EU environmental law and national Courts: an introduction

EU environmental law

- Air quality
- Pollution control of industrial installations
- Waste management
- Water quality, Waste water, Drinking water
- Protecting biodiversity
- Public Participation in environmental decisions
- GMOs

Two ways for compliance with EU legislation

- Role of the Commission and related powers granted by the Treaty
  - Article 17 EU and role of « Guardian of the Treaties »
  - Specific powers of articles 258 TFEU et 260 TFEU
- Role of national judges and role of the Court of Justice of the European Union
  - The concept of « direct effect »
  - The possibility to ask questions to the European Court of the European Union
The mission of the Commission

Article 17 TUE

“The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. (…) 2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. (…)”

Bringing a case to the Court of Justice

Article 258 TFEU

«If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union. »
A new element in the Lisbon Treaty in this first phase (article 260 TFEU, paragraph 3): cases where Member States have not transposed Directives in due time …

Infringements in EU environmental law by country (24 Feb 2011)

Infringement in EU environmental law by topic (all countries, 24 February 2011)
Article 260 TFEU

(...).2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it. (...)

The 2nd reference of a case to the ECJ

How does the procedure work in practice?

2nd step: article 260 TFEU

Letter of formal notice

Penalties and lump-sum

2 months for reply

Technical meetings

First judgment of ECJ

Court of Justice

Second judgment of ECJ

EU environmental law infringement cases (cases article 260 TFEU by country – 24 February 2011)
Action at the level of national Courts: the concept of direct effect

- A key-concept for EU law
  - Case 26/62 Van Gent en loos
  - Cases 41/74, Van Duyt et 148/78 Ratti
- Direct effect of EU law makes national judges « EU law judges »
  - The Court considers the concept of « direct effect » to be a consequence of Article 267 TFEU

What is « direct effect » ?

- The concept does not only deal with directives but on all areas of EU law (Treaties, Regulations, Directives, Decisions)
  - But the main source of problems is with Directives
- « Vertical direct effect » vs « Horizontal direct effect »
  - It is possible to raise EU law points of law not transposed before the national judge: vertical effect
  - However, it is not possible to use EU law not transposed against third parties

Direct effect imposes to judges to read national law in conformity with EU law

- Judges must try to have a reading of national law in conformity with EU law
  - Case 106/89 Marleasing
- EU law = national law for judges (raising points of law based on EU law)
  - Case 72/95 Kraaijeveld
- If it is national law incompatible with EU law, then judges have to discard national law
  - Case 148/78 Ratti
The preliminary reference mechanism
- The text of article 267 TFEU has not been much modified compared to old article 234 EC
- This mechanism is in place since the beginning of the EU
- It is the source of the EU law precedence and EU legal order: Case 6/64, Costa/ENEL

> By the terms of this article, however, national courts against whose decisions, as in the present case, there is no judicial remedy, must refer the matter to the Court of Justice so that a preliminary ruling may be given upon the « interpretation of the treaty » whenever a question of interpretation is raised before them.

EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

Why referring a question to the ECJ?
- A problem related to EU law
- A problem which is not hypothetical
- A problem which was not already solved

Conclusion: 2 complementary alternatives for ensuring compliance with EU law

- EU law implementation problem
  - Referral to a national Court
    - Ruling of national Court
      - Article 267 TFEU
    - National judge
      - Commission
        - Commission is informed or Commission identifies the problem
          - Article 258 TFEU
          - Court of Justice of the European Union
            - Judgement on preliminary reference
            - Judgement on failure to fulfill obligations