Supplementary material to: *On time or with a delay?: Transposition of EU directives in the Czech Republic in relation to subsidiarity check*

**Part 1: Detailed analysis of EU directives:**

**Public health (health risk):**

*Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products (tobacco directive)*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0040>)

* Proposed in 12/2012
* Adopted in 4/2014

Transposed **with a delay** in the Czech Republic

Negotiation of the Directive (ex-ante stage):

The main government gestor was Ministry of Agriculture (under ODS and later caretaker). There were also four additional subgestors (Ministry of Health under TOP09, Ministry of Industry and Trade under ODS, Ministry of Finance under TOP09, Ministry of Culture under TOP09) for the preparation of the national negotiation position.

The Senate´s Committee of EU affairs (CEUA) adopted resolution to the proposed directive on 20th February 2013 (i.e., two months after the Commission officially proposed the Directive and sent the draft to the national parliaments): [*http://www.connefof.europarl.europa.eu/connefof/app/exp/COM(2012)0788*](http://www.connefof.europarl.europa.eu/connefof/app/exp/COM%282012%290788)

*(Also here:* [*https://www.senat.cz/xqw/webdav/pssenat/original/71946/60458*](https://www.senat.cz/xqw/webdav/pssenat/original/71946/60458))

Debate in the Senate on the resolution to the proposed Directive, which was held on 22nd March 2013 (i.e., three months after the Commission´s draft were released), was very lively and focused on the regulation of tobacco in general (i.e., why, to what extent and with which consequences to regulate the tobacco products, the dilemma between economic and health issues). No particular issue related to the Directive was significant/problematic for the members of the Senate except for the competence of the EU to regulate this issue (with the proposed legal basis of the Directive). Due to the late adoption of the final resolution of the Senate, no reasoned opinion within the Early warning mechanism (EWM) was adopted and thus the resolution adopted by the plenary was sent to the EC as part of the Political Dialogue (PD).

<https://www.senat.cz/xqw/xervlet/pssenat/hlasovani?action=steno&O=9&IS=5023&D=22.03.2013#b13812>

(Also here: <https://www.senat.cz/prezentace/historieHandler.do?op=prepare&id=1821>)

Regarding the Chamber of Deputies (ChofD), its Committee for European affairs (CEA) adopted a reasoned opinion against the draft of the Directive within the eight-week period because it considered the proposed Directive in breach of the subsidiarity principle. It supported the position of the Government, which disagreed with several points (mainly ban of menthol cigarettes and other flavoured tobacco products, an extension of warning placed on the tobacco product packages at the expense of rights of trademark owners, regulation of components of tobacco products and their appearance based on subjective criteria, legal basis of the proposed Directive, and the level of discretion delegated to the Commission for the adoption of delegated acts). The resolution of the CEA was submitted to the Committee for health issues. (Unfortunately, we were not able to find a resolution of the Health Committee; moreover, the Health Committee was not involved in the latter transposition, only in one case among several transposition measures; therefore, it could not play some role in the interlink between the ex-ante and ex-post stage.)

The Senate had similar position but, as specified above, adopted its resolution after the „subsidiarity“ (eight-weeks) deadline. Moreover, the upper chamber, contrary to the ChofD, agreed with the proposed Directive but with several caveats. Besides arguments of the government, the Senate concerned potential illegal trade developed after the adoption of new regulation.

To sum up the positions of the Parliament as a whole, both chambers shared more or less similar position to the Directive, and they also agreed with the Government´s position.

National transposition (ex-post stage):

According to the EUR-Lex, 33 transposition measures were notified for the transposition of this Directive, of which 7 transposition measures were adopted between 2014 (when the Directive was finally adopted at the EU level) and 2016 (when the transposition deadline passed). These transposition measures were adopted in form of 4 legal acts (zákony) and 3 ministerial ordinances (ministerské vyhlášky).[[1]](#footnote-1)

The main transposition measure was *Zákona, kterým se mění zákon č. 110/1997 Sb., o potravinách a tabákových výrobcích a o změně a doplnění některých souvisejících zákonů, ve znění pozdějších předpisů, a další související zákony*, which was revised in 2014 and 2016. The act was identified as the most important by the negotiation position of the Government to the proposal of the Directive.

The inter-ministerial consultation on this particular bill was held between 28/7/2015 and 25/8/2015, and 35 subjects sent their comments, of which 13 were important and 4 were recommending, the rest are legislative and technical comments (see more here: <https://apps.odok.cz/veklep-detail?pid=KORN9YUCPVY4>).[[2]](#footnote-2)

Government submitted draft of the transposition act to the ChofD in December 2015 (i.e., more than one and a half year after the adoption of the Directive and six months before the transposition deadline). The Government pushed the bill through the ChofD with the request for shorter discussion (reduced to 30 days), with which MPs agreed (government of CSSD, ANO and KDU-CSL had majority in the ChofD). The main Committee for the discussion was agriculture.

The debate in both chambers had focused mainly on the foods, not tobacco. In the case of tobacco, MPs (in ChofD) had pointed out the regulation of herbal products and push for the unification of definition in this bill and in another one on protection of health against the harmful effects of addictive substance. They had also discussed the advertisement for electronic cigarettes and herbal products because in relation to this bill, another one on radio and television broadcasting was amended. In the latter case, i.e., the advertisement for electronic cigarettes, one MP had highlighted that the bill goes beyond the tobacco directive.

Members of the Senate had focused on pictures on the tobacco packages, excess duty on tobacco and the tobacco products in general. There was no reference to the previous debate on the draft of the Directive, even though some members of the Senate participated in both sessions (e.g., Mr Jaroslav Kubera). Also, as obvious, several issues mentioned previously in the ex-ante scrutiny were discussed in the ex-post stage.

