sądy i organy administracji jako mechanizm dostosowania systemu prawnego do *acquis communautaire**, [in:] *Prawo polskie a prawo Unii Europejskiej*, ed. E. Piontek, Warsaw 2003, pp. 181–185.

types¹⁴. Accordingly, the incorporation of European Union directives in the legal system of the Republic of Poland consists in adopting statutes incorporating the directive provisions in the legal system of the Republic of Poland.

On the whole, it is important to stress that the process of incorporating European Union law in the legal system of the Republic of Poland in the strict sense is no different from the legislative process. Nevertheless, it has certain peculiarities which distinguish it from the classic legislative process¹⁵. At the level of constitutional regulations, the legislative process is only distinctive with regard to the urgency procedure¹⁶ and the adoption of the budget act¹⁷. It does not contain any regulations regarding the adoption of statutes incorporating European Union law in the legal system of the Republic of Poland. In this respect, the distinctness of the EU law incorporation process has been regulated in the Standing Orders of the Sejm¹⁸ and the Senate¹⁹. It does not, naturally, exceed the constitutional limits regulating the legislative process.

III.

For practical reasons, it is the Council of Ministers that exercises the right of legislative initiative with regard to statutes incorporating the law of the European Union in the legal system of the Republic of Poland. This executive body has expert services at its disposal, which prepare complex implementation bills in terms of their content²⁰. Moreover, the prominent involvement of the Council of Ministers in this process also results from the competence vested in the Council of Ministers by the Art. 146 (1) and (2) of the Polish

¹⁴ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2013, pp. 102–104.

¹⁵ A. Trubalski, *Prawne aspekty implementacji...*, p. 140 et seq.

¹⁶ Art. 123 of the Polish Constitution.

¹⁷ Art. 221–223 of the Polish Constitution.

¹⁸ Resolution of the Sejm of the Republic of Poland of 30 July 1992 – The Standing Orders of the Sejm of the Republic of Poland (M.P. 2019, item 1028 as amended).

¹⁹ Resolution of the Senate of the Republic of Poland of 23 November 1990 – The Standing Orders of the Senate of the Republic of Poland (M.P. 2002, No. 54, item 741 as amended).

²⁰ R. Mojak, *Skład, organizacja wewnętrzna oraz zasady i tryb funkcjonowania Rady*, [in:] *Rada Ministrów. Organizacja i funkcjonowanie*, ed. A. Bałaban, Cracow 2002, p. 283 et seq.

Constitution. Subsequently, the bills are presented for debate before the Sejm and the Senate.

Consideration should also be given to the fact that the incorporation of European Union law in the legal system of the Republic of Poland is subject to the principles of cooperation between the executive and legislative authorities in this respect. This is particularly vital in the process of transposing European Union law into the legal system of the Republic of Poland. These issues are specified in detail in the Act of 8 October 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters related to the membership of the Republic of Poland in the European Union²¹ (the Cooperation Act). The principles of the cooperation of the Council of Ministers with the Sejm and the Senate in matters related to the membership of the Republic of Poland in the European Union are defined in the provision of Art. 1 thereof. Moreover, the provisions of the Act impose the obligation of such cooperation²². Pursuant to Art. 18 (1), the Council of Ministers shall submit to the Sejm a bill implementing European Union law no later than three months before the expiry of the deadline for its incorporation under European Union law. If this deadline exceeds six months, the Council of Ministers shall submit to the Sejm a bill incorporating European Union law no later than five months before that date²³. However, in exceptionally justified cases, the Council of Ministers, upon consulting the competent authority indicated in the Standing Orders of the Sejm, may submit a draft bill incorporating European Union law without observing the mentioned deadlines²⁴. In addition, the Council of Ministers presents to the Sejm and Senate, no less than once every six months, information on legislative work related to the incorporation of European Union law acts which implementation has expired or expires within 3 months from the date of submitting the information²⁵.

At this point, it should be noted that the Sejm considers draft implementation statutes, taking into account the provisions of Chapter 5a of the Standing Orders of the Sejm, unlike the 'ordinary' bills. Pursuant to Art. 95a (2) there-

²¹ Dz.U. 2010, No. 213, item 1395.

