



Principles of EU Environmental Law



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INTRODUCTION TO EU ENVIRONMENTAL LAW
Focus on the role of national judges and prosecutors
(10 May 2021 - online workshop)

Content

- What is the **purpose** and the **use** of the principles of EU environmental law?
- **General principles of EU law**
 - Primacy of EU law
 - Effectiveness
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 - Subsidiarity and proportionality
 - Integration
- **Specific principles**
 - Prevention principle
 - Precautionary principle
 - Polluter pays principle
 - Rectification of damage at source
 - Sustainable development



Legal base of EU Environmental law - TFEU

Article 191

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.



Before 1986 (Treaty of Rome)	Single European Act (1986)	Maastricht Treaty (Treaty of the Union - 1992)	Amsterdam Treaty (1999)	Lisbon Treaty (2009)
Art. 100 Harmonization (internal market)	→ Art 100a Harmonization + safeguard clause	→ Art 100a Harmonization + safeguard clause	→ Art 95 Harmonization + safeguard clause	→ Art 114 Harmonization + safeguard clause
Art. 235 Objectives of the Community	Art. 235 (not in use any longer!)	Art. 235 (not in use any longer!)	Art. 308 (not in use any longer!)	Art. 352 (not in use any longer!)
-	Art. 130r - Objectives - Principles - Grounds - Int. coop.	→ Art. 130r - Objectives - Principles - Grounds - Int. coop.	→ Art. 174 - Objectives - Principles - Grounds - Int. coop.	→ Art. 191 - Objectives - Principles - Grounds - Int. coop.
-	Art. 130s Legal basis and procedure	→ Art. 130s Legal basis and procedure	→ Art. 175 Legal basis and procedure	→ Art. 192 Legal basis and procedure
-	Art. 130t Minimum stringency	→ Art. 130t Minimum stringency	→ Art. 176 Minimum stringency	→ Art. 193 Minimum stringency

Legal base of EU Environmental law - TFEU

Article 35

Quantitative restrictions on exports, and all measures having equivalent effect, **shall be prohibited** between Member States.

Article 36

The provisions of Articles 34 and 35 **shall not preclude prohibitions** or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; **the protection of health and life of humans, animals or plants**; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.



PRIMACY OF EU LAW

EU law takes precedence over the law of the Member States and requires all Member State bodies to give full effect to the various provisions of EU law

= obligation of the national courts:

to interpret the national law to the greatest extent possible, in conformity with the requirements of EU law (autonomous concepts – context and purpose, derogations must be interpreted strictly, effective participative rights)

Not possible (interpretation contra legem)?

to disapply case-law which represents an obstacle to the full application of EU law, and even any provision of national law which is contrary to a provision of EU law



Exception: A risk that the annulment of the measure could create a legal vacuum that is incompatible with that Member State's obligation to adopt measures to transpose another act of EU law concerning the protection of the environment (Case C-41/11 Inter-Environnement Wallonie and Terre wallonne) or another general interest. In any event, any possible the maintenance of the effects of those acts may last only as long as is strictly necessary to remedy the breach found (Case C-24/19 A and Others () and à Nevele, also see Case C-411/17 Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen).



to consider direct effect of EU directive (separate principle)



PRIMACY OF EU LAW - EXAMPLES

Interpretation: Case C-585/10 (*Møller*) - a sow and a gilt (*sivēnmāte/jauncūka*)

10 Saskaņā ar Direktīvas 96/61 I pielikuma 6.6. punktu šī direktīva attiecas uz šādiem saimnieciskās darbības veidiem:

“Iekārtas intensīvai putnu vai cūku audzēšanai ar vairāk nekā:

[..]

b) 2000 vietām nobarojamām cūkām (virs 30 kg)

vai

c) 750 vietām sivēnmātēm.”

The CJEU noticed that the term 'sow' does not have a univocal meaning in all the official languages. It decided for interpretation which equates gilts with the sows because, for industrial installations which have a significant potential for pollution, both sows and gilts have the same effect on the environment.



EFFECTIVENESS

Art. 4 (3) TEU:

Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

*The Member States shall **take any appropriate measure**, general or particular, **to ensure fulfilment of the obligations** arising out of the Treaties or resulting from the acts of the institutions of the Union.*

= obligation of the national courts:



to nullify the unlawful consequences of a breach of EU law



to ensure effective protection (injunctive relief, suspensive effect)



*to penalise infringements of EU law **under conditions**, both procedural and substantive, **which are analogous** to those applicable to violations of national law of a similar nature and importance and which, **in any event**, **make the penalty effective, proportionate and dissuasive***

EFFECTIVENESS - EXAMPLE

Case C-201/02 Wells: National measure granting consent for mining operations without an environmental impact assessment being carried out

The CJEU held it is for the **competent authorities** of a Member State to take, **within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined** in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

Such particular measures include, **subject to the limits laid down by the principle of procedural autonomy of the Member States, the revocation or suspension of a consent already granted**, in order to carry out an assessment of the environmental effects of the project.

