

# **EU environmental law and its enforcement**

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# EU environmental law

## Form:

Regulations, art.288 TFEU; (a) int.agreements (b) institutions

Directives, art.288 TFEU normal form

Decisions, art.288 TFEU; mainly for int.agreements; also for individual decisions

International Agreements, art.216(2) TFEU;

Court judgments, art.19 TEU

Recommendations, art. 288 TFEU; not binding; normally ignored

Communications, guidelines: principle of equal treatment (Court)

# **Environmental law**

**Horizontal issues; for example 2011/92, 2003/4, 2004/35**

**Water: 2000/60; 91/271; 91/676**

**Air; 2008/50, 1005/2009, 2010/75**

**Products; 1907/2006; 1107/2009**

**Waste; 2008/98; 94/62; 1013/2006**

**Noise; 2002/49; 2000/14**

**Nature; 2009/147; 92/43; 338/97**

**Transport; for example airplane noise, emissions; road charges**

**Energy; for example renewables, energy performance of buildings**

**Agriculture; for example pesticides, fertilizers**

**Health; for example GMOs,**

**Trade (internal market); for example car emissions, chemicals, labelling**

# Environmental law - Generalities

1. EU law is an autonomous legal order. It has to be interpreted of its own. The same word („waste“; „significant“) used in national and EU law, may have a different meaning.
2. In the case of conflict, EU law prevails over national law.
3. Citizens may invoke EU law in their favour, where it is unconditional and sufficiently precise („direct effect“ in favour of citizens).
4. Administrations must apply EU law also, where it is not of direct effect.
5. Directives must be transposed into national law. This also applies normally to definitions, and always to quantitative results (emission limits, quality requirements)
6. The application of international agreements that were ratified by the EU, at (EU and) national level is a largely uncovered ground

# Enforcement

**Enforcement is the action by which it is made sure that the legislation is actually complied with**

**Sociologists: 5% never obey the law**

**20% always obey the law, even when it is bad, unjust etc**

**75% obey, when the law is perceived to be fair, just, well monitored, not creating exceptions for the powerful etc.**

**Implementation and enforcement of EU law is normally done by the Member States**

**The Croatian environment cannot be protected via Bruxelles**

**Implementation means:**

- **Transposition of the provisions of EU law into the national legal order**
- **Complete and correct transposition**
- **Application in daily practice of the transposed provisions**

**Enforcement by means of administrative, criminal or civil law**

# Enforcement by EU Commission

**The Commission shall ensure the application of the Treaties and of measures adopted by the institutions pursuant to them (Article 17 TEU)**

**Commission monitors: (a) transposition Member States must send in their legislation**

**within a certain time.**

**Sanction: Art.258-260 TFEU**

**(b) complete and correct transposition**

**No time limitation for Commission. Work is often contracted out (conformity studies)**

**(c) application**

**No EU inspectors. Therefore complaints, petitions as main source**

**Commission is reluctant to monitor application (Court, number of cases, relation with Member States). Pilot process**

# **EU enforcement procedure**

**Articles 258 and 260 TFEU. Action always against Member State**

**(a) Letter of formal notice. Communication of suspicion of infringement**

**(b) Reasoned opinion. Final word; the facts are largely clear**

**(c) Appeal to the Court**

**(1) The complete procedure takes on average about 47 months (quicker in cases of non-communication, slower in cases of bad application)**

**(2) The Commission has complete discretion whether to take any of the three steps; this discretion is not controlled by the Court**

**(3) Court states that law was breached. Member State has then to take the necessary measures.**

**(4) If that is not done, same procedure under Article 260 TFEU, but without (b). Court may then fix a payment of a lump sum or of a penalty payment**

# How come citizens and NGOs in?

## **(1) Enforcement at national level**

- **complaints to the administration; court action; public action**

## **(2) Enforcement at EU level**

- **complaints to the Commission („traitor“); complaint form  
very few information, practically no participation rights (pilot system)**
- **petition to the EU Parliament (see above)**
- **complaint to the Ombudsman**