We can identify a conflict between two ministries – the Ministry of agriculture and the Ministry of health – and between the parliamentary Committee on agriculture and health (but the latter did not discuss the bill), in both cases due to the competences to discuss the bill. But, while ministries were led by different coalition parties (KDU-CSL and CSSD, respectively), ChofD´s committees were chaired by the MPs from another coalition party (ANO).

The final legal act was published in the Collection of Laws on 9th June 2016, i.e., slightly after the transposition deadline (set to the 20th May 2016), with effect since 7th September 2016.

Discussion in both chambers on this bill can be traced here: <https://www.psp.cz/sqw/historie.sqw?o=7&t=687>

Another transposition measure in form of legal act shall be *Zákon č. 65/2017 Sb., o ochraně zdraví před škodlivými účinky návykových látek*, which shall transpose the art. 18(2), 18(3) and 20(6) of the Directive in parts on cross-border trade in tobacco products and electronic cigarettes. It shall also unify the terminology. However, according to Eur-lex, it is „not necessary for transposition“.

Consultation procedure was not held for the particular bill on the basis of the decision by the chairman of the Legislative Council of the Government due to time pressure (<https://apps.odok.cz/veklep-detail?pid=KORNAAF9BFV5>).

While the first (main) transposition measure was in the hand of the Ministry of Agriculture (KDU-CSL), this one was from the Ministry of Health (under CSSD). The Government proposed this transposition measure one year before the transposition deadline (3rd June 2015), but in the ChofD, the bill was rejected (by 25th May 2016, i.e., five days after the transposition deadline) due to the very high amount of the amendments(more details here:<https://www.psp.cz/sqw/historie.sqw?T=508&O=7>)*.* According to the results of voting, MPs from the coalition party ANO were mostly either against the adoption or abstained, similar to the opposition parties (KSCM, ODS, TOP, Dawn).Therefore, the Government submitted the same proposal including parliamentary amendments immediately after this rejection and asked for the shorter procedure in the ChofD (to adopt the bill in the first reading), but this request had been rejected by the plenary. Nevertheless, the ChofD had approved reduced time for the debate in the committees for 30 days. The bill was discussed in the ChofD´s Committee on Health (and also in the Senate´s Committee on Health and social policy, Senate´s Committee on public administration, regional development and environmental protection and the Senate´s Committee on Constitutional affairs).

The debate in the Parliament had dealt mainly with the ban of smoking in the restaurant or change of the date of the entry into force (whether 31st December 2016, or 1st January 2017 or 15th May 2017 or even 1st January 2018). No issue related to the Directive was detected. Only the Government (Ministry of Health) had pushed for faster approval due to the transposition deadline of the Directive, but the MPs disagreed. Moreover, the Minister of Health had pointed out in the debate about the previously rejected draft of the law that one amendment related to the electronic cigarettes, suggesting to remove the issue of electronic cigarettes from the scope of the law, is contrary to the Directive.

The final legal act was published in the Collection of Laws on 3rd March 2017, with effect since 31st May 2017.

More details on the bill here:[*https://www.psp.cz/sqw/historie.sqw?o=7&T=828*](https://www.psp.cz/sqw/historie.sqw?o=7&T=828)

Another transposition measure was *Zákon č. 183/2017 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o odpovědnosti za přestupky a řízení o nich a zákona o některých přestupcích.*

The main gestor was the Ministry of Interior (under CSSD). Consultation procedure was held between 11/5/2016 – 8/6/2016, with 52 submitted comments, of which 36 were important and 4 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORNA9UBSAY9>).

As the period of consultation indicates, the bill was proposed after the transposition deadline in October 2016 and was adopted in May 2017 (i.e., one year after the transposition deadline), with effect since July 2017.

No reference to the directive in both the government proposal and during the parliamentary debate was detected. For more detail see: <https://www.psp.cz/sqw/historie.sqw?o=7&T=929>.

Last transposition legal act shall be *Zákon č. 202/2015 Sb., kterým se mění zákon č. 40/1995 Sb., o regulaci reklamy a o změně a doplnění zákona č. 468/1991 Sb., o provozování rozhlasového a televizního vysílání, ve znění pozdějších předpisů, a zákon č. 256/2001 Sb., o pohřebnictví a o změně některých zákonů, ve znění pozdějších předpisů*

This bill was in gestion of the Ministry of Industry and Trade (under CSSD). The consultation procedure: was held between 17/7/2014 and 14/8/2014 and received 35 comments, of which 17 were important and 4 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORN9M2GYHDU>).

The bill was proposed by the government in November 2014 and was adopted in July 2015, with effect since August 2015 (i.e., within the transposition deadline). Neither the government nor the parliament mentioned the directive 2014/40. Instead, the revision of the legal act reacted to the infringement procedure against the insufficient transposition of the directive on unfair commercial practices (for more detail see [*https://www.psp.cz/sqw/historie.sqw?o=7&t=363*](https://www.psp.cz/sqw/historie.sqw?o=7&t=363)*)*

Among ordinances (vyhlášky), there is *Vyhláška č. 231/2016 Sb., o odběru, přípravě a metodách zkoušení kontrolních vzorků potravin a tabákových výrobků*, from the Ministry of Agriculture (under KDU-CSL). Consultation procedure was held between 26/10/2015 and 18/11/2015 and received 27 comments, of which 9 were recommending (<https://apps.odok.cz/veklep-detail?pid=RACKA3GA5R1V>). The ordinance came into force in August 2016 (i.e., more than two months after the transposition deadline).

*Vyhláška č. 261/2016 Sb., o tabákových výrobcích*, from the Ministry of Agriculture, had been consulted between 7/3/2016 and 29/3/2016, with 25 comments submitted, among which 10 was recommending (<https://apps.odok.cz/veklep-detail?pid=KORNA7QHD7BD>), and came into force by September 2016 (i.e., more than three months after the transposition deadline).