LIMITATION: *The national court sometimes has to balance a number of fundamental rights (see Case C-752/18 Deutsche Umwelthilfe)*



DIRECT EFFECT

The principle of direct effect enables individuals to immediately invoke an EU law provision before the national court independent of whether national law test exists.

A directive has direct effect when it grants certain right to an individual, its provisions are unconditional and precise, and the Member State has not transposed the directive by the deadline.



The environmental directives rarely expressly grant rights to individuals but if they fix limit values for the protection of human health, then they also confer on the persons concerned a legally enforceable right to compliance with those limit values (Case C-59/89 Commission v Germany).



It would be incompatible with the binding effect attributed to a directive to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned – also NGOs (Case C-243/15 Lesoochranské zoskupenie VLK, para. 44).



Therefore, the individuals concerned, including the environmental NGOs, are able to rely on the EU directives in the decision-making procedures, where the directives require, or before the national courts – they can access the courts based on EU directives.



SUBSIDIARITY AND PROPORTIONALITY

Article 4 TFEU: *Shared competence* between the Union and the Member States in areas:

- (e) environment (see Art. 191);
- (i) energy;

Article 5(3) and 5(4) TFEU:

3. Under the *principle of subsidiarity*, in areas which do not fall within its exclusive competence, the Union shall act only if and *in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States*, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

4. Under the *principle of proportionality*, the content and form of Union action *shall not exceed what is necessary* to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principles of subsidiarity and proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.



COMPETENCE + SUBSIDIARITY AND PROPORTIONALITY - EXAMPLE

Case C-358/14 Poland v Parliament and Council:

The CJEU confirmed that **the EU was permitted to prohibit the sale of menthol cigarettes** in the European internal market. According to the Court, the prohibition cannot be regarded as manifestly inappropriate for achieving the objective of facilitating the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of protection of human health, especially for young people. Any less restrictive measures do not appear to be equally suitable for achieving the objectives pursued

(also see *Case C-491/01 British American Tobacco and Imperial Tobacco*)



INTEGRATION

Broad sense:

Art. 11 TFEU: Environmental protection requirements *must be integrated into the definition and implementation of the Union's policies and activities*, in particular with a view to promoting sustainable development.

➡ useful for interpretation of requirements in all relevant policy areas (Agriculture, Energy, Fisheries, Transport, etc.)

Narrow sense:

Ratio behind specific EU legislation: The integration principle applies to considerations on environmental effects of certain activities

➡ useful for interpretation of requirements on environmental impact assessment (EIA Directive, SEA Directive, the Habitats Directive, Water Framework Directive) or the integrated permitting procedures for the most significant industrial installations (introduction of the best available techniques – the IED Directive).



SPECIFIC PRINCIPLES: Principle of prevention

- *aims to prevent environmental damage; such as to protected species or to natural habitats, water and soil; rather than to react to it. It requires preventive measures to be taken to anticipate and avoid environmental damage before it happens.*



A legitimate reason to set specific conditions in a permit of an activity, to impose preventive measures by the official authorities or the courts

- *often emphasised in the preambles of EU legislative acts*



Useful for interpretation of the EU requirements

Example: The preamble of the **SEA Directive** emphasises that the adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by **providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making**. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.

SPECIFIC PRINCIPLES: Precautionary principle

- *Where there is scientific uncertainty about the risk of environmental harm, the precautionary principle allows or requires protective measures to be taken without having to wait until the harm materializes (better safe than sorry)*

➡ *EU legislation: GMO Directive, Environmental Quality Standards Directive, Water Framework Directive, the Habitats Directive (C-254/19: ... the assessment of a project's implications must be carried out where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project might affect the conservation objectives of the site)*

➡ *Specific measures adopted at the EU level or at the national level:
Emergency + Number of endangered persons + hypothetical risk =
strictness of the measure*

C-157/96 (National Farmers' Union)

C-180/96 (Mad cow disease)



Czech Republic to lift Polish beef checks

By Joe Whitworth on March 23, 2019

Czech Republic will lift checks on beef from Poland that the European Commission called "disproportionate" from next week.

