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# Substitutive Enforcement and Penalty Payment Act

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RT I 2001, 50, 283  
Entry into force 01.01.2002

Amended by the following acts

| Passed     | Published           | Entry into force |
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| 15.11.2001 | RT I 2001, 94, 580  | 01.01.2002       |
| 15.06.2005 | RT I 2005, 39, 308  | 01.01.2006       |
| 15.02.2007 | RT I 2007, 24, 127  | 01.01.2008       |
| 27.01.2011 | RT I, 23.02.2011, 3 | 01.01.2012       |

## Chapter 1 GENERAL PROVISIONS

### § 1. Scope of application of Act

(1) This Act provides the definition of substitutive enforcement and penalty payment (hereinafter coercive measure) and the procedure for application of coercive measures.

(2) Exceptions to the procedure provided for in this Act may be prescribed by law.

### § 2. Prerequisites for application of coercive measures

(1) A coercive measure is applied if a precept of an administrative authority is not complied with during the term indicated in a warning.

(2) A coercive measure may be applied repeatedly until the objective sought by a precept is achieved. A coercive measure may be changed.

(3) Coercive measures are not applied:  
1) upon the execution of court decisions;  
2) upon conducting supervisory control.

(4) The provisions of this Act are not applied to enforcement of precepts of an administrative authority that obligate a person to pay money.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### § 3. Principles of application of coercive measures

(1) The Administrative Procedure Act applies to legal acts issued and measures taken upon the application of a coercive measure, taking into account the specific provisions arising from this Act.

(2) The application of a coercive measure is not deemed to be a punishment.

(3) In order to ensure performance of an obligation, the mildest coercive measure and minimum degree of coercion expected to be the most effective are applied. An administrative authority shall choose a coercive measure which forces a person to perform the obligation imposed on the person by a precept while causing minimum harm to the person.

#### **§ 4. Precepts**

(1) For the purposes of this Act, a precept means an administrative act which imposes on a person an obligation to perform a required act or refrain from a prohibited act.

(2) The imposition of a punishment does not preclude the application of a coercive measure in order to ensure compliance with a precept.

#### **§ 5. Addressee of coercive measure**

(1) The addressee of a coercive measure is a natural person or a legal person in private law or in public law who is obligated, by a precept, to perform a required act or refrain from a prohibited act. The addressee of a coercive measure is also a person with regard to whom substitutive enforcement without a precept provided for in section 12 of this Act is applied. A coercive measure is not applied with regard to a state authority.  
[RT I 2007, 24, 127 - entry into force 01.01.2008]

(2) If the obligations of an addressee are not inseparably bound to the addressee, a coercive measure may be applied:

- 1) to a legal successor of the person specified in subsection (1) of this section if the obligation arising from the precept also applies to the legal successor;
- 2) to a third party who is, pursuant to law, liable for the performance of the obligation imposed on the addressee by the precept.

(3) A coercive measure may be applied with regard to the person specified in subsection (2) of this section after the person becomes aware of the obligation prescribed by a precept and the possibility of application of the coercive measure.

#### **§ 6. Administrative authorities which apply coercive measures**

A coercive measure is applied by the administrative authority which issued the precept unless otherwise provided by law.

## **Chapter 2 PROCEDURE FOR APPLICATION OF COERCIVE MEASURES**

#### **§ 7. Warning**

(1) Prior to the application of a coercive measure, an administrative authority issues the addressee a written warning which shall set out:

- 1) the given name, surname and address of the addressee or the name and postal address of the legal person;
- 2) a reference to the precept compliance with which is requested;
- 3) the date by which the precept can be voluntarily complied with (if the precept contains an obligation to refrain from a certain act, the date need not be indicated);
- 4) the coercive measure which shall be applied in case of failure to comply with the precept;
- 5) the name of the administrative authority which issued the warning;
- 6) the signature of the authorised official of the administrative authority which issued the warning;
- 7) the date on which the warning was prepared.

(2) A warning may be issued together with a precept or as a separate notice.

(3) The term for voluntary compliance with a precept, granted in a warning, shall allow the addressee of the coercive measure to perform the obligation.

(4) If several coercive measures can be applied for enforcement of a precept, the types of the measures, the order of application and the dates of commencement of application thereof shall be indicated. In a warning, coercive measures shall not be determined alternatively and the enforcer shall not have the right to choose between the coercive measures. The administrative authority may apply a new coercive measure if compliance with a precept is not achieved by the initial coercive measure.

(5) The prescribed amount of penalty payment shall be indicated in a warning to impose penalty payment. If a person is obligated to perform several acts or refrain from several acts, the penalty payment shall be determined separately for each obligation.

(6) The presumed amount of the costs of substitutive enforcement shall be indicated in a warning to apply substitutive enforcement.

## **§ 8. Permissibility of application of coercive measures**

(1) A coercive measure may be applied if a valid precept has been communicated to the addressee and the precept is not complied with during the term indicated in a warning. Exceptions are provided for in section 12 of this Act.

(2) The administrative authority which issued a precept may postpone the application of a coercive measure at the reasoned request of the addressee of the coercive measure, and issue a new warning where a new term is set for compliance with the precept. The term shall not be longer than two months.

(3) A coercive measure shall not be applied if:

- 1) the bases for application of coercion provided for in subsection (1) of this section have ceased to exist;
- 2) the provision of law which was the basis of the precept is repealed;
- 3) the application of the coercive measure is postponed;
- 4) an administrative court suspends the application of the coercive measure pursuant to the procedure prescribed by the Code of Administrative Court Procedure [RT I 23.02.2011, 3 – entry into force 01.01.2012].