(According to the supplementing annexes, there shall have been adopted up to 10 ministerial ordinances until May 2016 (i.e., until the transposition deadline) and 3 others until 2017.)

*Vyhláška č. 37/2017 Sb., o elektronických cigaretách, náhradních náplních do nich a bylinných výrobcích určených ke kouření*, from the Ministry of Health (under CSSD), had been consulted between 26/7/2016 and 16/8/2016, with 36 submitted comments. The ordinance shall complete the transposition of the Directive by including articles 20, 21 and 22 of the Directive into the Czech legal order, and was in force by March 2017 (i.e., more than nine months after the transposition deadline).

Due to the late completion of transposition, non-notification (infringement) procedure was launched on 27th July 2016 against the delayed transposition of the Directive (under the no. 2016/0508: [https://isap.vlada.cz/homepage2.nsf/pages/esdvlz/$file/VLZ-zprava\_2016.pdf](https://isap.vlada.cz/homepage2.nsf/pages/esdvlz/%24file/VLZ-zprava_2016.pdf%20)) and was not finished until March 2019. For the whole period, the procedure stayed in the first step, i.e., formal letter.

It´s interesting that the EC has not referred to this case (against the Czech Republic) in its annual reports on monitoring the application of EU law and no press release was probably released (cf.[*https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\_decisions/index.cfm?lang\_code=EN&typeOfSearch=false&active\_only=0&noncom=0&r\_dossier=2016%2F0508&decision\_date\_from=&decision\_date\_to=&title=&submit=Search*](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=0&noncom=0&r_dossier=2016%2F0508&decision_date_from=&decision_date_to=&title=&submit=Search)*)*

It does not seem that the rejection of the second transposition measure would cause the infringement problems because the latest ordinance, which relates to the first transposition measure, was adopted in similar period as the second transposition measure.

Besides this infringement procedure, several cases (for annulment or as prejudicial procedures) were decided by the Court of Justice of the EU (CJEU) in relation to the interpretation of some parts of the Directive. The Czech Republic was not the initiator of any of these cases but joined to at least two of them, namely C-425/17 on tobacco for oral use, and C-439/17 on the ban of tobacco products with a characteristic flavour.

Another non-notification procedure against the Czech Republic and related to this Directive was launched on the same day against the Commission directive amending annexe 2 of the Directive 2014/40. This case was finished almost exactly one year later (in July 2017).

*Directive 2013/35/EU of the European Parliament and of the Council of 26June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (Directive on electromagnetic fields)*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0035>)

* Proposed in 6/2011
* Adopted in 6/2013

Transposed **on time** in the Czech Republic

Negotiation of the Directive (ex-ante stage):

The main gestor for the negotiation of the directive was the Ministry of Health (under TOP09).

No Czech parliamentary contribution according to the Legislative observatory of the European Parliament (OEIL) was prepared and/or adopted. Only ChofD´s EU Committee formally took into account the draft of the directive, according to the information from the ChofD´s Department for EU affairs.

National transposition (ex-post stage):

In the Eur-lex, 15 transposition measures are reported, of which 2-to-3 transposition measures were adopted during transposition time.

The main transposition measure, which was prepared by the Ministry of Health (under CSSD) is government regulation, namely *Nařízení vlády č. 291/2015 o ochraně zdraví před neionizujícím zářením*, which refers to the Directive 2013/35. The consultation procedure was held between
31/12/2014 and 23/1/2015, with 39 submitted comments, of which 5 comments were important and 6 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORN9SAJAPRS>). It was finally adopted in November 2015, well in advance of the transposition deadline (set on 1st July 2016).

Among other transposition measures, there is a revision of the legal act on *protection of public health*, which does not refer to the Directive but some issues related to the EU act are part of the national act (especially the offences) and were also mentioned during the plenary debate in ChofD (e.g., (health) risks at the workplace or administrative offences).

Consultation procedure for the draft was held between 13/5/2013 and 10/6/2013 (i.e., before formal adoption of the directive), with 55 submitted comments, of which 29 were important and 11 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORN97KGMG4K>). The bill was proposed by the Government (with Ministry of Health as main gestor) one year later, in July 2014, and was finally adopted after another year in September 2015 after very long and difficult debate in both chambers (among others, several committees had been involved in either of the chambers and the Senate returned the bill to the ChofD). The main topic of the parliamentary debate focused on the mandatory vaccination of children (not related to the directive). One point had been however raised that the bill is contrary to an EU directive (without specification which Directive is concerned but shall be focused on the work with chemicals). The final legal act was published in the Collection of Laws in October 2015, with effect since 1st December 2015. For more details see <https://www.psp.cz/sqw/historie.sqw?T=270&O=7>.

Among the transposition measures listed in Eur-lex, there is also the revision of the Labour code, which was adopted in August 2015 but not refer to the Directive in the draft nor in the parliamentary debate. <https://www.psp.cz/sqw/historie.sqw?T=376&O=7>

Despite the difficult national legislative procedure for the adoption of the legal act on the protection of public health, no infringement procedure was launched, probably thanks to the sufficiently long transposition period.

**Transport:**

*Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Railway directive)*

([*https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0034*](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0034))

* Proposed in 9/2010
* Adopted in 11/2012

Transposed **with a delay** in the Czech Republic

Negotiation of the Directive (ex-ante stage):

The position of the Czech Government (led by the Ministry of Transport, under the VV with several personal changes during the negotiation) to the proposal of the directive was restrained and it disagreed with several proposed points. It´s not, therefore, surprising that the official negotiation position of the Government was high national priority.

