



Transparent transposition

While BusinessEurope acknowledges Member States' discretion regarding the transposition of EU directives, Member States should be transparent about the way they transpose. They should explain and justify the elements that are added to the national transposition measure but are not required by the directive.

BusinessEurope aims for a more transparent transposition of EU directives in Member States and EEA countries, since transposition can highly impact company operations, especially cross-border. EU legislation should be transposed in a way that does not fragment the Single Market, does not hinder competitiveness or creates unnecessary compliance costs and burdens. National governments and the European Commission should also continue to make sure that the legislation adopted jointly at EU level is fit for purpose and effective and can be transposed at national level in a way that supports the functioning of the Single Market.

Currently there are no common criteria or understanding as to what amounts to proper transposition of EU legislation. There is also a lack of transparency on implementation, as is pointed out by the 2016 Interinstitutional Agreement on Better Law-Making (para. 43-45) and the EP's resolution of 30 May 2018 on the Interpretation and Implementation of the Interinstitutional Agreement on Better Law-Making (para. 87, 90 and 91). BusinessEurope encourages the Commission to take the lead in developing guidance or a template to enhance transparency on transposition, and in doing so to take inspiration from existing best practices in Member States.¹

Recommendations

- The European Commission should take the lead in developing guidance or a template that relates to the transposition of EU directives - including minimum harmonisation directives - in the national context in order to improve the current lack of transparency in this area.
- Member States should use this guidance to report to the Commission on transposition; this reporting should be publicly accessible and be done through the existing IT-tool ('MNE interface').
- The guidance should include different categories where the transposition exceeds the minimum implementation level, most notably by:
 - extending the scope of the directive;

¹ Such best practices for example already exist in Denmark.



- not taking (full) advantage of derogations where this would result in Single Market barriers;
- adding regulatory requirements beyond what is required, in particular if these fall outside the aim of the directive, or retaining national regulatory requirements that are more comprehensive than is required by the Directive;
- implementing the directive earlier than the date specified in the directive;
- applying stricter sanctions or other enforcement mechanisms than necessary for correct implementation.