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Substitutional Performance and Non-Compliance Levies 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
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
19.06.2014	RT I, 12.07.2014, 1	01.01.2015

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of Act

(1) This Act provides the definition of substitutional performance and non-compliance levy (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 compliance notice 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 compliance notice 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 compliance notices 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 compliance notice while causing minimum harm to the person.

§ 4. Compliance notices

(1) For the purposes of this Act, a compliance notice means an administrative decision 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 compliance notice.

§ 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 compliance notice, 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 substitutional performance without a compliance notice provided for in § 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 compliance notice 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 compliance notice.

(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 compliance notice 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 compliance notice 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 compliance notice that must be complied with;
- 3) the date by which the compliance notice can be voluntarily complied with (if the compliance notice 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 compliance notice;
- 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 compliance notice or as a separate notice.

(3) The term for voluntary compliance with a compliance notice, 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 compliance notice, 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 compliance notice is not achieved by the initial coercive measure.

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

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

§ 8. Permissibility of application of coercive measures

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

(2) The administrative authority which issued a compliance notice 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 compliance notice. 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 compliance notice 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. Compliance order

(1) If a compliance notice is not complied with during the term indicated in a warning, the administrative authority applying a coercive measure issues a written compliance order to the person who directly applies the coercive measure on behalf of the administrative authority, and the order shall set out:
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

- 1) the name of the administrative authority which issued the compliance notice 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 decision by which the compliance notice was issued and contents of the compliance notice;
- 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 substitutional performance, 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 compliance order.

§ 10. Non-compliance levy

(1) Non-compliance levy is an amount determined in a warning, payable by the addressee if the addressee fails to perform the obligation imposed by a compliance notice within the term indicated in the warning.

(2) The upper limit of non-compliance levy for each imposition thereof is provided by law.

(3) An addressee has the right to receive a receipt certifying the delivery of non-compliance levy.

§ 11. Substitutional performance

(1) If an addressee fails to perform an obligation imposed on the addressee by a compliance notice 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 (substitutional performance).

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

§ 12. Special cases of substitutional performance

(1) Substitutional performance may be applied without a compliance notice, warning or compliance order if imminent danger to public security or order needs to be eliminated immediately.

(2) Substitutional performance may also be applied without a compliance notice if the compliance notice cannot be issued to the addressee in due time.

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

(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 substitutional performance

(1) An administrative authority or a third party who carries out substitutional performance with the authorisation of the administrative authority shall record the act of substitutional performance. 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 substitutional performance;
- 5) the time and place of preparation of the report;
- 6) the signature of the person who prepared the report.

§ 14. Costs of substitutional performance

(1) The costs of substitutional performance include:

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

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

§ 15. Collection of costs of substitutional performance and non-compliance levy

(1) The costs of substitutional performance and non-compliance levies 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 substitutional performance are collected even if the costs exceed the estimated amount indicated in a warning. The procedure for calculation of costs of substitutional performance and the limits of remuneration payable to third parties who carry out substitutional performance 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 substitutional performance prior to the actual commencement of substitutional performance and collect such costs as advance payment. After substitutional performance 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 compliance notice 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.