Czech Senate did not scrutinize the draft of the Directive but only the „Communication from the Commission concerning the development of a Single European Railway Area“ that preceded the Directive. Contribution of the Czech Senate according to the OEIL:[*http://www.connefof.europarl.europa.eu/connefof/app/exp/COM(2010)0474*](http://www.connefof.europarl.europa.eu/connefof/app/exp/COM%282010%290474)*,* in Senate´s portal: <https://www.senat.cz/xqw/webdav/pssenat/original/64354/54326>, and also here: <https://www.senat.cz/prezentace/historieHandler.do?op=prepare&id=1553> (including the reaction of the Commission to the Senate´s resolution)

The Senate shared with the Government several key points: 1) the view that the introduction of „charges for noise pollution puts rail transport at a disadvantage compared to road transport“ (however, in this case, the minister for transport did not share the view with the Senate´s resolution as stressed during the debate in the plenary session of the Senate); 2) the view that the competences delegated to the Commission are too extensive; 3) large-scale transfer of competences related to the regulation and to the supervision of the competition in the railway sector shall have been delegated to the hands of the single national regulatory body. The main dividing point in the Senate (between the Committee on EU affairs and Economic Committee, and also between the Senate/CEUA and the Ministry of Transport led by the coalition parties (ODS and VV, respectively)) was the internalisation of external costs and related charges for noise pollution. In reaction to the Senate´s resolution, the Commission clarified all points raised by the Senate, except the internalisation of external costs.

The ChofD´s Committee for European affairs (under the main government party ODS) had the same position, mainly very critical to the powers of the Commission for the adoption of delegated acts and to proposed higher competences of the regulatory body. In the ChofD, the Economic Committee (led by the opposition party CSSD) was informed about this position (according to the resolution of the CEA). In the Senate, the CEUA recommended the Committee on economic issues to scrutinize the Communication of the Commission, which did so. While the Senate resolution was adopted after the „subsidiarity deadline“, the resolution of the ChofD´s Committee, which related to the draft of the directive, was adopted within the subsidiarity deadline, but the CEA explicitly stated that the draft of the Directive comply with the subsidiarity principle (see: <https://www.psp.cz/sqw/text/text2.sqw?idd=66892>). Moreover, its resolution is addressed to the Government; therefore, no resolution of the ChofD´s CEA was sent to the EWM nor to the PD (there is also no response of the Commission to the ChofD´s resolution in the IPEX).

To sum up the abovementioned, while the Senate scrutinized the Communication to this initiative and only “took note” of the proposed directive itself, the ChofD went in opposite direction – it took note of the Communication but scrutinized the legislative proposal.

National transposition (ex-post stage):

Eur-lex listed 31 measures for transposition of this directive, of which 4 are legal acts adopted in 2016 after the transposition deadline (within the transposition time, only one act adopted but not sure whether this is related to the Directive itself) and accompanied by two ministerial ordinances adopted in 2017.

The main transposition measure is *Zákon č. 266/1994 Sb., o dráhách*. It was revised before the adoption of the Directive in 2011; another revision was carried out in 2014, which reacted to the judgement of the CJEU (explanatory report to this revision explicitly emphasised that it is not the transposition of the Directive 2012/34). In Senate, the revision from 2014 was in hand of the same rapporteur from the same (economic) Committee as for the resolution to the Communication on the then directive 2012/34 in 2011.

Inter-ministerial consultation procedure was held between 23/10/2014 and 24/11/2014, with 39 submitted comments, of which 15 were important and 6 were recommending (more details here: <https://apps.odok.cz/veklep-detail?pid=KORN9Q693M7E> ). But the government adopted the final version of the bill almost one year later (after this procedure).

Government thus submitted the „real“ proposal to the Parliament in September 2015, i.e. after the transposition deadline (set to June 2015), with Ministry of Transport (under ANO) as main gestor. But no urgency was apparent, neither in the explanatory report accompanying the proposal nor in the parliamentary debates. The first reading started in March 2016. The bill was discussed in the Committee on economic affairs (led by ANO). After three readings, the bill was adopted in July 2016 in the ChofD. MPs adopted several additional provisions to the draft of the Government. The Senate (composed mainly by coalition parties), however, did not adopted the bill but had to return the proposal back to the ChofD because of several additional corrections.

During the debate in the ChofD, one MP pointed out that the national law is in contrary to the Directive. The final legal act was published in the Collection of Laws on October 2016, with effect since April 2017 (i.e., almost two years after the transposition deadline).

For more details: <https://www.psp.cz/sqw/historie.sqw?T=608&O=7>.

Another transposition measure is *Zákon o Úřadu pro přístup k dopravní infrastructure*.

Consultation procedure was held between 23/10/2014 and 24/11/2014, with 40 submitted comments, of which 9 were important and 9 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORN9Q69N55L>).

As in the case of previous transposition measure, the Government (with Ministry of Transport as the gestor) submitted the bill to the Parliament one year after the consultation, in September 2015, i.e., three months after the transposition deadline. Again, the explanatory report accompanying the draft did not mention that the transposition deadline is over. The procedure in the Parliament traced the same journey as in the case of the previous (main) transposition act (i.e., both were discussed simultaneously).

The proposal was in hands of the Economic committee in both chambers. There was a huge discussion about the particular parts of the Directive related to the regulatory subject that was necessary to establish. This issue was also discussed in case of the previous transposition act but was excluded from the final version. It was similarly pointed out in both resolutions of both chambers within the ex-ante scrutiny. Moreover, there were at least two MPs who shall have participated in the ChofD´s Economic committee to which the EU committee referred its resolution adopted to the draft of the Directive (e.g., MP František Laudát, Jaroslav Foldyna or Mrs Květa Matušovska). The final legal act was published in the Collection of Laws in October 2016, with effect since April 2017. More details here: <https://www.psp.cz/sqw/historie.sqw?T=609&O=7>.

The next transposition measure shall be *Zákon č. 129/2016 Sb., kterým se mění zákon č. 104/2000 Sb., o Státním fondu dopravní infrastruktury, ve znění pozdějších předpisů.*

Government (with Ministry of Transport as main gestor) adopted the bill in September 2015. Consultation of interested subjects/stakeholders was not held due to the time pressure caused by the complexity of the railway act and its drafting, to which this act on the national funding body for transport infrastructure was previously attached but finally separated from.

