



## Transposing Directives through instruments having questionable legal value: “soft law”

*Judgement of the Court of Justice of the European Union, of 11 June 2015, Case C-29/14*

### Background

Poland passed a Law to comply with its obligation to adapt its national legislation to the provisions of Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.

Directive 2004/23/EC provides that it should apply to reproductive cells (eggs, sperm) and to foetal and embryonic tissue. On the other hand, the Polish Law transposing such Directive expressly excluded said cells and tissue from its scope of application.

In view of the abovementioned exclusion, the European Commission requested Poland to properly transpose the Directive. Poland finally replied stating that the rules relating to said tissues and cells were still in the process of being drafted. In those circumstances, the Commission brought action before the Court of Justice against Poland.

### Reasoning of the Court

The Court considered that in order to determine whether or not there was a failure in properly transposing the Directive, not only had the controverted Polish Law to be taken into account but also the ‘general legal context’ in force.

The Court expressed that adapting the national laws to a directive does not necessarily require a specific express legal provision, since the general legal context may be sufficient for implementation of a directive, depending on its content.

To satisfy the requirements of legal certainty, the Court’s case-law demands in any case that the provisions of a directive must be implemented with unquestionable binding force. Nevertheless, adapting the internal laws by specific legislative or regulatory measures may be superfluous due to the existence of certain principles of constitutional or administrative law. The important thing is that the national administrative authorities ensure a full and effective application of the directive’s provisions, in a way that the individuals benefiting from the rights created by the directive are in a position to know them and invoke them before the national courts.

In this case, the Court considered that the Polish provisions contained within its ‘general legal context’ lacked binding force, because they were no more than recommendations or guidelines. Moreover, the Court considered that given that Directive 2004/23/CE specifically required the national transposing provisions to make a reference to it, Poland should have indeed adopted specific transposition measures making such reference. Considering all the foregoing, the Court declared that Poland failed to comply with its obligation of properly transposing the Directive.