(4) The administrative authority which is competent to apply a coercive measure shall notify the addressee of the coercive measure immediately of a decision not to apply the coercive measure.

## **§ 9. Enforcement order**

(1) If a precept is not complied with during the term indicated in a warning and the term for challenging the precept expires, the administrative authority applying a coercive measure issues to the person who directly applies the coercive measure on behalf of the administrative authority a written enforcement order which shall set out:

- 1) the name of the administrative authority which issued the precept and applies the coercive measure;
- 2) the given name and surname of the person or the name of the legal person who directly applies the coercive measure;
- 3) a reference to the administrative act by which the precept was issued and contents of the precept;
- 4) confirmation that the coercive measure indicated in the warning will be applied;
- 5) the given name and surname of the addressee or the name of the legal person;
- 6) in the case of substitutive enforcement, the place of application of the coercive measure;
- 7) the coercive measure applied.

(2) At the request of the addressee, the person directly applying a coercive measure shall present the addressee with his or her professional licence and the enforcement order.

## **§ 10. Penalty payment**

(1) Penalty payment is an amount determined in a warning, payable by the addressee if the addressee fails to perform the obligation imposed by a precept within the term indicated in the warning.

(2) The upper limit of penalty payment for each imposition thereof is provided by law.

(3) An addressee has the right to receive a receipt certifying the delivery of penalty payment.

## **§ 11. Substitutive enforcement**

(1) If an addressee fails to perform an obligation imposed on the addressee by a precept within the term prescribed in a warning, and the obligation is not inseparably bound to the addressee, a competent administrative authority may perform the obligation at the expense of the addressee or organise the performance of the obligation by a third party (substitutive enforcement).

(2) If substitutive enforcement is carried out by a third party, the administrative authority may require the addressee to refrain from interference with the substitutive enforcement. The administrative authority shall issue an enforcement order to the third party who carries out substitutive enforcement.

## **§ 12. Special cases of substitutive enforcement**

(1) Substitutive enforcement may be applied without a precept, warning or enforcement order if imminent danger to public security or order needs to be eliminated immediately.

(2) Substitutive enforcement may also be applied without a precept if the precept cannot be issued to the addressee in due time.

(3) Substitutive enforcement without a warning or enforcement order may be applied for the performance of an obligation indicated in a precept if imminent danger to public security or order requires expedited compliance with the precept.

(4) In the cases specified in subsections (1) – (3) of this section, the procedure for application of coercive measures provided by this Act is applied subject to the specific provisions provided for in this section.

### **§ 13. Report on substitutive enforcement**

(1) An administrative authority or a third party who carries out substitutive enforcement with the authorisation of the administrative authority shall record the act of substitutive enforcement. The addressee shall receive a copy of the report if the addressee so requests.

(2) A report shall include:

- 1) the name of the administrative authority in whose name or with whose authorisation the report is prepared;
- 2) the given name, surname and official title of the person who prepared the report;
- 3) the given name and surname and address of the addressee or the name and postal address of the legal person;
- 4) the content of the act of substitutive enforcement;
- 5) the time and place of preparation of the report;
- 6) the signature of the person who prepared the report.

### **§ 14. Costs of substitutive enforcement**

(1) The costs of substitutive enforcement include:

- 1) costs incurred by the administrative authority which carries out substitutive enforcement;
- 2) remuneration payable to a third party who carries out substitutive enforcement;
- 3) compensation to a person to whom damage is lawfully caused by the application of substitutive enforcement.

(2) If the actual costs of substitutive enforcement substantially exceed the costs specified in the warning to apply substitutive enforcement, the administrative authority applying substitutive enforcement shall notify the addressee thereof immediately after the increase in the costs has become evident.

### **§ 15. Collection of costs of substitutive enforcement and penalty payment**

(1) The costs of substitutive enforcement and penalty payments are collected pursuant to the procedure provided for in the Code of Enforcement Procedure as financial claims deriving from court judgments. The addressee is the debtor and the administrative authority applying the coercive measure is the claimant.

(2) The actually incurred costs of substitutive enforcement are collected even if the costs exceed the estimated amount indicated in a warning. The procedure for calculation of costs of substitutive enforcement and the limits of remuneration payable to third parties who carry out substitutive enforcement as well as the procedure for payment of such remuneration are established by the Government of the Republic.

(3) As an exception, an administrative authority applying a coercive measure may determine the estimated costs of substitutive enforcement prior to the actual commencement of substitutive enforcement and collect such costs as advance payment. After substitutive enforcement is carried out, accounts shall be settled pursuant to the procedure established by the Government of the Republic.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 16. Protection of rights of addressee**

(1) An addressee may file an action, application for initial legal protection or claim for compensation for damage with an administrative court pursuant to the procedure provided by the Code of Administrative Court Procedure if the addressee finds that the application of a coercive measure violates or may violate his or her rights.

(2) The filing of an action does not suspend compliance with a precept or application of a coercive measure unless the court decides otherwise.

## **Chapter 3**

## IMPLEMENTING PROVISIONS

§ 17.–§ 18.[Omitted from this text.]

§ 19. [Repealed - RT I 2001, 94, 580 – entry into force 01.01.2002)

§ 20.–§ 27.[Omitted from this text.]

**§ 28. Entry into force of Act**

This Act enters into force on 1 January 2002.