Parliament adopted the bill in April 2016. The debate was not so long, but several concerns or additional provisions were raised and later adopted. Economic committee and Committee for public administration and regional development discussed the bill in both chambers. In the Senate, the Economic committee raised concern over one article that transposed part of the Directive. But this was not turned into the amendment. MPs were not the same between the discussion of the draft of the Directive and its transposition in both ChofD and the Senate. The final act came into effect since May 2016 (i.e., almost one year after the transposition deadline). More details here: <https://www.psp.cz/sqw/historie.sqw?T=583&O=7>.

Last transposition statutory measure shall be *Zákon č. 134/2016 Sb., o zadávání veřejných zakázek*

Consultation procedure was held between 22/4/2015 and 22/5/2015, with 65 submitted comments, of which 53 were important and 7 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORN9VSC8K3C>). Government (with Ministry of regional development as main gestor, under ANO representative) proposed the bill in October 2015. Parliament adopted the final act in April 2016. But there is no reference to the Directive (neither in the bill nor in the final version of the adopted act); it´s only listed in the national transposition table and in Eur-lex. The Senate (dominated by coalition parties) had returned the bill to the ChofD with the proposal to extend the effectiveness of the law by six months. The final legal act was published in the Senate´s version in the Collection of Laws in April 2016, in effect since October 2016 (<https://www.psp.cz/sqw/historie.sqw?o=7&t=637>).

Among ministerial ordinances, there is *Vyhláška č. 76/2017 Sb., o obsahu a rozsahu služeb poskytovaných dopravci provozovatelem dráhy a provozovatelem zařízení služeb* (from the Ministry of Transport). Consultation procedure was held between 27/9/2016 and 19/10/2016 (i.e., more than one year after the transposition deadline), with 31 submitted comments, of which 12 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORNAE2H88LT>). Final ordinance was adopted in February 2017 (i.e., one and a half year after the transposition deadline); explicit reference to the Directive is there.

*Vyhláška č. 78/2017 Sb., kterou se vydává dopravní řád drah, ve znění pozdějších předpisů* is from the Ministry of Transport. Consultation procedure for the ordinance was held between 27/9/2016 and 19/10/2016, with 30 submitted comments of interested parties, of which 16 were recommending (<https://odok.cz/portal/veklep/material/KORNAE2GWHES/>). The ordinance was finally adopted in March 2017 but no reference to the Directive even though this act is listed in the comparative (transposition) table as well as in Eur-Lex. The reason might be that this ordinance is connected to the main transposition act (i.e., zákon o drahách)

**In this case, parliamentary committees could play some role in the interlink between the ex-ante and ex-post phase because the economic committees in both chambers somehow participated in both stages. Moreover, there were some personal continuities, especially in the ChofD. Yet, transposition was substantially delayed.**

Therefore, non-notification procedure (no. 2015/0261) was launched in July 2015 (one month after the transposition deadline passed). In 2016, the reasoned opinion of the Commission was sent. In 2017, additional reasoned opinion was sent. The procedure finished in June 2018. According to the EC, the main reason for the infringement procedure was “not communicated any measures to the Commission” (cf. [*https://ec.europa.eu/commission/presscorner/detail/EN/MEMO\_16\_319*](https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_16_319)*)*

[*https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\_decisions/index.cfm?lang\_code=EN&typeOfSearch=false&active\_only=0&noncom=0&r\_dossier=2015%2F0261&decision\_date\_from=&decision\_date\_to=&title=&submit=Search*](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=0&noncom=0&r_dossier=2015%2F0261&decision_date_from=&decision_date_to=&title=&submit=Search)

*Directive 2014/46/EU of the European Parliament and of the Council of 3 April 2014 amending Council Directive 1999/37/EC on the registration documents for vehicles (Registration directive)*

([*https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32014L0046*](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32014L0046))

* Proposed in 7/2012
* Adopted in 4/2014

Transposed **on time** in the Czech Republic

Negotiation of the Directive (ex-ante stage):

Senate adopted its resolution after the subsidiarity deadline in January 2013 (the proposal of the Directive was published in July 2012). Moreover, its resolution is related to three similar proposals on technical controls of vehicles (two proposals for regulation and one for the Directive). In case of the particular Directive, Senate criticised the proposal as unnecessary and pushed to respect the national terminology and practice. (for more details see [http://www.connefof.europarl.europa.eu/connefof/app/exp/COM(2012)0381](http://www.connefof.europarl.europa.eu/connefof/app/exp/COM%282012%290381); <https://www.senat.cz/prezentace/historieHandler.do?op=prepare&id=1775>; <https://www.senat.cz/xqw/webdav/pssenat/original/71946/60458>)

Except for the CEUA in the Senate, no other committee was in charge with this file in ex ante stage.

The position of the Government (prepared by the Ministry of Transport, firstly under the VV, since December 2012 under the ODS) related to this particular Directive was disapproving. According to the analysis of the Senate´s department for the EU, the Government shared with the Senate (dominated by opposition parties) several points (e.g., in terms of terminology in the directive or in view that the technical conditions of vehicles are not the only reason for car accidents). The Government also required in the negotiation to clarify the definition of withdrawal for vehicle registration concerning regular roadworthiness testing of vehicles.

The ChofD only formally took into account the proposal for the particular Directive without debate in the EU Committee (<https://www.psp.cz/sqw/eudoc.sqw?c=12803&r=12>).

National transposition (ex-post stage):

Nine transposition measures are listed in the Eur-lex, of which 4 adopted in time of transposition (and 1 another after the transposition deadline), but only 3 were relevant for this Directive.