²² Art. 2 of the Cooperation Act.

²³ Art. 18 (2) of the Cooperation Act.

²⁴ Art. 18 (3) of the Cooperation Act.

²⁵ Art. 18 (4) of the Cooperation Act.

of, the Council of Ministers shall declare whether or not a bill is incorporating European Union law when introducing the bill. In the case of bills other than those referred to in (2), before submitting a draft for first reading, the Marshal of the Sejm shall decide whether it is a bill incorporating EU law²⁶. By initiating the proceedings in relation to a bill incorporating European Union law, the Marshal of the Sejm arranges schedule of work of the Sejm in respect of that bill, bearing in mind the deadlines for incorporating EU law²⁷. Notably, a competent parliamentary committee prepares the schedule of works on the bill and communicates it to the Marshal of the Sejm²⁸.

An amendment to the draft bill incorporating European Union law may be submitted in writing by a group of at least three Members of Parliament at a committee meeting, which is a significant deviation from the classic legislative process²⁹. Furthermore, upon being submitted in writing and rejected by the committee, the proposed amendments shall, at the request of at least 3 sponsors, be included in the report as minority motions. A minority motion concerning a particular provision or part thereof shall specify the consequences of this motion for the content of the draft bill incorporating European Union law³⁰. It should also be noted that the second reading of a bill incorporating European Union law shall be held at the first sitting of the Sejm after the delivery of the committee report to the Members of Parliament, unless the Marshal of Sejm sets a later date for the second reading, upon consulting the praesidium of the committee³¹. Moreover, Senate amendments are considered at the first sitting of the Sejm after the delivery of a committee report³². As for the distinctions from the 'ordinary' procedure at the stage of work in the Senate, these concern primarily the fact that the Marshal of the Senate, prior to submitting an amendment to a bill incorporating European Union law, may request the Foreign Affairs Committee and the European Union to issue their opinion, should a doubt arise

²⁶ Art. 95a (3) of the Standing Orders of the Sejm.

²⁷ Art. 95b of the Standing Orders of the Sejm.

²⁸ Art. 95c (1) and (2) of the Standing Orders of the Sejm.

²⁹ Art. 95d (1) of the Standing Orders of the Sejm.

³⁰ Art. 95d (2) of the Standing Orders of the Sejm.

³¹ Art. 95e of the Standing Orders of the Sejm.

³² Art. 95f of the Standing Orders of the Sejm.

as to the scope of the amendment³³. When considering a bill incorporating European Union law, the competent committee may request that the Foreign Affairs Committee and the European Union issue an opinion regarding the bill or a part of it³⁴.

The remaining constituents of the legislative process regarding bills incorporating European Union law in the legal system of the Republic of Poland fall under the constitutional provisions governing the legislative process. Furthermore, the regulations of the Sejm and the Senate which also apply to 'ordinary' statutes are pertinent to the legislative process in this case. According with the Art. 95a (1) of the Standing Orders of the Sejm, the provisions of Section II Chapters 1–3 and 14 thereof shall apply to draft bills incorporating European Union law, hereinafter referred to as 'draft bills incorporating European Union law', unless the provisions of this Chapter provide otherwise.

IV.

Questions regarding the incorporation of European Union law in the legal system of the Republic of Poland are undoubtedly crucial from the perspective of the functioning of Poland within the EU structures. Timely and proper implementation of directives is important both for the operation of the state and its credibility in the entire European Union. From the experience it is evident that steps should be taken to improve the implementation of EU directives into the Polish legislation. The fact that this process must ensue within the constitutional regulations regarding the legislative process does not allow much room for manoeuvre for the ordinary legislator. The employment of the urgency procedure provided for in the Constitution appears insufficient and proves inefficient. There is a need, therefore, to analyze possible solutions regarding not only the amendment of the Standing Orders of the Sejm and the Senate or the Cooperation Act but also the provisions of the Polish Constitution in terms of improving the process of incorporating European Union law in the legal system of the Republic of Poland.

³³ Art. 54 (4a) of the Standing Orders of the Senate.

³⁴ Art. 68 (1a) of the Standing Orders of the Senate.

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