

C. Provisional application of treaties

The Czech Republic applies provisionally the international agreements but this practice is limited by the Constitution of the Czech Republic. While the executive treaties (the international agreements concluded within the competence of the Government and respective Ministries, i.e. within the framework of the Czech laws) can be provisionally applied fully, the treaties that are subject of the approval of the Parliament before their ratification can be provisionally applied only to the extent they are compatible with the Czech laws.

Furthermore the provisional application is quite common for the treaties negotiated in the framework of the European Union (EU). The legal basis for the provisional application of international agreements concluded between the EU and third countries (or international organisations) is enshrined in Article 218(5) of the Treaty on the Functioning of the European Union.

In practice, the EU regularly makes use of the provisional application especially in the case of the so-called mixed agreements which require ratification by all Member States and thus can be very time-consuming. As the provisional application of provisions falling within

the Member States' competences may prove impossible due to constitutional restrictions in Member States' legal systems, only those matters covered by the agreements coming within the EU's competence are provisionally applied by the Union or the scope of the provisional application by the Member States is limited by the requirement of conformity with internal procedures (or domestic legislation).

Thus, the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, is being applied on a provisional basis by the Union, pending the completion of the procedures for its conclusion, and at the same time provisions falling within the Member States' competences are excluded from the provisional application [see Art. 3 of the Council Decision of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (2011/265/EU)].¹

As another example, Art. 3 of the Decision of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 15 October 2010 on the signature and provisional application of the Common Aviation Area Agreement ("CAAA") between the European Union and its Member States, of the one part, and Georgia, of the other part (2012/708/EU) and Art. 29 of the CAAA itself² establish that pending its entry into force, the CAAA shall be applied on a provisional basis by the Union and by the Member States, in accordance with their internal procedures and/or domestic legislation as applicable.

¹ Official Journal of the EU, L 127, 14. 5. 2011, p. 1-3.

² Official Journal of the EU, L 321, 20. 11. 2012, p. 1-32.