The main transposition measure shall be *Zákon č. 63/2017 Sb., kterým se mění zákon č. 56/2001 Sb., o podmínkách provozu vozidel na pozemních komunikacích a o změně zákona č. 168/1999 Sb., o pojištění odpovědnosti za škodu způsobenou provozem vozidla a o změně některých souvisejících zákonů (zákon o pojištění odpovědnosti z provozu vozidla), ve znění zákona č. 307/1999 Sb., ve znění pozdějších předpisů, a další související zákony*

Consultation procedure for the first draft of the act was held between 31/7/2015 and 28/8/2015 with 37 submitted comments, of which 15 were important and 3 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORN9YXAUNA6>).

Government (with Ministry of Transport as the main gestor under ANO) adopted the final bill in September 2015. There was no reference to the directive, neither in the bill nor in the parliamentary debate. Nor it´s the case in the following revision of this act (cf. Zákon č. 193/2018 Sb., kterým se mění zákon č. 56/2001 Sb., o podmínkách provozu vozidel na pozemních komunikacích a o změně zákona č. 168/1999 Sb., o pojištění odpovědnosti za škodu způsobenou provozem vozidla a o změně některých souvisejících zákonů (zákon o pojištění odpovědnosti z provozu vozidla), ve znění zákona č. 307/1999 Sb., ve znění pozdějších předpisů, a další související zákony).

In the case of legal act no. 63/2017, it´s related to the registration of the vehicles; therefore, it´s much closer to this Directive. The latter legal act no. 193/2018 transposed directive 2014/45 and 2014/47 but not the directive no. 2014/46, because it´s more about roadworthiness tests than the registration, and it was adopted one year after the transposition deadline of the Directive no. 2014/46 (set to May 2017).

In the ChofD, Economic committee (led by the ANO MP) was responsible for the debate of the bill. In Senate, besides the Economic committee, Committee for regional development, public administration and environment discussed the bill. The final legal act was published in the Collection of Laws in March 2017, with effect since June 2017. (more here: <https://www.psp.cz/sqw/historie.sqw?o=7&t=683>)

In time of adoption of the directive (in 2013 and 2014), another revision of the legal act on road traffic conditions was underwent, together with ministerial ordinance *vyhláška o registraci vozidel* but without reference to the new directive 2014/46.

Another transposition measure is *Vyhláška č. 158/2017 Sb., kterou se mění vyhláška č. 343/2014 Sb., o registraci vozidel, ve znění pozdějších předpisů* (from Ministry of Transport). Again, there is no reference to the directive in the legal act, but it´s related to the main transposition act (i.e., legal act no 56/2001 Sb., o podmínkách provozu vozidel na pozemních komunikacích …). It was adopted few days after the transposition deadline; the previous one was adopted in December 2015 without consultation procedure. In the case of the ministerial ordinance no. 158/2017, consultation procedure was held between 28/3/2017 and 20/4/2017, with 17 submitted comments, of which 8 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORNAKNHRR59>).

*Zákon č. 183/2017, kterým se mění některé zákony v souvislosti s přijetím zákona o odpovědnosti za přestupky a řízení o nich a zákona o některých přestupcích* can be another transposition measure but, again, with no reference to the Directive, neither in the draft nor in the parliamentary debate nor in the final act. The act only amended several provisions in the main transposition act (i.e., in zákon o podmínkách provozu vozidel na pozemních komunikacích) but was adopted one month after the transposition deadline.

Consultation procedure was held between 11/5/2016 and 8/6/2016, with 52 submitted comments, of which 36 were important and 4 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORNA9UBSAY9>). Government (with Ministry of Interior as the main gestor under CSSD) adopted the bill in October 2016. The Committee for public administration and regional development (led by the opposition MP from KSCM in the ChofD) and the Constitutional legal committee (led by the coalition MP from CSSD in the ChofD) in both chambers were in charge of the discussion of the bill. The final legal act was published in the Collection of Laws in June 2017, with effect since July 2017, i.e., slightly after the transposition deadline. (more here: <https://www.psp.cz/sqw/historie.sqw?o=7&t=929>)

Despite all these deficiencies, no infringement procedure was launched against the Czech Republic according to the government report for the Czech cases before the CJEU.

**Economic policy (financial intervention):**

*Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Directive on recovery of crisis)*

(<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014L0059>)

* Proposed in 6/2012
* Adopted in 5/2014

Transposed **with a delay** in the Czech Republic

Negotiation of the Directive (ex-ante stage):

Senate welcomed the proposed Directive but had some concerns regarding the transfer of banking supervision from the Czech authorities to bodies of other member states or to the European banking authority. It considered creating a resolution of credit institutions as an effective framework. It, however, concerned the proposed level of legal harmonisation, which can lead to a certain level of centralisation of decision-making of the supervisory authorities. It pointed out that the proposed Directive can go beyond the competences of the EU, especially in the case of the creation of the European system for financing arrangements that leads to sharing of resolution costs among the Member States, with the involvement of deposit guarantee schemes. Last but not least, the Senate also criticised the delegation of power to the Commission to adopt implementing acts. Because the resolution was adopted after the „subsidiarity deadline“ it cannot be labelled as the reasoned opinion within the EWM. Yet, the Senate´s Committee explicitly adopted the reasoned opinion to draft of the Directive, even within the subsidiarity deadline, but the Senate as a whole, whose resolutions to the proposed directives are the only one „binding“ compared to the Committee´s resolution, adopted its final resolution after the subsidiarity deadline.

**Draft of the Directive was also debated in the Committee on economics, agriculture and transport, which was also later involved in the transposition.**

According to the analysis of the Senate´s Department for EU affairs, the Senate (composed of opposition parties at that time) shared its position to the proposed Directive with the Czech Government, which mainly concerned the reduction of the national competences for national supervisory authorities and their transfer to the European supervisory authority (i.e., EBA). In the negotiation position, the Czech Government (led by the Ministry of Finance as main gestor, under the main coalition party ODS, together with Czech National Central Bank) also planned to reject the proposed Directive during the voting in the Council (but finally voted for).

