

VI.

Environmental Legislation – information on structure, implementation and enforcement

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EU environmental policy is based on the **provisions and principles provided in the EC Treaty mainly in Articles 2, 95 and 174**, which cannot be changed by subsequent legislation.

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Subsequent or secondary legislation in the field of the environment includes:

a) Regulations

Regulations are binding, directly applicable in all Member States and are **immediately enforceable** at Member State level before national courts. Regulations are normally adopted to provide legislation on issues requiring uniform provisions throughout the Community.

b) Directives

Directives are addressed to the Member States and impose upon them an obligation to achieve a specific result within a certain period of time. However, it is up to the Member States to decide how to achieve this result. Member States must **transpose directives' provisions into domestic legal orders**, but it is up to each Member State to decide what kind of legislative act is more appropriate to achieve the imposed result as long as the transposition is 'complete' and 'correct'.

c) Decisions

Decisions are not legislative instruments aimed at the general public, unlike the regulations, and are binding in their entirety, unlike the directives. Decisions are binding upon those to whom they are addressed. A recent and important example of an environmental Decision is the Decision of the European Parliament and Council for the Sixth Environmental Action Programme, which i.a. obliges the European Commission to present Thematic Strategies within a given time and including certain elements.

VI.2 Implementation and Enforcement

As many EU laws are adopted in the form of Directives the quality of transposition into national legislation and their application at national level are key aspects for successful environmental protection. The European Commission has a special obligation to enforce EU laws and thus must control the quality of transposition and application of provisions.

Transposition:

The Commission receives reports about the transposition of Directives into national laws and is thus in a position to check compliance – although due to a lack of resources the checks are rather limited. In case of delayed, incomplete or wrong transposition the Commission can launch an infringement procedure.

The room for manoeuvre to transpose Directives, especially so-called Framework Directives into national law is often substantial and can lead to large interpretation differences and subsequently in different environmental ambition levels.

Implementation:

The second hurdle for a proper application of environmental Directives is the actual implementation of the provisions, measures, monitoring etc. in practice. Most Directives foresee reporting of how those obligations are to be carried out – but often in a very general and summarised format, which is often insufficient to check compliance.

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As there is no EU inspectorate for the environment to check what is happening in practice, the European Commission has only limited possibilities of ensuring proper enforcement. The Commission acknowledges that complaints sent by citizens, ECOs or others play a vital role in keeping the Commission informed of (non-)compliance with certain EU environmental legislation.

This complaints procedure is available to everybody, there is no need to be personally specifically concerned by the infringement and it does not involve any costs. It has, however, also a number of shortcomings. The process is very slow (worst cases remain pending for 10 years and more); there is no fixed time frame; the complainant often lacks information on the development of the case confidentiality being invoked with regard to Member States' replies; and cases cannot be reopened when a Member State does not keep its promise to remedy an offence.

Stages of the infringement procedure

1) Suspected Infringement

- Complaints launched by citizens, ECOs, corporations
- The own initiative of the Commission
- Petitions and Questions by the European Parliament
- Non-communication of the transposition of Directives by Member States

2) Formal Letter of Notice (Art. 226)

3) Reasoned Opinion (Art. 226)

4) Referral to the European Court of Justice (ECJ) (Art. 226)

5) ECJ Judgement (Art. 226)

6) Proceedings, Financial Penalties (Art. 228)

FURTHER READING AND INFORMATION SOURCES

EEB (2002) EC complaints procedure: EEB's seven key recommendations for a change, Position Paper December 2002, Brussels

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EEB (2004) Your Rights Under the Environmental Legislation of the EU, Special Report by the EEB, December 2004, Brussels

Legislation: can be found at most easy through the natural number year/number at EUR-lex at http://europa.eu.int/eur-lex/lex/RECH_naturel.do

Transposition: a calendar for the transposition of directives can be found at the Website of the Secretariat-general of the Commission http://europa.eu.int/comm/secretariat_general/index_en.htm under the heading "Application of Community law"

Infringements: The Commission's "Annual report on monitoring the application of Community law" provides a detailed overview of the application – or lack of application – of Community law per Member State and per issue. It can be found at the Website of the Secretariat-general of the Commission http://europa.eu.int/comm/secretariat_general/index_en.htm under the heading "Infringements"

Complaints: A standard form for complaints to be submitted to the European Commission for failure by a Member State to comply with Community law can be found at the Website of the Secretariat-general of the Commission http://europa.eu.int/comm/secretariat_general/index_en.htm under the heading "Infringements"