One month ago, the country put in place extraordinary veterinary measures that all Polish beef must be tested in an accredited lab at a cost to the importer before it is placed on the market following detection of Salmonella.

The EC examined these measures and concluded they appeared disproportionate to the incident.



SPECIFIC PRINCIPLES: Polluter Pays Principle

- *The polluter pays principle (PPP) requires polluters to bear the environmental and social cost of their actions.*

The PPP has been utilised as an economic tool for managing different types of environmental pollution through embodiment in legislation including the Waste Framework Directive, the Landfill Directive and the Water Framework Directive.



Indicates the ratio behind the regulation (useful for interpretation and considerations on effectiveness):

Article 1 of the Environmental Liability Directive: 'The purpose of this Directive is to establish a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage.'



Specific instruments based on the PPP principle (a guidance for interpretation of specific requirements)

Polluter Pays Principle - EXAMPLES

The PPP is **not applied as an absolute rule**, more as a method to determine the effectiveness of the financial burden as a whole. It should reflect the principle of proportionality:

Case C-534/13 Fipa Group and Others: The CJEU was dealing with a dispute regarding sites in Italy polluted by industrial activity. Under the national law, **the authorities could not require the new landowners who have not contributed to that pollution to carry out preventive and remedial measures**. The Court held that the national legislation does not violate EU law, provided it is impossible to identify the polluter of a plot of land or to have that person adopt remedial measures.

Case C-335/16 - VG Čistoća: *Price charged for waste management was based on the volume of waste containers and the number of times these containers were emptied, not on their actual content. CJEU: No violation of EU law. It is, however, incumbent on the referring court to verify, on the basis of the matters of fact and law placed before it, whether this results in the imposition on certain 'holders' of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce. Accordingly, the national court may take into account, inter alia, criteria relating to the type of property that the users occupy, its surface area and use, the productive capacity of the 'holders', the volume of the containers provided to the users, and the frequency of collection, in so far as those parameters are liable to have a direct impact on the amount of the costs of waste management.*



Lat.: Iesniedzējtiesai, pamatojoties uz tai zināmajiem faktiskajiem un tiesiskajiem apstākļiem, tomēr ir jāpārbauda, vai tādējādi dažiem "īpašniekiem" netiek noteiktas izmaksas, kuras acīmredzami nav samērīgas ar atkritumu, kurus tie spēj radīt, apjomu vai īpašībām. Šajā nolūkā valsts tiesa tostarp var ņemt vērā kritērijus, kas ir saistīti ar dzīvojamās ēkas, kuru lietotāji aizņem, veidu, tās platību un šīs ēkas izmantošanas nolūku, "īpašnieku" atkritumu radīšanas spēju, lietotājiem piešķirtā konteinera tilpumu, kā arī vākšanas biežumu, ciktāl šie parametri var tieši ietekmēt atkritumu apsaimniekošanas izmaksu summu.

PRINCIPLE OF RECTIFICATION OF DAMAGE AT SOURCE

- ensures damage or pollution is dealt with where it occurs. In perfect scenario, its application helps to
 - 1) prevent pollution which is not transferred elsewhere to get *out of sight*
 - 2) to prevent pollution at source, not at the chimney/exhaust (modern technologies of production instead of conditions of operation).

➡ In particular in *waste management* - consistent with the principles of self-sufficiency and proximity applied in the waste management policies

Example: Case C-2/90 Commission v Belgium: The CJEU held that the principle entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of; it must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible, the transport of waste.



➡ illegality of the national acts?
violation of EU law?



PRINCIPLE OF SUSTAINABLE DEVELOPMENT

- a specific, but far-reaching principle
- *Sustainable development is now repeatedly mentioned in the Treaties: as a basic objective of the EU in the new Article 3 TEU; in Article 21 TEU concerning the external action of the Union; and in Article 11 TFEU setting out the integration principle (+ EU Strategy for Sustainable Development).*

with → *very similar to the general principle of proportionality: the necessity of an action negative impact should be always considered, including alternative solutions*

→ *In the secondary legislation, sustainable development serves as a framework principle behind the goals of environmental protection, either in specific legislation, or integrated into other policies.*

Example: According to recital 5 of the Birds Directive, the conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary in order to attain the European Union's objectives regarding the improvement of living conditions and sustainable development. As a consequence, inter alia, hunting of birds is restricted to certain species, must be compatible with maintenance of the population of these species at a satisfactory level, and must consider other satisfactory solutions

(See Case C-161/19 Commission v Austria).

→ **SURVIVAL IS NOT ENOUGH!**



THANK YOU FOR YOUR ATTENTION!

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