(more details here: [http://www.connefof.europarl.europa.eu/connefof/app/exp/COM(2012)0280](http://www.connefof.europarl.europa.eu/connefof/app/exp/COM%282012%290280); or here <https://www.senat.cz/xqw/webdav/pssenat/original/68214/57393>)

The ChofD´s EU committee adopted its resolution in a similar way to the Senate but with fewer points than the upper Chamber (cf. <https://www.psp.cz/sqw/text/text2.sqw?idd=106011>). The ChofD, on the one hand, welcomed the proposal of the Commission in the context of the economic crisis but at the same time criticised the scope of the proposed Directive. According to the MPs, draft of the Directive breached the principle of subsidiarity, but the resolution was adopted after the „subsidiarity deadline“; therefore, it cannot be considered as the reasoned opinion (similar to the Senate). Besides, the MPs disagreed, especially with the delegation of powers to the other EU institutions (mainly the European banking authority), including the proposed European system for financing the crisis management and deposit guarantee scheme. The MPs also required a higher level of discretion for the member states. The ChofD´s resolution to the draft of the Directive was also debated at the plenary session in October 2012.

National transposition (ex-post stage):

There are 46 transposition measures listed in the Eur-lex, of which two measures were adopted in time of transposition (during 2014), two others adopted one year after the transposition deadline (in 2015).

The main transposition act shall be new *Zákon no. 374/2015 o ozdravných postupech a řešení krize na finančním trhu* that was proposed by the Government (with Ministry of Finance as main gestor, under ANO) in July 2015 after the consultation procedure held between 26/11/2014 and 29/12/2014. However, no comments are listed in the specific portal for the consultation (see here: <https://apps.odok.cz/veklep-detail?pid=KORN9XZFULDC>).

The Government asked the ChofD to adopt the proposed bill in the first reading due to the launch of the infringement procedure, but MPs disagreed (we were not able to find the results of the voting). They blamed the Government for its inability to prepare the transposition measure in time and correctly. Nevertheless, reduced time for the discussion of the bill in committees were agreed. Only, two minor points (European system for financing the crisis management and deposit guarantee scheme, and critics that the transposition would be harmful for the Czech Republic) raised during the ex-ante phase were mentioned during the transposition, especially in the Senate. Here, some personal continuity between the ex ante and ex post stages might have been observed (mainly, the Economic committee chair was the same in both phases).

The act was finally adopted in December 2015, with effect since January 2016, i.e., one year after the transposition deadline (set to December 2014). (more details here: <https://www.psp.cz/sqw/historie.sqw?o=7&t=536>)

Second transposition measure was new legal act (accompanied by the revised act) *Zákon no. 375/2015, kterým se mění některé zákony v souvislosti s přijetím zákona o ozdravných postupech a řešení krize na finančním trhu*

Consultation procedure for the first draft was held between 26/11/2014 and 29/12/2014, again without any submitted comment that would be listed on the Government portal (see here: <https://apps.odok.cz/veklep-detail?pid=KORN9XZFUM9V>). Yet, the final bill was adopted by the Government in July 2015 (i.e., half a year after the end of the consultation).

Proceeding for the adoption of this bill was very similar to the previous case (of zákon o ozdravných postupech a řešení krize na finančním trhu), but the debate about the bill was very short compared to the previous one. The final version of the act was adopted by the Parliament in December 2015, with effect since January 2016 (more info here: <https://www.psp.cz/sqw/historie.sqw?o=7&t=537>)

Due to the one-year delay, non-notification (infringement) procedure was launched in January 2015 and was finished in December 2016. In May 2015, reasoned opinion was sent, and in October 2015, the decision to submit the case to the CJEU was adopted. According to the Commission, the reason for the infringement procedure was a failure to implement rules in national law (<https://ec.europa.eu/commission/presscorner/detail/EN/IP_15_5057>) and „failure to communicate all national measures transposing the Bank Recovery and Resolution Directive, a centrepiece of the EU banking union“. It, however, seems that almost no member state was able to transpose the directive on time because similar infringement procedures were started against other 25 member states for late transposition of the Directive (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0463&from=EN>).

The EC itself stressed in its annual report on monitoring the application of EU law that it will closely monitor the implementation of this particular Directive in member states („notification of all national measures necessary to transpose the Bank Resolution and Recovery Directive“ - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD%3A2017%3A259%3AFIN&from=EN>). Therefore, the Government shall have expected that the late transposition would be problematic for the EU executive.

*Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy (Directive on debt instruments)*

(<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv%3AOJ.L_.2017.345.01.0096.01.CES>)

* Proposed in 11/2016
* Adopted in 12/2017

Transposed **on time** in the Czech Republic

Negotiation of the Directive (ex-ante stage):

The ChofD took note of the draft of the Directive four months after the Commission proposed the revision of the Directive and supported the Government´s framework position (<https://secure.ipex.eu/IPEXL-WEB/document/COM-2016-0853/czpos>). The Senate has not scrutinised the proposal at all. Government (led by the Ministry of Finance, under ANO, together with Czech National Central Bank) generally supported the draft of the Directive but had some concerns over several points that the Directive introduced (among others, longer transposition time).

National transposition (ex-post stage):

According to Eur-lex, 5 measures were adopted in the Czech Republic for transposition of the Directive, of which 2 measures were adopted in time of transposition.

The main transposition measure is probably *Zákon, kterým se mění zákon č. 374/2015 Sb., o ozdravných postupech a řešení krize na finančním trhu, ve znění zákona č. 183/2017 Sb., a další související zákony*

There is no mention of the Directive, neither in the final act nor in the Government bill, nor was the case during the debate in the Parliament. Government only argued that this act accompanied the initial transposition of the Directive 2014/59. Nevertheless, in view of the authors, the act covers the topic of the Directive 2017/2399.

Consultation procedure was held between 12/10/2016 and 10/11/2016, with 18 submitted comments, of which 3 were important and 2 were recommending (<https://apps.odok.cz/veklep-detail?pid=KORNAENHZU5Q>). The final draft of the act was submitted by the Government to the Parliament in February 2018 (i.e., eight months before the transposition deadline set to December 2018). It was prepared and submitted to the Parliament earlier, but due to the end of the parliamentary term, (minority) Government (composed of previous coalition party ANO) had to deliver the same draft once again. Hence, there is a huge gap between the consultation procedure held and the submission of the bill to the Parliament.

The final act was adopted by the Parliament in July/August 2018 and published in the Collection of Laws in August 2018, with effect since October 2018 (<https://www.psp.cz/sqw/historie.sqw?o=8&t=94>), still within the transposition deadline.

Another transposition measure shall be *Zákon, kterým se mění zákon č. 190/2004 Sb., o dluhopisech, ve znění pozdějších předpisů, a další související zákony*, which was proposed by the Government in February 2018 (no information on consultation procedure was found).

There is already the reference to the Directive 2017/2399 in the final act, but the draft of the act explicitly stated that it´s not the transposition per se. Even though this bill was discussed in parallel with the previous transposition measure, the former had been finally adopted later, in November 2018 because the Senate (composed of opposition parties at that time) returned the bill to the ChofD. The legal act is in effect since January 2019, i.e., few days after the transposition deadline (<https://www.psp.cz/sqw/historie.sqw?o=8&t=93>).

Nevertheless, no infringement procedure has been launched.

**Part 2: Additional sources of information for the manuscript**

**Interviews and questionnaire:** As part of the analysis, one of the authors led in-person (separate) interviews with two officials from the Senate´s Department on EU affairs, who were regularly involved in the subsidiarity check of EU legislation in the Senate at that time. Besides, one questionnaire was distributed to the officer from the equivalent Department in the lower Chamber of deputies, where in-person interview was not possible due to the time pressure of the parliament. The main purpose of the interviews and questionnaire, which were processed in the last quarter of 2019, was to gain more insightful information on the practical processes of the subsidiarity check and the role of the parliament in both the negotiation of the EU legislation and its following transposition. Such information gained from these sources were then triangulated with data collected from the document analysis.

The interview questions/questionnaire asked: 1) which EU proposals are scrutinized by the members of the parliament, according to which criteria they are selected for the scrutiny of the EU committee and by whom they are selected, 2) what is the role of the officials and the politicians in both the subsidiarity checks and transposition, and whether the cooperation between both parliamentary chambers for these purposes takes place, 3) which committee(s) are involved in the subsidiarity check and which ones in the transposition, 4) are there some issues in the EU legislative proposals that MPs often point out during the subsidiarity check or transposition processes in relation to the EU law, 5) whether the MPs and/or officials trace the whole legislative process at the EU level after the (chamber/committee of the) parliament adopts the reasoned opinion or political dialogue resolution (that would help in the later transposition), 6) how the transposition of EU directives proceeds in the parliament (with regard to the transposition deadline), 7) whether and how both chambers of the parliament cooperate with the government and the European Commission in both the subsidiarity check and the transposition, and whether and how the government and the Commission take into account the parliamentary positions to the EU legislative proposals.

**Searching on Google:** Some data for the analysis were also obtained from the framework positions of the government (for the position of the executive to the EU legislative draft) and from the transposition tables (national tables of concordance that compares the articles of the EU directive with the articles of national transposition law), which were either received by the personal request from the ministries (especially those from the economic policy/financial intervention) or simply downloaded from the internet (by entering the name/number of the particular directive and related type of the document into the search engine). All documents utilized, which are wholly in Czech language, can be accessed by one of the authors (P. Hosnedlova).

**Part 3: Statistics on reason opinions and political dialogue´s opinions related to the Czech Republic as well as the EU as a whole**

**Figure 1: Total number of political dialogue´s opinions from both Czech parliamentary chambers between 2010-2020**

Source: Authors based on the EC´s reports on relations with national parliaments and on subsidiarity and proportionality between 2010-20

Note: total number of Political dialogue´s opinions from the Czech Parliament between 2010-20: 612 (130 from the Chamber of deputies; 482 from the Senate) out of 4876 opinions submitted from all EU national parliaments in years 2010-20 (i.e., circa 10 % of all political dialogue´s opinions came from the Czech Senate)

**Figure 2: Total number of reasoned opinions on subsidiarity principle from both Czech parliamentary chambers between 2010-20**

Source: Authors based on the EC´s report on relations with national parliaments and on subsidiarity and proportionality between 2010-20

Note: total number of reasoned opinions on subsidiarity from the Czech Parliament between 2010-20: 23 (14 from the Chamber of deputies; 9 from the Senate) out of 448 reasoned opinions from all EU national parliaments

**Figure 3: Total number of both reasoned opinions and political dialogue´s opinions from national parliaments of all member states**

Source: Authors based on the EC´s reports on relations with national parliaments and on subsidiarity and proportionality

Note: L – lower chamber; U – upper Chamber

1. The Czech Republic, together with other CEE countries, is typical for the higher number of transposition measures, which often take a form of the statutes. [↑](#footnote-ref-1)
2. Inter-ministerial consultation procedure shall last 20 days for bills and 15 days for both government regulations and ministry ordinances but all deadlines can be extended or shortened by the initiator of the bill (art. 8(1), 13(2) and 16(2), respectively, of the Legislative Rules of procedure of the Government: <https://www.vlada.cz/en/jednani-vlady/jednaci-rad-vlady/rules-of-procedure-of-the-government-20989/>). There are set of national institutions and authorities that shall have to be consulted (art. 5(1)). [↑](#footnote-ref-2)